CHAPTER IV

MAINTENANCE AS AN ANCILLARY REMEDY UNDER MATRIMONIAL LAWS

The right to maintenance is an incident of the status or estate of matrimony. Under all the existing personal laws in India a duty is imposed upon the husband to provide maintenance to his wife not only during coverture but also on separation.

All personal laws, except Muslim Law have provided for an ancillary remedy of interim maintenance and permanent alimony under the marriage laws. Under the Hindu Marriage Act (HMA) and the Parsi Marriage and Divorce Act (PMDA) either party, i.e. wife or husband can claim maintenance and alimony from the other spouse while under the Indian Divorce Act (IDA) and the Special Marriage Act (SpMA), it is only the wife who can claim it from her husband. In the year 1976 by the Marriage Laws Amendment Act, the provisions of the SpMA, 1954 and the HMA 1955 were made more or less pari materia by several common amendments in both the Acts, but still the maintenance provisions under the SpMA were not amended so as to allow husband claim maintenance from his wife. It is difficult to understood why the Legislators did not give right to the husband to claim maintenance against his wife under the SpMA when it is there under the HMA. If the husband and wife are placed on a footing of equality as regards the liability of paying maintenance under the
personal law, it is surprising why it was not so done under the SpMA.

Muslim Law of Maintenance is much different than the other personal laws. Therefore, we will discuss it separately in the third part of the next chapter.

Maintenance as an Ancillary Relief:

According to Encyclopedia Britannica\(^1\) ancillary is an adjective, meaning 'subordinate' or merely helping as opposed to essential. The dictionary meaning of one word ancillary is subserving; auxiliary.

Ancillary remedy means a remedy which grows out of and is auxiliary to another primary action.\(^2\)

The expression 'ancillary' was first used in the English Matrimonial Law by the Matrimonial Causes Rules, 1837. Under the ecclesiastical law the court was required to pronounce a decree of alimony in favour of the wife on its pronouncing a decree of divorce a mens et thoro (i.e. judicial separation) as ancillary to the decree of separation. When the matrimonial jurisdiction came to be conferred on common law courts by the Matrimonial Causes Act, 1857, introducing absolute divorce, the courts considered itself to be duty bound to provide two types of reliefs as ancillary to the main petition of matrimonial relief viz. (a) alimony and maintenance to the wife and (b) adjudication of matters relating to the custody, maintenance and education of children.
Based on these principles of English Law all the Indian matrimonial statutes have incorporated the provisions relating to maintenance and custody of children as ancillary to the main marriage petition.

There are two implications of the ancillary relief.

1. Unless a petition for a matrimonial remedy viz. restitution of conjugal rights, judicial separation, dissolution of marriage or nullity has been filed, the court has no jurisdiction to grant maintenance.

2. Secondly, it is the granting of a relief in a matrimonial matter that decides ancillary remedy of sanctioning maintenance. There are divergent views on this point. According to one view, if the relief sought in a matrimonial petition is refused and if the petition is dismissed, the ancillary relief of maintenance would not be granted. The other view is, even if the matrimonial petition is dismissed, the ancillary relief of maintenance could be granted. We will discuss this controversy elsewhere in detail.

It is pertinent to note that no Indian Matrimonial statute uses the phrase ancillary relief as such. But the Indian courts, while interpreting the various provisions under these laws, have applied the broad principle of ancillary relief as understood under the English Law. Indian Courts have used incidental, supplementary, complementary phrases in addition to 'ancillary' relief.
In other words under all the Indian Matrimonial Statutes for seeking maintenance *pendente lite* or permanent alimony, filing of a marriage petition claiming one or the other matrimonial reliefs, provided by the law is a condition precedent. Application for maintenance *pendente lite* can be made only during the pendency of the main marriage petition. But the application for permanent alimony can be made either along with the marriage petition or any time after the final order is passed in the marriage petition. There is no time limit prescribed within which such application should be made after the passing of the decree.

The second proposition, so far as it lays down that ancillary relief is dependent upon the granting of the main relief, has no application to maintenance *pendente lite* since interim maintenance is granted during the pendency of the proceedings. In fact, if the need of the spouse is established for interim maintenance, the court is not to go into the question of merit or conduct of the parties.  

**Maintenance Pendente Lite**

Section 24 of the HMA, Section 36 of the SpMA and Section 36 the of IDA and Section 39 of the PMDA, deal with ancillary remedies of maintenance during the pendency of matrimonial petitions as well as the expenses of the proceedings. This is known as interim maintenance.

To have a comparative view of these various provisions
under the different personal laws the sections are quoted hereinafter.

The Hindu Marriage Act:

Section 24:

Maintenance Pendente Lite And Expenses Of The Proceedings

Where in any proceedings under this act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and necessary expenses of the proceedings, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceedings, monthly during the proceedings, such sum as having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.

The Parsi Marriage and Divorce Act:

Section 39:

Alimony Pendente Lite

Where in any suit under this Act, it appears to the court that either wife or the husband, as the case may be have no independent income sufficient for her or his support and the necessary expenses of the suit, it may or the application of the wife or husband, order the defendant to pay to the plaintiff, the expenses of the suit, and such weekly or monthly sum, during the suit, having regard to the plaintiff's own income and the income of the defendant, it may seem to the court to be reasonable.

Section 24 of the HMA and Section 39 of the PMDA are substantially similar. The right is recognised of the needy spouse. The spouse may be either wife or husband. Such is not the law with reference to Christians or those marrying under the SpMA.

The titles of the two sections of the HMA and the PMDA use different terminologies viz. maintenance and alimony respectively. But there is no distinction between the terms
maintenance and alimony and both mean the same. Hence it does not matter really. However, contents of the two respective sections are almost similar recognising the right of interim maintenance of both the spouses.

**The Indian Divorce Act**

**Section 36:**

**Alimony Pendente Lite**

In any suit under this Act, whether it may be instituted by husband or wife, and wherein or not she has obtained an order of protection, the wife may present a petition for alimony pending the suit.

Such petition shall be served on the husband and the court being satisfied of the truth of the statements therein contained, may make such order upon the husband for payment to the wife of alimony pending the suit as it may deem just.

Provided that alimony, pending the suit shall in no case exceed one fifth of the husband's average net income for the three years next preceding the date of the order and shall continue, in case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or confirmed as the case may be.

Section 36 of the IDA, unlike S.24 of the HMA, S.39 of the PMDA, recognises the right of a wife alone to claim interim maintenance. Additionally it embodies the "One Fifth Rule" of maintenance which is a peculiar feature only of this Act.

**The Special Marriage Act**

**Section 36:**

**Alimony Pendente Lite**

Where in any proceeding under Chapter V or Chapter VI it appears to the District Court that the wife has no independent income sufficient for her support and the necessary expenses of the proceedings, it may on the application of the wife,
order the husband to pay to her the expenses of proceeding and weekly or monthly, during the proceeding such sum, as having regard to the husband's income, it may seem to the court to be reasonable.

Thus section 36 of the SpMA compared with the sections 24 of the HMA and 39 of of the PMDA points out that it allows only a wife to claim interim maintenance like sec.36 of the IDA. However, it does not lay down any rule as to the quantum like the IDA.

The provisions for interim maintenance under all the aforesaid laws cover:

1. Personal maintenance of the claimant during the proceedings and
2. expenses of the proceedings.

Object:

The object of maintenance *pendente lite* is to provide funds to the needy spouse to initiate, the proceedings and maintain herself (himself) during the trial. A party to a proceeding should not suffer during the pendency of the proceeding by reason of poverty. The only consideration behind maintenance *pendente lite* is to provide sufficient means to the needy person. The object is to support the spouse and not to make good deficit incurred.

The rule of maintenance *pendente lite* is based upon indigency of the applicant and not upon the fault of the other spouse. The Kerala High Court held that the object and purpose of enacting sec.24 of the HMA was to secure to the indigent spouse some financial assistance to prosecute
the case and also not make him/her to suffer during pendency because of indigency.\textsuperscript{11}

An amplest jurisdiction is conferred on the court and it is in the discretion of the court to allow or refuse an application for interim maintenance,\textsuperscript{12} as well as to fix the quantum of interim maintenance. But the discretion has to be exercised judicially on sound legal principles and not by caprice or chance or humour.\textsuperscript{13} There are no hard and fast rules laid down for the exercise of this discretion. The exercise of the discretion depends upon the circumstances of each case. It was held by the Rajasthan High Court that unless a good cause is shown for depriving the claimant of her right, the interim maintenance should be given.\textsuperscript{14} In fact, once it is established \textit{prima facie} that the applicant has no sufficient means for her maintenance and support the court should pass an order as a matter of course.\textsuperscript{15}

\textbf{Scope}

The grant of maintenance \textit{pendente lite} is interpreted so as benefit those for whom be laws are made. \textit{pendente lite} is independent of merits of the petition or of any particular issue.\textsuperscript{16} Similarly the conduct of the claimant is immaterial for granting interim maintenance.\textsuperscript{17} Husband's petition for divorce involving serious allegations of gross misbehaviour and infidelity would not disentitle the wife to claim maintenance under sec.24 of the HMA.\textsuperscript{18} The mere fact that the respondent denies the factum of marriage is no bar to the power of the court to make an order in favour of the
petitioner.\textsuperscript{19} It has also been held that a pre-existing order of maintenance against the husband under the Criminal Procedure Code could not bar the court from making an order under sec.24 of the HMA.\textsuperscript{20} Nor it would oust the jurisdiction of the civil court, if the claim under the Criminal Procedure Code was rejected.\textsuperscript{21} But the Rajasthan High Court\textsuperscript{22} held that the court would think twice before granting the temporary alimony if the claim was rejected under the Criminal Procedure Code. The High Court of Punjab held that the order of the trial court refusing interim maintenance for pressuring her to reconsider her decision against reconciliation was unwarranted and contrary to law.\textsuperscript{23}

Further the expressions petitioner, respondent or plaintiff, defendant appearing in the sections mentioned above refer clearly to the parties to the application of maintenance pendente lite and not to parties to the original, matrimonial petition. There is no scope for doubt that the application for interim maintenance can be made by a spouse who may be either the petitioner or the respondent in the original matrimonial petition.\textsuperscript{24} However, it is submitted that these words should be replaced by proper terminologies viz. applicant and opponent to clarify the legal position.

