In the preceding pages, we have seen that an indigent spouse can claim maintenance during the pendency of proceedings under Section 24 of the Act. By nature, the maintenance pendente-lite under Section 24 of the Act is interim maintenance. With the decision in a case, the other of maintenance pendente-lite ceases to operate. On the other hand, section 25 of the Act makes provision for permanent alimony and maintenance. The court can pass order for permanent alimony and maintenance at the time of passing any decree or subsequent thereto. Thus these two Sections ensure the financial provision to an indigent spouse at two different stages. These sections fulfil the social as well as moral obligation to save the spouse from destitution.

While tracing the historical background, the Division Bench consisting of P.N. Bhawati and A.R. Bakshi, JJ., of the Gujrat High Court in the case of Dharamshi Iremji Vs. Bai Sakar Kanji has observed that:

"The concept of 'permanent alimony' is not an indigenous concept grown on our soil as we did not have any law of divorce amongst Hindus in this country. But when the Act was enacted providing inter-alia for divorce amongst Hindus, the concept of 'permanent alimony' was borrowed by the draftsman of the Act from England'.

In England, presently the matrimonial causes are governed by the Matrimonial Causes Act, 1973. Now, Part-II of this Act

deals with 'Financial Relief For Parties To Marriage And Children of Family'. It is very important to note that under this part II, the phrase used is 'Financial Provision'. Though the marginal note of Section 22 of this Act reads 'Maintenance Pending Suit', the phrase 'Permanent Alimony And Maintenance' etc. has not been used anywhere in the Act. Now, under this British Statute, the Court can pass 'Financial Provision Orders' in favour of either party to the marriage.

1. PROVISIONS OF SECTION 25 OF THE HINDU MARRIAGE ACT NOTED FOR IN ARTISTIC DRAFTSMANSHIP: It is very unfortunate that the provisions of Section 25 of the Hindu Marriage Act, 1955, with such a social and moral objective, have become a bone of controversies. Our Courts have given different interpretations to the different phrases and words of Section 25 of the Act. It is true that the provisions of the Hindu Marriage Act are not drafted properly. It has also contributed towards confusion. Our High Courts did notice the inartistic draftsmanship of the provisions of the Act, particularly of Sec. 25 of the Act. The Kerala High Court, while examining the provisions of Section 25 has noticed in Subramaniam Vs. Sreelathathat it is clear that the statute has been very clumsily drafted. The Madras High

1. See Part II consisting of SS 21 to 40 of the Act.
2. 1985 (2) HLR 308 at 312.
1 Court in A.R.M Rajoo Vs. Hemsa Rani, while discussing the meaning and construction of some expressions used in Sec. 25 of the Act noted that this clumsy phrase has been inadvertently used by unimaginative draftsman. A Division Bench of Gujrat High Court in Kadia Harilal Vs. Kadia Lilawati has noted that the Act contains several provisions which are not noted for good drafting and words used in some sections are not very happy. Justice C.G.Suri of the Punjab & Haryana High Court in Dayal Singh Vs. Bhajan Kaur has very correctly observed that:

"The better view which may appear to have found favour with the majority of High Courts, however, is that the Act has not been very carefully drafted and that the language of Section 25 has to be liberally construed".

The learned judge further described the Act as 'carelessly drafted piece of legislation'. Therefore, the language of Section 25 should not receive a very strict construction.

2. MAIN FEATURES OF SECTION 25: Before we critically examine the different provisions of Section 25 of the Act, it will be advisable to reproduce.

"Section 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 there to, on application made to it for the purpose by either the wife or the respondent shall pay to the applicant for her or his maintenance and support such monthly or

1. AIR 1975 Mad. 15.
3. AIR 1973 P & H 44.
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 circumstances of either party at any time after it has made an order under sub-Sec.(1), it may at the instance of either manner as the court may deem fit.

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 if such 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 fit.

Before the Marriage Law (Amendment) Act, 1976 the words 'while the applicant remains unmarried' were used in sub.Sec. (1) of this Section after the words 'respondent shall and before' pay to the applicant'. The words 'remain unmarried' resulted in judicial controversy. The High Courts in India expressed divergent opinion on the interpretation of these words. The unfortunate construction of these words were taken that maintenance u/s. 25 can be awarded, subsequent to the decree, only in proceedings for restitution of conjugal rights and judicial seperation. It means, no maintenance

could be granted in divorce or nullity proceedings. This was certainly a wrong construction. To put an end to this controversy, the Legislature amended the provisions of Sec. 25 of the Act by the Amendment Act No. 68 of 1976 and omitted the words 'while applicant remains unmarried.' Two more amendments to this Section 25 were effected by the same Amendment Act No. 68 of 1976. In sub-Sec.(1) after the words 'conduct of the partyrthe words 'other circumstances of the case' were added. In sub.Sec. (3) Legislature substituted the words, 'it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem fit' in place of 'it shall rescind the order' at the end of this sub clause by the same Amendment Act.