'Any proceedings' under this Act would include restitution of conjugal rights, judicial separation, nullity of marriage or divorce. Any proceeding would also include an application for permanent alimony.\textsuperscript{25} Setting aside of an ex
parte decree would also be within the purview of the sec.24.26 When an appeal is filed against the decree of the trial court, during the pendency of the appeal, interim maintenance can be claimed.27 It is a well-established view that an appeal is a continuation of the proceedings filed in the trial court.28

Application for interim maintenance is as a general rule and practice, disposed off on affidavit like any other interim application in civil proceedings.29

Independent Income:

Under the HMA, the PMDA and the SpMA, the main consideration before the court while deciding the application for interim maintenance is to find out whether the claimant has an independent income for her support. The emphasis is on independent income.30 Such is not the requirement under the IDA. Thus it was held by the Kerala High Court in Joykutty Mathe v. Valsamma Kurunilla 31, the case decided under the IDA, that the wife could seek interim maintenance eventhough she had independent income.

The use of the word 'income' clearly indicates that the fact that the applicant has some property movable or immovable is not sufficient to disentitle her (him) from claiming maintenance or expenses. Such properties could be considered only if they yield income.

The word 'independent', means independent of the other party to such application; the fact that the applicant is
maintained by parents is no reason for not granting interim maintenance. The fact that the wife was educated and capable of earning could not disentitle her from claiming maintenance. Sufficient independent income is not equivalent to her potential earning capacity. The test is whether she has any independent income sufficient for her support to bear the expenses of the proceedings.

The court has to consider the income as it exists at the date of the hearing of the application of both the spouses.

However the Calcutta High Court has recently held that the direct income from properties should be considered and not the land in possession and the burden of proof of income should be on the husband. Further the Bombay High Court has rightly pointed out that income tax return is not the sole guide for determining the income of the party in proceedings as it does not reflect the true position of the income for several reasons. Hence other circumstances would be of importance while finding out the income.

Having a temporary job will not take away the right of a wife to claim interim maintenance was the decision in Krishna Priya Mahapatra v. Birakishore Mahapatra.

Quantum:

How much should be the quantum of interim maintenance and expenses of proceedings are not specified in any of the
matrimonial laws except the IDA. The Court has discretion to fix the amount of maintenance. The provisions clearly state that the court may award to the applicant such sums every month until the position is finally disposed as the court considers reasonable. While fixing the amount of maintenance the court should have regard to the status, income and other circumstances of the parties.38

Proviso to Sec. 36 of the IDA lays down that alimony pending the application shall in no case exceed one fifth of the husband's average net income for three years next preceeding the date of order. No such limit has been laid down under the other matrimonial statutes. However, in some cases, under other, laws it has been held that in the absence of special circumstances it should be allowed as per one fifth test.39 But in some cases it has been observed that no arithmetical rule should be adopted as a matter of course.40

In Dinesh v. Usha41 the Bombay High Court has criticised this one fifth rule. Deshpande J. observed that he was unable to trace any rational basis behind the one fifth rule. It militated against the concept of reasonableness which should be the basis for awarding interim maintenance. In P.S.Krishna Murthy v. P.S.Umadevi42 the Andhra Pradesh High Court compared the provision of the IDA and the HMA. The HMA gives equal right to spouses to claim maintenance. Sec.36 of the IDA gives such right only to the wife and that to a maximum of 1/5th of the husband's income. Sec.24 of the HMA is more reasonable and beneficial to the parties and there is no discrimination. The husband demanded here the application
of 1/5th test for fixing the quantum of interim maintenance. The A.P. High Court held that the test was unreasonable.

In *Dev Dutta Singh v. Gandhi* the Delhi High Court rightly observed that what was proper proportion of the husband's income to be given to the wife as maintenance pendente lite is a question to be determined in the light of all the circumstances of a particular case and no rigid rule of 1/5th or 1/3rd could be applied.

It is now well established principle that in fixing the quantum of interim maintenance the court should consider the income of the party, the need of the claimant having regard to the status of the parties, their family background, the standard of life to which the claimant has been accustomed to, legal and other obligations of the non-claimants and other relevant circumstances. This principle has been affirmed in *Hema v. Lakshmana Bhat*. The court rightly said that the criterion of 1/5th of the husband's average net income for three years as laid down under Sec. 36 of the IDA was not applicable under Sec. 24 of the HMA. The court added that that with the concept of equality of sexes, any such formula is outmoded.

**Expenses of the proceedings**

During the pendency of the proceedings a claimant is entitled not only to maintenance but also necessary expenses of the proceedings if she (he) has no sufficient means. The purpose is to enable the claimant to defend or prosecute the
proceeding, paucity of funds being no hindrance for the continuation of the proceedings 45.

The 'expenses of proceedings' are not specifically mentioned under Sec.36 of the IDA. But it is submitted that the words used therein are wide enough to include the expenses of proceedings. The expression expenses of proceedings is of wide import and would include fees of a lawyer, court fees, expenses of the witnesses, typing expenses and the like. Not only these but even the travelling expenses to attend the court proceedings will also have to be borne by the husband, was the ruling given by the Rajasthan High Court recently 46.

Order Of The Court In The Marriage Petition And Its Effect On Application For Interim Maintenance:

It is the bounden duty of the court to decide interim application as expeditiously as possible in every case before the trial or in any event before the decision in the matrimonial petition. 48 However, if till the termination of the main petition the interim application is not decided, the wife is still entitled to get the order for interim maintenance. She might have made temporary arrangements for her support which she needs to reimburse. The Kerala High Court held further that even if the main marriage petition was dismissed; an order could be passed granting interim maintenance. 50 In Devi v. Purushottam 51 the Rajasthan High Court also rightly said that the liability to pay interim maintenance could not be avoided in respect of the period
during which the petition was pending and subsequent
dismissal of the petition could not exonerate the non-
claimant from the liability already incurred. Similar was
the view of Punjab High Court in Sohanlal v. Kamlesh. 52
However, there are also contrary decisions on this point
holding once the marriage petition is dismissed, no order for
interim maintenance can be made thereafter. 53

From Which Date The Interim Maintenance Is To Be Granted:

There can be various situations as to from which date
interim maintenance can be granted:

1. If a wife is the petitioner in the marriage petition and
if she files interim application along with the main petition
interim maintenance could be granted from the date of
marriage petition.

2. If she is the petitioner in the marriage petition, but
files interim application at a later date-interim maintenance
could be granted from the date of application for interim
maintenance.

3. If she is the respondent, the interim maintenance could be
granted from the date of the service of the notice of the
petition.

4. If she is the respondent, the interim maintenance could be
granted from the date on which she makes application for
interim maintenance.

5. Lastly the interim maintenance could be granted from the
date of the order granting interim maintenance irrespective
of the fact who the petitioner is and when the application
There are conflicting opinions as to from which date the interim maintenance is to be granted. One view says that it could be granted from the date of the service of the main matrimonial petition\textsuperscript{54} the other view is that it could be granted from the date of the application of interim maintenance.\textsuperscript{55}

There is still third view which holds that interim maintenance should be granted from the date of the order of interim maintenance. However, it is submitted that the first view is correct. The later ones are against the object of the section. It was held by the Rajasthan High Court recently that granting of interim alimony from the date of the order was wrong and the court granted it from the date of the application.\textsuperscript{56} It is submitted that the Rajasthan High Court ought to have approved the liberal view\textsuperscript{57} and ought to have ordered interim maintenance from the date on which the original marriage petition was filed.

It is further submitted that, in the interest of justice, the interim relief ought to be awarded from the date when the spouses start actually and factually living separately from each other. It is submitted that the necessary changes will have to be made in the law accordingly.
Non-compliance With The Order Of The Court

The court has inherent power under sec. 151 of C.P.C. to stay the proceedings or to struck the defense in the original marriage petition or to dismiss the petition in case the husband fails to comply with the order of granting expenses of the proceedings and interim maintenance. In *Krishnan v. Therilambal* the court did allow the husband to withdraw his petition as he was avoiding enforcement of the order of interim maintenance. However, in another case the court observed that the husband could not be allowed to defeat the claim of the wife to interim maintenance just by withdrawing the petition. It is submitted that if the husband dragged the wife to the court of law and if the wife was able to make out a case for interim maintenance and expenses of proceedings, her claim should not be defeated by allowing the husband to withdraw his petition. Under the SpMA in *Mahalingos Pillai v. Amsavalli* also the same view was taken.

The interim order is non-appellable under all the personal laws. Only revision application can be made. It is generally an accepted principle that there should be no interference with the order of the trial court passed under sec. 24 of the HMA unless there is an apparent error.

Permanent Alimony And Maintenance:

The provision of permanent alimony and maintenance is borrowed under the Indian statutes from English Law.
However, unlike English law, alimony and maintenance are treated alike under the HMA, PMDA and SpMA. The IDA uses the phrase permanent alimony only. English law signifies by 'alimony', the allowance to be claimed by a married woman on judicial separation, from her husband. In English law 'Maintenance' is the expression used for weekly or monthly payments to be ordered on 'dissolution of marriage'. Distinction between 'alimony' and 'maintenance' under the English law is that the former is available when marriage is suspended but not dissolved and the latter follows the final dissolution of marriage. Under the HMA in sec.25, the PMDA sec.40 the SpMA, sec.36, both the terms viz. permanent alimony and maintenance, are used simultaneously, and they do not indicate the different meanings.

To have a comparative view of the provisions relating to permanent alimony and maintenance under the different personal laws, the sections are quoted hereinafter.

The Hindu Marriage Act

Sec.25:

Permanent Alimony And Maintenance

(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties, and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a
charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, such if the party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.

Sec.40 of the Parsi Marriage and Divorce Act is identical to Sec.25 of the HMA. The PMDA additionally provides for payment of alimony to the wife or to her trustees through sec.41.

Sec.41 : Payment Of Alimony To Wife Or To Her Trustee :
In all cases in which the court shall make any decree or order for alimony it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the court, or to a guardian appointed by the court and may impose any terms or restrictions which to the court may seem expedient, and may from time to time appoint a new trustee, or guardian if for any reason it shall appear to the court expedient so to do.

The Special Marriage Act :
Sec.37 : Permanent Alimony And Maintenance :

(1) Any court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree on application made to it for the purpose, order that the husband shall secure to the wife for her maintenance and support, if necessary, by a charge on the husband's property such gross sum or such monthly or periodical payment of money for a term not exceeding her life, as, having regard to her own property, if any, her husband's property and ability, the conduct of the parties and other circumstances of the case, it may seem to the court
be just.

(2) If the District Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as it may seem to the court to be just.

(3) If the District Court is satisfied that the wife in whose favour an order has been made under this section has remarried or is not living a chaste life, it may, at the instance of the husband vary, modify or rescind any such order and in such manner as the court may deem just.

The Indian Divorce Act:

Sec.37 : Power To Order Permanent Alimony:

The High Court may, if it thinks fit, on any decree absolute declaring a marriage to be dissolved, or any decree of judicial separation obtained by the wife, and the District Judge may, if he thinks fit, on the confirmation of any decree of his declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife, order that the husband shall, to the satisfaction of the court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the party, it thinks reasonable; and for that purpose may cause a proper instrument to the executed by all necessary parties.

Power To Order Monthly Or Weekly Payments:

In every such case the Court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the Court may think reasonable:

Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part, as to the Court seems fit.

Sec.38 : Payment Of Alimony To Wife Or To Her Trustee:

In all cases in which the court makes any decree or order for alimony, it may direct the same
to be paid either to the wife herself, or to any
trustee on her behalf to be approved by the court,
and may impose any terms or restrictions which to
the court seem expedient, and may from time to time
appoint a new trustee, if it appears to the court
expedient so to do.

On reading carefully the above provisions relating to
permanent alimony under all the personal laws, following
differences can be pointed out.

1. Under the HMA and the PMDA either spouse can claim
alimony, while under the IDA and the SpMA the right is given
only to the wife.

There is no justification in not giving such right to
a husband, particularly under the SpMA, when this civil law
is otherwise based on the principle of equality between the
husband and the wife.

2. Under the IDA permanent alimony can be claimed only in
two matrimonial reliefs viz., dissolution of marriage and
judicial separation. It is not available in the case of
nullity and restitution of conjugal rights. Under the other
three statutes it is available in all the matrimonial
remedies.

3. Under the IDA, an order of permanent alimony can be made
only at the time of passing the decree in the marriage
petition. No such order can be made subsequently. Under the
other three statutes it can be made both at the time of the
passing of the decree in marriage petition as well as at any
time subsequently.

4. The amount of alimony may be paid to the wife or her
trustee approved by the Court, is the additional provision
under the IDA and PMDA which is not so under the HMA and the SpMA.

Permanent Alimony:

The HMA and the PMDA recognise the right of the wife as well as the husband to claim maintenance, from the husband or the wife respectively when a decree is passed in any matrimonial remedy. This rule enabling the husband, along with the wife to claim maintenance is unique in the history of matrimonial legislation, though is rarely enforced. This rule has the merit of enabling the court to grant alimony to the husband in deserving cases. A destitute husband against whom proceedings are adopted by the wife and decree is passed in her favour on the ground of his insanity or his being affected with leprosy, and if she has substantial property, she can be asked to pay alimony to her husband.

The provision relating to permanent alimony and maintenance vests wide power in the court while passing any decree for restitution of conjugal rights, judicial separation, dissolution of marriage by divorce or annulment of marriage on the ground that it was void or voidable (exception is of the IDA as mentioned above). The expression "any court exercising jurisdiction under this act", appearing at the beginning of the sections, appears to have been wisely used to include any court irrespective of its ordinary pecuniary jurisdiction. An order for maintenance under the matrimonial laws can be made only by the court to which the marriage petition for restitution, or judicial
separation or dissolution of marriage or for nullity is made. The application for maintenance may be incorporated in the substantive marriage petition itself or may be made in the form of a separate application.

The reason for awarding permanent alimony to the wife seems to be that if the marriage bond, which was at one time regarded as indissoluble, is to be allowed to be severed in the larger interest of the society, the same consideration of public interest and social welfare also require that the wife should not be thrown on the street but should be provided for in order that she may not be compelled to adopt a disreputable way of life. 65

Permanent Alimony As An Ancillary Relief:

We have seen earlier that claiming of maintenance is an ancillary relief provided under different personal laws. Filing of a matrimonial petition is a condition precedent to claim permanent alimony. That is the reason why it is being called as an ancillary relief.

Permanent alimony and maintenance can be granted to an applicant only at the time of the passing of the decree in the main matrimonial petition or thereafter. But the question that arises is whether on dismissal of a marriage petition refusing to grant the desired relief under the marriage petition, alimony be granted or not. Before we look into Indian Law on the subject let us see in brief the origin of implications of this ancillary relief under the English

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Law.

The English Law before 1958 adhered rigidly to the view that if the main petition in a matrimonial case is dismissed, no ancillary relief can be granted. But this position has changed now and the so called ancillary proceedings are no longer dependent on the main proceedings in toto. Once the problem of matrimonial discord is brought before the court, the court has the 'jurisdiction to pass orders in all ancillary matters, irrespective of the fact whether the main petition is dismissed or not.

Till recently the Indian courts supported the earlier English view. But lately some courts have expressed view consistent with the contemporary provision under the English law.

This issue was tackled for the first time by the Gujarat High Court handled this issue for the in Kadia Harilal Purshottam v. Kadia Lilavati Gokuldas. In this case, the wife's application for permanent alimony and maintenance under sec. 25 of the HMA was granted by the trial court, when husband's petition for the restitution of conjugal right was dismissed. In appeal, the husband argued before the High Court that the words "at the time of passing of the decree" in Sec.25, would not give the court the jurisdiction to grant permanent alimony when the marriage petition was dismissed. The High Court accepted this argument and held that the passing of the decree did not cover dismissal of the petition but it covered only granting of the relief in the main petition. Hence, if the petition
was dismissed, the maintenance could not be granted. The principle laid down in this case has been followed by almost all the High Courts.\textsuperscript{67} It also covered the withdrawal of the petition.\textsuperscript{68}

If the main petition is dismissed, permanent alimony under sec.25 could not be awarded was challenged on the basis of different issues in \textit{Darshan Singh v. Mst. Dasu}\textsuperscript{69}. On dismissal of the Husband's petition for restitutions of conjugal right alimony was granted to the wife by the trial court. Husband went in appeal to the High Court. The wife as respondent argued in the appeal that dismissal of the main marriage petition was not simply an order of dismissal but was also a decree under sec.28 of the HMA.\textsuperscript{70} She supported this point by arguing that all decrees and orders under Sec.28 of the HMA were appellable before 1976\textsuperscript{71} and though the dismissal of the marriage petition was considered as an 'order' there was no bar in making an appeal on such order of the dismissal. But sec.28 of the HMA was amended in 1976. It provided that an order is non appellable if it is of interim nature. Based on this amended version of Sec.28 of the HMA, she argued that since an 'order' dismissing a petition was appellable even after 1976, it was a 'decree' and therefore she was entitled to an order of permanent alimony or maintenance under sec.25, as Sec. 25 states that permanent alimony may be granted at the time of passing any decree under the Act. However, the High Court did not accept the wife's contention. The court pointed out that Sec.25 states that at the time of 'passing' any decree, the court could
grant the maintenance. Sec.28 states that all decrees 'made' in any proceedings are appealable. The High Court pointed out the distinction between the words 'passing' occurring in Sec.25 and 'made' occurring in Sec.28. The court observed that the expression 'passing any decree' had to be given a meaning that it was a decree granting the relief in the main petition, and it did not indicate an order dismissing the main petition. The court further observed that the word 'passing' in Sec.25 meant only granting of any relief and the words 'making any decree' in Sec.28 meant both i.e. granting or refusing to grant the relief sought. Therefore, the High Court refused to grant alimony on dismissal of the petition for restitution of conjugal rights.

But this argument of the wife was accepted by the Punjab and Haryana High Court in Swarna Lata v. Sukhvinder Kaur. In this case the husband filed a petition for the nullity of the marriage on the ground of fraud. The trial court granted the decree of nullity and also allowed maintenance to the wife under sec.25. The High Court, however, reversed the decree but still granted maintenance to the wife, holding that the expression 'passing any decree' occurring in sec. 25 would cover the case where the petition had been dismissed.

The court observed:

Some courts had taken decision under the law, as it, took before the amendment of 1976, that the dismissal of an application is not a decree, therefore on dismissal, an application under sec.25 of the Act could not be granted to an improvident spouse. At that time sec. 28 of the Act, which
provided for appeals from decrees and order was differently worded. All decrees and orders were made appellable and if dismissal of an application was not to be treated as a decree it could be treated as an order and appeal lay therefrom and thus some distinction on that basis could be made. But after the amendment in 1976, while all the decrees have been made appellable under sec.28(1) of this Act the appellable orders are only those which are passed under ss.25 or 26 of the Act. If dismissal of an application under sec.9 to 13 of the Act is not to be treated as a decree then it won't be appellable at all under the Act....'

The High Court further added that the proceedings under sec. 9 to 13 of the Hindu Marriage Act were made pari materia with the proceedings before the civil courts and hence whether suit was dismissed or decreed, the decree was appellable as such. Under sec.2(2) of the Code of Civil Procedure, 'decree' means the formal expression of an adjudication, conclusively determining the right of the parties with respect to the matters of controversy. In view of this, whether *divorce (sic) was granted or not, the rights of the parties in that behalf were adjudicated and finally determined.74

The cognizance of this decision was taken recently by the Andhra Pradesh High Court in S.Jagannadha Prasad v. S.Lalitha Kumari75 and the alimony was granted to the wife in spite of the dismissal of the husband's petition for divorce.

But there are other High Courts which have still stuck to the earlier position that on dismissal of the marriage petition, permanent alimony could not be granted.76
Dynamics Of Ancillary Relief:

After discussing the judicial attitude towards the alimony as dependent on granting of a matrimonial relief, it is essential to look into this matter elaborately in the light of the nature of the main relief claimed.

Restitution Of Conjugal Rights:

The decree of restitution of conjugal rights enjoins upon the parties that they should reconcile and stay together. The IDA does not make any provision for permanent alimony, consequent to the decree of restitution of conjugal rights. But under the other laws the maintenance can be ordered at the time of passing 'any decree'. Therefore, the court can pass the order for permanent alimony consequent to the decree of restitution of conjugal rights. Thus technically speaking a spouse would be entitled to get permanent alimony on granting the decree of the restitution of conjugal rights. However, in majority of the cases the courts refuse to grant permanent alimony when the relief granted is of restitution of conjugal rights. The reason being if the two start staying together there is no need of paying maintenance separately. But in Mohinder v. Usha, the court passed a decree of restitution of conjugal rights in favour of the wife and also passed an order under Sec.25 of permanent alimony in favour of the wife. It is submitted that the court took the right decision. There is no provision in the law which compels the parties to stay
together after the decree of restitution of conjugal rights is passed by the court. Physical force cannot be used against either of the parties for the enforcement this decree. Therefore, even after such a decree, if the husband refuses to take back his wife, it is necessary to protect her right to maintenance by granting it along with the decree of restitution of conjugal rights. It is further submitted that, granting of a decree of restitution to the wife, establishes the fact that the husband had withdrawn from the society of his wife without reasonable cause. After passing of the decree even if he takes her back, there is a possibility of driving her out of the matrimonial home again or he may neglect her while staying under the same roof. The order of maintenance passed in favour of the wife, may help her in such crisis. To put control over him and to prevent him from driving out his wife again, it is necessary to grant permanent maintenance to her. If the order of the permanent alimony is not passed in her favour along with the restitution of conjugal rights and if she starts living with him the husband may turn her out or desert her again. She would then be required to initiate another proceedings against him to get maintenance.

But if the decree of restitution is passed in favour of the husband it would lead to the presumption that the wife had withdrawn from the society of the husband without reasonable cause. However, in spite of such a decree if she is not interested in staying with the husband because of the reasons which she could not have proved in the court of law,
there is no legal provision which will compel her to go and stay with him. In such a situation, taking the majority view of the High Courts as explained earlier, maintenance should be granted to her. It is well settled principle that the guilty spouse is not disentitled to claim maintenance.\textsuperscript{79} The fault on the part of the spouse might be considered while fixing the amount but it would not take away the entitlement of that spouse. Hence it is submitted that even when the petition of the husband for restitution is allowed against the wife, it is not unreasonable to pass an order under sec.25 in her favour taking into consideration other factors.\textsuperscript{80}

One may think of still another situation. If a petition for restitution is dismissed, should the court pass an order for permanent alimony by following Swarna Lata's case? By rejecting the remedy of restitution, the court is not asking the parties to come and stay together. In other words, by dismissing the restitution petition the court accepts the existence of reasonable grounds for withdrawal from the society of the other and impliedly allows the two to live separately. In such a situation it is submitted that a needy spouse should get permanent alimony. If the husband is denied the decree of restitution then there is no fault on part of the wife and her separate stay is justified. If one sticks to the earlier discussed majority view of the High Court, that the dismissal of the marriage petition would result in rejection of the wife's claim for alimony, it would be injustice on such wives. In fact,
exactly it happen in *Kadia Harilal Purshottam v. Kadia Lilavati Gokal*. Hence it is submitted that this decision was wrongly decided. And even if the wife's petition for restitution is dismissed, still permanent alimony should be granted to her for the same reasons discussed earlier.

**Judicial Separation:**

A decree for judicial separation postulates that the parties to the marriage should live separate. In practice, irrespective of whether the decree for judicial separation is granted or not, the parties live separately. In such a situation, it is submitted that it would be wrong not to grant the permanent alimony to the needy spouse.

In *Shantaram v. Hirabai* the husband filed a petition for judicial separation. The trial court passed an order for permanent alimony in favour of the wife though the husband withdrew his petition. But on appeal, the Bombay High Court reversed the order of the trial court of granting permanent alimony. It is submitted that the High Court of Bombay was wrong. Rejection of the claim for alimony was not necessary when the court allowed the husband to withdraw the petition for judicial separation. Claim for alimony has to be evaluated independently of the contestious issues involved in marriage petition.

In another case permanent alimony was granted to the wife though the relief of judicial separation was granted to the husband on the ground of the wife's cruelty. Fault on
part of the wife was not considered as a bar for order of alimony. Taking help from this decision, even if the wife's petition for judicial separation is dismissed for non establishment of pleadings taken by her, it is submitted that permanent alimony may be granted to her.

The IDA clearly lays down that an order for permanent alimony can be passed only when any decree of judicial separation has been obtained by the wife.\textsuperscript{85} It means that on dismissal of her petition for judicial separation she cannot claim permanent alimony. Similarly, she will not be able to get permanent alimony if her husband's petition for judicial separation is granted. The decision discussed earlier will have no application to the cases under the IDA because of the above statutory provisions. It is submitted that this provision needs to be amended in the light of the earlier discussion.

Nullity of Marriage:

The third situation whether permanent alimony should be granted to the needy spouse is where the petition for nullity has been either granted or dismissed. If the decree of nullity is granted, it establishes that the relationship of husband and wife had never come into existence. But still there are number of decisions upholding\textsuperscript{86} the right of the wife to get maintenance from her husband on the granting of the decree of nullity. This was because the words used in section 25 of the HMA are on 'passing any decree' which
covers the decree of nullity also. The courts have liberally interpreted this provision in favour of women so as to protect their right of maintenance, even after establishing that she is/was not the wife of that husband.

The decree of nullity is passed in case of two matrimonial remedies under the HMA and the SpMA viz. in case of void marriages and in case of voidable marriages. However, no such clear distinction is made under the IDA and the PMDA. Sec.18 and 19 of the IDA speak about the decree of nullity and grounds on which nullity could be granted. Sec. 3 of the PMDA which gives the essentials for a valid marriage starts with the clause that 'no marriage shall be valid...'. It means that the marriage will be invalid. Whether it will be void or voidable is not stated clearly. Sec.4(2) of the PMDA however, declares the bigamous marriage as void. Sec.36 of the PMDA states that due to non consummation of marriage, at the instance of either of the parties, the marriage may be declared as null and void. Thus Sec. 36 declares such marriage as voidable. Such are the differences in the provisions of the personal laws, relating to void and voidable marriages. However, most of the decisions regarding granting of permanent alimony to the wife whose marriage is declared null and void are under the HMA. In Govind Rao v. Anandbai, Rajeshbai v. Shantibai, Shantaram v. Durgabai, Dayal Singh v. Bhujarkumar, and K.L.Sharma v. Geeta permanent alimony was granted to the wife (second wife) after granting the decree of nullity, on the ground that the husband had his first wife living at the
time of his second marriage. However, it is important to note that such opinion was not uniform. The Madras High Court interpreted it in a different way and refused to grant maintenance to the second wife of the bigamous marriage even though the decree of nullity was 'granted'. In another case, decided by the Punjab High Court permanent alimony was refused to the wife as her petition for nullity, on the ground of husband's second marriage with her, was 'dismissed'.

In case of voidable marriages under sec.12 of the HMA, irrespective of who the petitioner was, when the decree of nullity was granted on the ground of impotency, maintenance was granted to the wife by the various High Courts. However, the Gujarath High Court refused to grant alimony to the wife in spite of granting the decree of nullity to the husband on the ground of wife's impotency. It is submitted that if alimony is asked by the wife and her need is established, irrespective of the fact whether the decree of nullity (in case of void\voidable marriage) is granted or petition is dismissed, maintenance should be granted to her.

Sec. 25 of the HMA speaks about the "passing of any decree". To hold that dismissal of petition for nullity would not amount to a decree would be rather too technical. By liberal interpretation, if after granting the decree of nullity, maintenance could be granted to her though no husband-wife relationship had ever existed between them, there is no explanation why maintenance could not be given
when the claims for nullity was rejected. Rejection of such petition establishes that the two are husband and wife. There is no logic in asking the wife to go under other laws to claim maintenance e.g. under sec. 18 of the HAMA, or under sec. 125 of the Cr.P.C. It is submitted further, that even where the wife as petitioner is claiming a decree of nullity and if her petition is dismissed, maintenance should be granted to her, taking into consideration all the relevant circumstances. *Swarna Lata v. Sukhvinder Kumar* is a welcome decision on this point. The Bombay High Court has recently construed the provisions liberally and granted permanent alimony to the wife where husband's petition for nullity/divorce on the ground of non-consumation of marriage was dismissed. The lower court granted alimony to her and by upholding it, the Bombay High Court observed that depriving the wife of alimony would leave her destitute and it would be a travesty of justice if technicalities would prevail and deprive her of the small consolation.

But we have another recent decision of the Madras High Court. A petition under section 12 of the HMA for annulment of marriage filed by the wife was dismissed. In this case, the High Court, refused to grant her alimony under sec. 25 on the ground that the words 'passing of any decree' meant a decree granting the relief. The court has not considered the decision in *Swarna Lata*. The judicial interpretation in two different directions without referring or distinguishing from other views creates confusion. One fails to understand why the judicial discretion can not be
used in such a way as to give liberal interpretations in favour of the weaker sections for whom the law is made. On the contrary, the Madras High Court observed that the unsuccessful wife could take recourse under sec.125 of the Cr.P.C. or sec.18 of the HAMA.¹⁰³

Decree Of Divorce :

On dissolution of marriage by decree of divorce, the marital bond between the husband and wife comes to an end. But still as a social responsibility, a husband is duty bound to provide maintenance to his divorced wife according to all the personal laws except the Muslim Personal Law. It is only under the HMA and the PMDA, as we have already seen, the wife is also bound to give maintenance to her divorced husband in deserving cases. However, such situations are rare. On granting the decree of divorce, it is a well settled principle that the wife is entitled to claim maintenance from her husband.¹⁰⁴ But the question arises when the petition of the husband for divorce is 'dismissed' by the court, whether alimony should be granted to the wife. 'Dismissing' the petition for 'divorce' does not come within the purview of the 'passing any decree' in S.25 according to the view taken by some High Courts.¹⁰⁵ The courts have held that a decree could be deemed to have been passed when a petition for divorce was granted but not when it was dismissed.

However, the other view expressed is that irrespective of whether petition for divorce is allowed or dismissed,
alimony should be granted to the wife in deserving cases and
the technicalities should not prevail so as to deprive her of
her right of survival.\textsuperscript{106} In \textit{S.Jagannadha Prasad v. Lalitha
Kumari}\textsuperscript{107}, it was argued that the relief under sec.25 was
ancillary to the relief sought in the main marriage petition
and the same could be granted only if the main relief was
granted. When the petition for divorce was dismissed, no
relief could be granted under sec.25. But the court observed
\textsuperscript{108}

The main object of the section is to provide some
amount for the sustenance of parties who are unable
to support themselves.... The word 'decree' is not
defined under the Hindu Marriage Act. Therefore,
we can borrow the definition under the C.P.C.
Sec.2(2) of C.P.C. defines a decree as a formal
expression of an adjudication. The suit or
petition may either be dismissed or allowed. A
relief may be given or refused. In either case it
is a decree. There is no reason to give a
restricted meaning to the expression decree. It is
an ancillary power, no doubt but ancillary to the
main power of disposal of the petition. To our
mind this section from its express language
empowers every court deciding a matrimonial matter
to give the relief of maintenance to either party
irrespective of the fact whether the petition for
any of the reliefs mentioned in sec. 9 to 13 is
dismissed or allowed.

It is submitted that this is the correct and just
view.

Thus, the above discussion, at length, points out that
there are divergent opinions of various High Courts regarding
the interpretation of the words "passing any decree",
appearing in sec.25 of the HMA. Majority of the High courts
are of the view that the grant of ancillary relief under
sec.25 is dependent on the grant of the main relief. It is
submitted for the reasons discussed earlier, that the majority
view needs to be overruled by the Supreme Court. It is submitted that sec.25 of the Act is ancillary to the filing of the marriage petition and not ancillary to the granting of the relief. It is ancillary merely to the disposal of the petition irrespective of whether the marriage petition is dismissed or allowed.

Discretion Of The Court:

Sections dealing with permanent alimony are wide enough to empower the courts to possess maximum discretion. Whether application is to be granted or not, and if granted how much amount should be granted are matters of discretion. The discretion is judicial and a judge can not exercise it arbitrarily. However, if one analyses the decisions of the High Courts, the divergent opinions are expressed on the issues of maintenance.

The sections give certain guidelines to the judges while granting permanent alimony to an applicant spouse. While deciding the application the court would look into:

a) the financial position of both the parties;
b) conduct of both the parties;
c) any particular or special circumstances.

However, there are no rigid rules or yardsticks for deciding the entitlement of the applicant or for fixing the amount of maintenance. The sections leave the matter of assessment to the discretion of the court. The means of the parties and their conduct are the essential factors to be
considered by the court. It has to consider all the pertinent circumstances related to each of the parties. The factors to be considered include everything having legitimate bearing on present or prospective matters affecting lives of both the parties. In the exercise of its discretion the court has to consider the factors, appropriate to the facts of the particular case, in addition to the prime factors which touch the means of income and conduct of the parties such as the status of the parties, duration of the marriage, support and education of children, the ability of spouses to earn and their future prospectus and also their age, health and the reasonable wants.

Financial Position:

The main question before the court is to get at the truth about the financial position of each party before deciding the application of permanent alimony and maintenance. A party which makes an application for permanent alimony, is required to give all details about income and properties of both the parties. There is an obligation on the party to make a full, frank, true and complete disclosure of all relevant circumstances. The court has power to make an order for discovery i.e. ask the parties to make available for inspection the relevant documents such as income tax return, bank statements, the account of any business etc.

Under the modern English law the court takes into consideration not only the financial status but also the
capacity to earn and that too not only of the husband but also of the wife.\textsuperscript{109}

The Indian High Courts have on the other hand categorically expressed, and rightly so, the view that in considering wife's application for permanent alimony her capacity to earn or her potential should not be taken into account. Thus in \textit{Krishna v. Padma}\textsuperscript{110} the fact that the wife was sufficiently qualified to get a job was not considered as a relevant factor, in fixation of the amount of maintenance.

However, husband's capacity and potential is always looked upon by the courts. In \textit{Bibi Balbir v. Ragubir}\textsuperscript{111} it was held that the husband could not refuse to pay maintenance on the ground that he was unable to get a good job. If the wife is supported by her father,\textsuperscript{112} or she is staying with her father,\textsuperscript{113} if is not an excuse for the husband for not maintaining the wife. Possibility of inheriting the property by the wife was held to be no reason for refusing maintenance to the wife.\textsuperscript{114}

\textbf{Conduct Of The Parties:}

The conduct of the parties is a primary consideration for the court to address itself in assessing the permanent alimony. By looking into the conduct of the applicant the courts have either refused to grant maintenance or have granted a lesser amount than they would have granted otherwise. The respondent's conduct would be taken into account while deciding upon the amount to granted to the
applicant.

The early English matrimonial law was wedded to the notion that a wife guilty of a matrimonial offence was not entitled to permanent alimony. Thus a wife who had committed adultery or had deserted her husband or treated him with cruelty was not entitled to receive maintenance.\textsuperscript{115}

But the English law has abandoned this doctrine long back. Thus in \textit{Goodness v. Goodness}\textsuperscript{116} a decree of judicial separation was passed against the wife on the ground of her adultery, yet she was granted permanent alimony. In another case, the court granted\textsuperscript{117} alimony on passing the decree of annulment or the ground of willful refusal to consummate the marriage by the wife:

\begin{quote}
In \textit{Sydenham v. Sydenham}\textsuperscript{118} Lord Denning observed:

There is nothing in the statute to say that a wife against whom a decree has been made cannot be awarded maintenance. ... All it says is that on a decree of divorce the court may award maintenance to the wife. This included a guilty wife as well as an innocent one, but in awarding maintenance the courts must have regard to the conduct of the parties...

\textit{Clear v. Clear}\textsuperscript{119}, Hodsan J. observed that by virtue of divorce legislation even a wife guilty of adultery was entitled to permanent alimony. In construing the expression 'conduct of the parties', the courts in India have expressed divergent views.

In some cases, under the IDA, following the earlier English decisions, our courts have held that a wife guilty of matrimonial misconduct, such as adultery, was not entitled to
maintenance. 120

It is surprising to find such decisions. Under the IDA adultery committed by the wife is the only ground available to the husband for the dissolution of marriage under sec.10. Sec.37 empowers the court to grant permanent alimony to the wife on dissolution of marriage. Since dissolution of marriage takes place only on the ground of adultery, it should logically follow that maintenance should be granted to the wife, eventhough she is guilty of adultery. Any other interpretation would make sec. 37 redundant.

Under the HMA, in some cases the courts have held that a wife guilty of matrimonial misconduct is not entitled to permanent alimony. But the contrary view is also expressed by some of the High Courts.

In Raja Gopalan v. Rajamma121 a finding of unchastity was recorded against the wife and the decree for judicial separation was passed against her. It was held that no order for maintenance could be passed in her favour. This view was followed by the Division Bench of the High Court of Jammu and Kashmir in Surdai Lal v. Vishno122. Bhat J. observed that a woman once divorced on the ground of proved unchastity should be left to the resources of her immorality. The reliance was placed on sub-sec.3 of sec.25 which makes it mandatory on part of the court to revoke an order for maintenance passed under sub-section 1 of sec.25; if the wife, who is the recipient of maintenance, has not remained chaste after the order has been passed. The court observed
that the unchastity of the wife would be a criminal circumstance to be taken into account as conduct of the parties while determining the claim of alimony. If a subsequent conduct of the wife could form the basis for cancellation of an order of alimony under sub-sec.(1); a finding recorded during the judicial separation proceeding regarding unchastity of the wife could form the basis of the decision to refuse maintenance under sub-sec. 1 of sec.25. Otherwise it would lead to a very incongruous situation namely, only when a wife became unchaste, after the award of maintenance, she was disabled from continuing to receive maintenance. Whereas a wife who had been held guilty of unchastity even in the main proceedings, would, never the less, be entitled to get maintenance, at the first instance under sub-sec.(1). Similar was the view expressed in *Mayadevi v. Mahabir Singh.* 123 The decree of divorce was passed in favour of the husband on the ground of wife's adultery and permanent alimony was refused to her by the Punjab High Court.

In *Sachinder v. Banmala* 124 the High Court of Calcutta refused to grant permanent alimony to the wife and observed that the wife divorced on the ground of proved unchastity or adultery should be left to the resources of her immorality and be denied of lawful means of support.

However, the same High Court in the same year in *Amarkanta v. Sovana* 125 expressed the view that since the import of sec.25 of the HMA being the same as that of the
English Matrimonial Cases Act 1857, the principle enunciated by the English courts in cases such as Ascroft v. Ascroft, Squire v. Squire might be equally applied under sec. 25 of the HMA. Accordingly, it was held that even an unchaste wife was entitled to a bare subsistence allowance. A similar view was taken in Dr. Hormusji v. Dinabai, a case under the PMDA.

Again in Kunbikannan v. N.V. Malu the court granted the wife a sum of Rs. 25/- per month as a bare subsistence allowance though the decree of judicial separation was passed on the ground of her adultery.

In Gulab v. Kamla the husband got divorce on the ground of adultery of the wife. However, Sawant J. of the High Court of Bombay granted her permanent alimony.

It may be recalled that even the Dharmashastra laid down that a wife guilty of adultery was entitled to starving maintenance.

In Jagdish v. Manjula the marriage was dissolved on the petition of the husband on the ground of cruelty on part of the wife, yet maintenance was granted to her.

In Nathulal v. Munna Devi a decree of divorce was passed against the wife for not complying with the decree of restitution of conjugal rights for a period of two years. The court said that there was no provision in the HMA which disentitled the erring wife from getting maintenance. In Dhanashri v. Bai Sarkar a decree of restitution was passed.
against the wife, yet maintenance was granted to her.

The above rulings point out the diversity of opinion of the various High Courts. The discretion used by the judges does not show a common line of thinking and this certainly creates confusion.

It is submitted, that the fault or guilt on part of the wife (spouse) even adultery or unchastity should not become an absolute bar in the determination of entitlement for maintenance. If maintenance is refused to the wife on the ground of her adultery, she will not have any source of income for her survival. This might compell her to lead immoral life in future. To avoid this, it is submitted that her fault of adultery may be taken into consideration while fixing the quantum of maintenance but it should not disentitle her from claiming maintenance. It should simply be considered for judging the conduct of the parties. Thus a claimant for alimony should not be thrown out of the court, simply because she has committed a matrimonial wrong. The granting of maintenance to the applicant is a matter of discretion of the court which should be exercised after considering all the circumstances of the case. Whenever, the decree of annullment or divorce is granted on the basis of disability of the respondent such as impotency or leprosy or insanity, there is no reason to treat these grounds as matrimonial offences. In such cases, maintenance should be granted to such respondent, if claimed. Just because a decree is passed against the respondent that should not

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disentitled her to maintenance.

Other Circumstances:

The court has discretion to consider all relevant factors and circumstances of the case while deciding the question of maintenance. The provision of permanent alimony is not controlled by any other laws viz. sec.125 of the Cr.P.C. and in case of a Hindu wife not by sec.18 of the HAMA. This is a well settled principle. However, if the order of maintenance is already passed granting alimony under any other law, the judge would certainly look into the fact and circumstance for fixing the amount under the matrimonial law. The standard of living before the matrimonial dispute occurred, other responsibilities on the payer, his legitimate liabilities like debt, income tax, provident fund etc. would be taken into consideration by the court.

Quantum Of Maintenance:

The English ecclesiastical courts laid down 'one-third' of the income of the husband as principle for awarding maintenance to the wife. After passing a decree in a matrimonial proceedings, the English judges would normally order the husband to pay to his wife a sum by way of alimony as one third of his income. If the wife was earning herself, her income would be added to the husband's income for the purpose of calculation and 1/3rd of the joint income would be granted to her. The Matrimonial Proceedings and Property Act, 1970 laid down the new principle by which the limit of
one third was removed. The discretion is now left with the courts to decide the amount. It may be more than one third or less than one third, depending upon the facts of each case.

In Indian matrimonial statutes nowhere such rigid rule as to quantum is laid down except Sec. 36 of the IDA which speaks about the one-fifth rule but it is for the interim maintenance. Though generally the Indian courts, have not\textsuperscript{139} applied such rigid rules of one-third or one-fifth, in some cases, one-third rule was applied\textsuperscript{140} and in other cases it was one-fifth.\textsuperscript{141} But these cases do not indicate application of any arithmetic rules as such while fixing the amount of maintenance. But it may be mentioned that the discretion is used so arbitrarily that sometimes one wonders looking at the figures of such awards (viz. Rs. 25 or Rs. 40) whether they were making a mockery of the provision of maintenance? Many a times it is not even equal to starving allowance!

In all the matrimonial laws, there is a provision to make periodical payments or a lump sum payment. The periodical payments might be monthly, yearly or by installments according to the convenience of the parties. The payments may be secured by creating a charge on the property\textsuperscript{142} of the responsible party under the HMA, the PMDA the SPMA. But there is no such provision under the IDA. The IDA provides for the execution of instrument for securing the payment to the wife. If the responsible party fails to make
the payment, the execution proceedings can be started against him. In such a situation the property of the other party can be attached and sold in auction. The secured payment is always advantageous but could be enforced only where the other spouse is in possession of some property!

**Power To Vary Maintenance Order** :

Under all the matrimonial laws the courts are empowered at the instances of either party to vary, modify, rescind any order relating to maintenance in such a manner as the court may deem just, if it is satisfied that a change had taken place in the circumstances of either party at any time after the last order was made. The court may revise its order from time to time.

Under the IDA, if the husband, after the order of the court for payment of alimony, is unable to make such payment due to any reason, the courts are entitled to change its order by discharging, modifying or suspending it temporarily in whole or part and revive it again. There is no specific provision made in Sec.37 of the IDA to rescind the order if the wife remarries or becomes unchaste. Under the HMA, the SpMA and the PMDA there was a provision for cancellation of the order of permanent alimony in case of wife getting remarried or not remaining chaste. But after 1976, remarriage or unchastity is not an absolute bar debarring the wife of her entitlement of maintenance. The discretion is with the court as to rescinding the earlier order. In case of the wife becoming unchaste, we have already discussed above
the necessity of paying her at least starving maintenance. But in case of her remarriage, there is no need to allow her to draw maintenance from her ex-husband. However, there is a discretion with the judges to revise the order of maintenance in such case. 143

In Shankarappa v. Sushilabai 144 lump sum was paid by the husband to wife towards maintenance. On her remarriage the husband applied for rescission of the order. The court held that once lump sum was paid, there was no question of returning back that amount. Rescinding the order could be done only regarding future maintenance.

Agreement Not To Ask Maintenance

On general principles agreement between parties not to ask maintenance does not prejudice the court from granting maintenance or renewing the order of maintenance. The discretion given to the court is unfettered and the right given to the wife being a statutory right can not be overridden by any agreement. Such agreement would be treated as against public policy.

If there be an agreement to pay a lump sum maintenance, the court enforces it, if it is reasonable. However, if the amount provided is not adequate or becomes inadequate due to change in circumstances the court should intervene and award adequate amount in the lights of the real and legitimate claim of the party. 145
Procedure:

All the Indian matrimonial statutes lay down some procedural and jurisdictional rules\(^{146}\) in addition to the rules under the Code of Civil Procedure.

It is important to mention here that in pursuance of the Law Commission's recommendation \(^{147}\) in 1976 the Code of Civil Procedure was amended and a separate Order XXXII-A on "suits relating to matters concerning the family" was added. The amendment highlighted the need for adopting different approach for trying family disputes than the one used in conducting civil matters. It emphasised the need for efforts to bring about an amicable settlement.

Jurisdiction:

The proper forum to which maintenance application is to be filed is the court which passes the decree in the matrimonial remedy.\(^{148}\) As discussed earlier, filing of a marriage petition seeking one or the other remedies provided under the respective law is a condition precedent to seek maintenance under matrimonial law. Maintenance application can be filed either along with the matrimonial petition or can be filed subsequently to the passing of the order. The IDA is an exception and the court can pass the order for maintenance only at the time of passing of the decree and not subsequently. To which court and at which place the petition for matrimonial remedy is to be made is provided under all the laws.
The Court:

Under the HMA, a matrimonial petition lies to the District Court. However, according to the Rules framed under the HMA, the jurisdiction is given to the civil judge senior division to try all the matrimonial petitions. Sec. 4 of the IDA confers jurisdiction on the High Court at presidency towns and at other places on District Courts. A decree of dissolution of marriage and decree of nullity passed by the District judge requires confirmation from the High Court. The PMDA provides for the constitution of special Parsi Matrimonial courts. The Act contemplates constitution of two types of courts. (a) Parsi chief matrimonial courts in the presidency towns, (b) District matrimonial courts, another places.

Parsi Chief Matrimonial Courts:

Under Sec. 19 of the PMDA, the Parsi Chief Matrimonial Court is constituted at the Presidency towns of Calcutta, Madras and Bombay. The chief justice of the High Court and the judge nominated by him are the judges who are to be aided by seven deligates.

District Courts:

Places other than presidency town, the District court has the jurisdiction to try the matters under PMDA. Delegates: The PMDA stipulates for the appointment of delegates to various Parsi Matrimonial courts. Each State Government in the presidency towns and districts is required
to appoint the delegates. A list of the delegates of not more than 30 at the High court and not more than of twenty at district court who are Parsis, is to be prepared by the State government. The appointment of a delegate is for a term of ten years, but he is eligible for reappointment. The delegates have to assist the court in adjudicating matrimonial suits. In adjudicating matrimonial suits, he acts like a jury man. In individual cases the delegates are appointed by the presiding judge. The number of delegates at trial is to be fixed by the court. But it can not be less than seven.

Under the SpMA\textsuperscript{153} the jurisdiction is conferred on the District Court to try matrimonial petitions.

**Place Where Petition Is To Be Filed:**

The jurisdictional rules regarding at which place the petition is to be filed are provided under all the laws. The court at the place of last residence together of the parties has the jurisdiction under all the laws.\textsuperscript{154} But under the PMDA\textsuperscript{155} this will confer jurisdiction on the court only if the defendant had left the country at the time of filing of the suit.

The place where the respondent is residing gives the jurisdiction to the court under the HMA,\textsuperscript{156} SFMA,\textsuperscript{157} and PMDA.\textsuperscript{158}

The place where husband and wife are residing (not necessarily together) at some place, the court there will
have the jurisdiction to try the petitions under the IDA.\textsuperscript{159}

The place where marriage was solemnized confers jurisdiction on the court under HMA\textsuperscript{160} and SPMA.\textsuperscript{161}

Lastly the place where petitioner is residing confers the jurisdiction on the court under the HMA\textsuperscript{162} and SPMA,\textsuperscript{163} if at the time of the presentation of the petition the respondent is residing outside India or if the respondent is not heard of for seven years.

Appeals :

The purpose of the appeal is to redress an error of the court below. Sec. 28 of the HMA Sec. 49 of the PMDA, Sec. 55 and 56 of the IDA and Sec. 39 of the SPMA make provision for appeals. Sec. 28 of the HMA and Sec. 39 of the SPMA are almost same. Sec. 28 of the HMA states that the orders made by the court in any proceeding under this Act, under Sec. 25 shall beappable, if are not interim orders. It is clear, therefore, that the order passed for permanent alimony is appealable under the HMA and the SPMA. But an order for maintenance \textit{pendente lite} is not appealable\textsuperscript{164}. However, a revision against an order passed under Sec. 24 of the HMA has been regarded as permissible.\textsuperscript{165} Such revision is required to be made within 30 days from the date of the order and it lies to the District court.

Under the Indian Divorce Act, an appeal lies from an order of the court fixing the amount of alimony and maintenance.\textsuperscript{166} Under the PMDA the appeal lies to the High
Court on any decision within 3 months from the date of order.

The Family Courts:

The Family Court Act was passed in the year 1984. But the family courts have not yet been established in all the states. In the state of Maharashtra as per provision of Sec. 3(1)(a) family courts could be established only in Bombay, Pune, Nagpur and Aurangabad as the population there exceeds one million. But till today such courts have come in existence only at Pune and Bombay, that too in the year 1989 and 1990 respectively. The state government has the discretion to establish the family courts at places where the population is less than one million, if it feels necessary as per sec.3(1)(b) of the Family Courts Act.

Object:

The purpose behind the necessity for establishment of family courts had been realized long back. The committee on Status of women had recommended in 1973, for establishment of the family courts. It stated that conciliation which ought to be the main consideration in all family matters was not the guiding principle in the matrimonial statutes. The ordinary principle i.e. the petition seeking relief alleges certain facts and the other side refutes them is followed under all statutes. It recommended strongly abandonment of the established adversary system for settlement of family problems and establishment of family courts which should adopt conciliatory methods and informal and inquisitorial
procedures in order to achieve socially desirable results.

The purpose behind the family courts thus implies an integrated broad based services to the families in trouble\textsuperscript{169}. With this objective, the Family Court Act was enacted. It is expected that these courts should function to help stabilize the marriages, preserve the families and where it is not possible dissolve the marriage with maximum fairness and minimum bitterness, distress, and humiliation.

Hereinafter, all the family matters will go before the family courts. It will cover issues relating to maintenance also. As per the provision of the Act, union or state servant having special knowledge of the law or a judicial officer or an advocate having experience of not less than seven years can be appointed as a judge of the family court. Women are to be preferred for the appointment of judges. There is a provision for association of social welfare agencies for effective working of the court. Marriage counsellors are to be appointed to help the judges. The discretion is provided to the judges for applying informal procedure. Parties are not entitled as of right to appoint a lawyer to represent their case before the family court.

An overview of the provision of the family court Act therefore, points out the sincere intention of the legislators of reconciling the spouses facing the matrimonial problems. However, the success of the law will depend upon the personnel who will constitute the family court. The family courts have been established at Pune in 1989 and at
Bombay in 1990. To study the working of the family courts and whether use of conciliatory procedure has brought any change in the existing matrimonial problem would be an area for further research.

It is submitted, that if judicial attitude at any forum of dispute resolution new or old does not change to meet contemporary challenges, judicial process as an institution is bound to suffer irreparably. Old norms of decision making must make room in the judicial process for value oriented norms fulfilling constitutional imperatives. If the process must achieve an end, its success must depend on effective resolution of any dispute in the wider perspective of social and constitutional values. Not law alone but legitimacy, derived from constitutional values informing the decision, is regarded as hallmark of a wholesome judicial process.

In the matter of maintenance, we expect a lot from the Family Courts. Being an informal dispute settlement machinery the first role of the Family Court judges could be to explain the legal rights to the parties appearing before them in deserving cases. Then the judges could identify the exact problems faced by them. Thereafter efforts could be made to reconcile the dispute between them. If reconciliation is not possible the judges should see that her right of maintenance is best protected which would avoid her future destitution and then the desired matrimonial remedy could be awarded without humiliating either party.
Notes:


   see also Rukminibai v. Kishanial Ramlal AIR 1959 M.P.187.


10. Supra note 8.


14. Ibid.

   76.
   Surendra Kumar Asthana v. Kamlesh Asthana AIR 1974
   All.110.

   Balbir Singh v. Swaran Kanta AIR 1981 Raj.266.


   see Laxmibai v. Ayodhya Prasad AIR 1991 M.P.47 in which
   Maintenance pendente lite was granted to the second
   wife.


22. Supra note 13.


   Baburao v. Sushila Bai & others AIR 1964 M.P.73.
   Gopendranath Basu Malik v. Pratibhan Pratibhan Basu Malik AIR
   1962 Cal.455.
   Rajkumari v. Trilok Sing & others AIR 1959 All.628.
   Supra Note 7. AIR 1958 Bom.466.


   Haricharan Kaur v. Nachhattar Singh AIR 1966 Punj.27.


31. AIR 1990 Ker.262.


Bom.120.

37. AIR 1987 Ori.65.

38. In Jayanti Munjet v. Asit Kumar Mohanty AIR 1988 
Ori.195, under sec.36 of IDA deduction of income tax 
and provident fund were allowed.
In Sushama v. Suresh AIR 1982 Delhi 176 CPF and 
insurance instalments were allowed to be deducted. 
See also Freeti v. V.Ravindra AIR 1979 All.29. 


N.Subramaniam v. M.A.Saraswathi AIR 1964 Mys.38.

41. AIR 1979 Bom.173.

42. AIR 1987 A.P.237.

43. AIR 1984 Delhi 320.

44. AIR 1986 Ker.130.


46. Saroj Devi v. Ashok Puri Goswami AIR 1988 Raj.84. 


Kusum Lata v. Kamta Prasad AIR 1965 All.280.

See also Halini v. Velu AIR 1984 Ker.214.

51. AIR 1973 Raj.2.

52. AIR 1984 P&H.332.

S. Radhakumari v. VKMK Nair AIR 1983 Ker 139.
Subramaniyam v. M.G. Saraswati AIR 1964 Mys 38.
Shobha v. Amar AIR 1959 Cal 455.

see also Shyamlal v. Kamala Devi AIR 1983 Raj 229.

56. Ibid.

57. Supra Note 54.

Balbir Kaur v. Gurdev (1978) HLR 258 (appeal was
dismissed).
Balvinder v. Surinder Kaur (1975) HLR 387 (struck the
defence).
Anita v. Briendra AIR 1962 Cal 86 (stay order).
see also Yakub v. Christina AIR 1941 All 93 where the
same view was taken under the IDA.


60. Jai Rani v. Um Prakash AIR 1984 Delhi 301.

61. (1956)2 MLJ 289.

62. Krishna Kumari v. IV Add. District Judge, Hamirpur and
Others AIR 1969 All 198.
Jwala Prasad v. Meena Devi AIR 1987 All 130.

63. Mrs. R. K. Agrawala, Matrimonial Remedies Under Hindu
Law, (Tripathi, 1974) p. 118.

64. Sec.25 HMA Sec.37 SPMA; Sec.40 PMDA.


67. Supra note 3.
Sandhya Bhattacharjee v. Gopinath Bhattacharjee AIR
1983 Cal 161.
Shantaram v. Malati AIR 1964 Bom.83.

68. Shantaram v. Hirabai AIR 1962 Bom.27.


70. Sec.28 of the HMA (before 1976).
All decrees and orders made in any proceedings under
this Act may be appealed from.

71. Sec.28 of the HMA (after 1976):
All decrees made in any proceedings are appellable and
only those orders which are not interim orders are
appellable.

72. (1986)1 HLR 363.

73. Id at p.370.

74. Id at p.371.

75. AIR 1989 A.P.8.

76. Supra note 27.
All.150.

77. See generally B.K.Sharma, R.D.Anand, "Matrimonial
Causes, Dynamics of Ancillary Relief", 31 JILI 210
(1989).

78. (1975) HLR 241. See also ARM Rajoo v. Hema Rani AIR
1975 Mad.15.

Patel Dharamshi Premraj v. Bai Sakar Kanji AIR 1968
Guj.150.
Sachindra Nath Biswas v. Banmala Biswas and aur AIR
1960 Cal.575.


81. Supra Note 66.

82. Supra Note 79.

83. AIR 1962 Bom.27. See also Purushottam v. Devaki AIR
84. *Jagdish v. Manjula* AIR 1975 Cal.64.

85. Sec.37 of the IDA.

*Uday Narayan V. Kusum* AIR 1975 All.94.
*Sisirkumar v. Sabita Rani* AIR 1972 Cal.4.

87. Sec.11 of the HMA. Sec.24 of the SPMA.


89. AIR 1976 Bom.433.

90. AIR 1982 Bom.231.

91. AIR 1987 Bom.182.

92. AIR 1973 Punj. & H.44.

93. AIR 1977 Delhi 124.


*Sisirkumar v. Sabita Rani* AIR 1972 Cal.4.
*Aarykumairi V. Ila* AIR 1968 Cal.276.


98. e.g. Sec.18 of the Hindu Adoption & Maintenance Act, Sec.125 of the Criminal Procedure Code.

99. Supra Note 72.


102. Supra Note 72.

103. Supra Note 101.

Akasamchhina Basu v. Parbat AIR 1907 Ori. 163.


107. Silla Jagannadha Prasad v. Silla Lalitha Kumari AIR
1989 A.P. 8.

108. Id at 11.

108A. Trivedi Himanshu, "Permanent Alimony and Maintenance


110. AIR 1968 Mys. 226. See also C.B. Joshi v. Ganga AIR 1980
All. 130.
Subramaniyan v. Saraswati AIR 1964 Mys. 38.


112. Supra Note 110.


115. Supra Note 109 at p. 594.


117. Dailey v. Dailey (1947) 1 AllER 647.

118. (1949) 2 AllER 196.

119. (1958) 2 AllER 196.

120 Hiblett v. Hiblet AIR 1935 Oudh 133.
Lahfrenais v. Lahfrenais AIR 1931 Sind. 112.

121. AIR 1967 Ker. 181.

122. AIR 1970 J & K 150.


124. AIR 1960 Cal. 575.

125. AIR 1960 Cal. 438.
126  (1902) p.270.
127.  (1905) p.4.
128.  *Supra* Note 125 at p.439.
130.  *AIR* 1973 Ker.273. This decision overruled
    *Raja Gopalan v. Rajamma* *AIR* 1967 Ker.181.
    See also *Dwarkadas v. Bhanukiben* *AIR* 1986 Guj.8.
    *Umeshchandra Sharma v. Rameshwari Devi* *AIR* 1982
    Raj.83.
132.  *Supra*, Note 109 at p. 595. See also J.D.Derrett, "The
    Unchaste Wife's Alimony : A conflict of decisions, "69
    *BLR* 33.
133.  *AIR* 1975 Cal.64.
    See also *Durga Das v. Tara Rani* *AIR* 1971 P&H 141.
136.  Alimony was granted to the wife though the petition
    was granted in favour of husband on the ground of
    wife's impotency in *Gurubachan Kaur v. Sher Singh*
    (1981) *HLR* 29 and in *Gunvantraj v. Bai Prabha* *AIR*
137.  Alimony granted to the wife when marriage was
    dissolved on filing of the petition by the husband as
    the ground of wife's suffering from Mental Disorder in
    *Mukesh v. Veena* *AIR* 1969 Raj.97.
    *Shakuntala v. Sahebrao* *ILR* (1978)1 Bom.127.
    *Govindrao v. Anandibai* *AIR* 1976 Bom.433.
    *Leela v. Manoharilal* *AIR* 1959 M.P.349.
142.  (a) Movable and immovable property under the *PMDA*.
    (b) Only immovable property under the HMA. Hence a
charge can not be created on provident fund –
Durga Das v. Tara Rani AIR 1971 P&H 141.
(c) Only immovable property under the SpMA


144. AIR 1984 Ker.112.


146. See Sec.21 of the HMA.
Sec.40 of the SPMA.
Sec.45 of the IDA.
Sec.45 of the PMDA.


149. Sec.19 of the HMA.

150. Sec.17 and Sec.20 of the IDA.

151. Sec.18 to 21 of the PMDA.

152. Sec.21,22 of the PMDA.

153. Sec.31 of the SPMA.

154. Sec.19(iii) of the HMA. Sec.3(3) of the IDA.
Sec.29(2) of the PMDA. Sec.31(1)(iii) of the SPMA.

155. Sec.29(2) of the PMDA.

156. Sec.19(ii) of the HMA.

157. Sec.31(1)(ii) of the SPMA.

158. Sec.29(1) of the PMDA.

159. Sec.3(9) of the IDA.

160. Sec.19(i) of the HMA.

161. Sec.31(1)(i) of the SPMA.

162. Sec.19(iv) of the HMA.

163. Sec.31(1)(iv) of the SPMA.

164. Before the amendment to Sec.28 of the HMA in 1976,
there was controversy among the High Courts as to whether appeal lies against an interim order. However, in 1976 Sec.28 was amended on the recommendations of 59th Report of the Law Commission. Accordingly, interim orders are not appealable now. This was done in the interest of speedy disposal of cases.


166. Millicans v. Millicans AIR 1937 Lah 862.

167. So far in the following 7 states the family courts have been set up. (As on 26-12-1990). See Report of 'the orientation training course for family court personnel' organised by the National Law School of India University, Bangalore, between 26-12-1991 and 1-1-1992. Maharashtra, Karnataka, Tamilnadu, Rajasthan, Uttar Pradesh, Orissa and Pondicherry.


169. See Paras Diwan, Family Courts 27 JILI 101 (1985)  