Thus, the deletion of the words 'while the applicant remains unmarried' has removed the ambiguity, whereas the substitution of the words, 'other circumstances of the case' in sub Section (1) of Section 25 has enlarged the jurisdiction of the Court with more discretion in determining the maintenance. The substitution of words 'vary, modify and rescind' instead of 'rescind' only in sub. Sec. (3) has also entrusted the Court with wide discretionary powers to make alteration in maintenance orders. The amended Section 25 of the Hindu Marriage Act, 1955 lays down the following points:

-Any Court exercising jurisdiction under this Act, which means the Court seized of the main petition, can order the permanent alimony.

-Husband as well as wife can claim maintenance.
This is a radical change in old Hindu Law where only could claim maintenance.

-Order for permanent maintenance can be made by the Court
  -at the time of passing any decree or
  -at any time subsequent thereto.

-Here any decree means decree of restitution of conjugal rights, judicial separation, nullity as marriage being void and voidable, divorce, and divorce by mutual consent.

-Therefore, the relief under the Section is ancillary to the main proceedings under this Act.

-For claiming maintenance under the Section the spouse has to file an ‘application’.

-The Court, while determining maintenance will give due considerations to the
  -respondent's own income and other property
  -the income and other property of the applicant
  -the conduct of the parties and
  -other circumstances of the case

-The Court, can order the respondent to 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, which seems the court to be just.

-The Court can order the payment of maintenance to be secured by creating a charge on the immovable property of the respondent.

-Lateron, if there is change of circumstances of either party the Court, after satisfying itself, can vary, modify or rescind the order of maintenance in such a manner as it may deem just.

-In case of wife, if she
  -Remarries or
  -has not remained chaste
  -And in case if husband, if he
    -remarries or
    -has had sexual intercourse with any woman outside wedlock.

-the Court, if satisfied, can at the instance of
non-claimant party,
-Vary
-Modify or
-rescind
-the maintenance order in such manner as the Court may deem just.

Section 25 if read carefully reveals that there exist no ambiguity in the provisions. But still the courts have been interpreting some of the phrases of the Section in different directions.

3. 'ANY COURT EXERCISING JURISDICTION UNDER THIS ACT' AN EXPRESSION ATTRACTING DIFFERENT INTERPRETATIONS: In the recent past, the High Courts in India have been giving different interpretations to the phrase 'any court exercising jurisdiction under this Act.' The words 'any court' is a point of controversy. The question, whether an application for permanent alimony under Sec. 25 can be filed in a Court, other than the Court which passed the decree of divorce (or restitution of conjugal rights, judicial separation or nullity), came for consideration before a Division Bench of the Orissa High Court in Rama Chandera Vs. Snehlata Devi. The Court answered the question observing:

Admittedly the decree was passed by the Court of the subodinate judge at Cuttack and therefore an application for permanent alimony and maintenance could not be maintained in a court of subordinate judge at Keonjhar.

Then, the same question was raised before the Punjab &
Haryana High Court in Darshan Kaur Vs. Malook Singh. The brief facts of the case reveal that Malook Singh got ex-parte decree of divorce from Additional District Judge, Allahabad; Darshan Kaur filed appeal against the said decree in the High Court, Allahabad, which was dismissed as time barred. She then filed a 'petition' under Sec. 25 of the Act for permanent alimony and maintenance against Malook Singh in the Court of District Judge, Jullundha. The District Judge dismissing the petition of wife came to the conclusion that it was the Court which granted the decree of divorce, which alone had the jurisdiction to entertain the petition under Section 25 of the Act. The wife filed appeal in the Punjab and Haryana High Court which was heard by Justice G.C. Mittal. The learned judge applied Section 19 of the Hindu Marriage Act to determine the jurisdiction of Court to entertain 'petition' under Section 25 of the Act.

It is submitted that the learned judge of the Punjab & Haryana High Court has not construed the provisions


2. The term 'petition' is used by the judge in the judgement.

3. Section 19. Courts to which petition shall be presented: Every petition under this Act shall be presented to the District Court within the local limits of whose ordinary civil jurisdiction.
   i) the marriage is solemnised; or
   ii) the respondent, at the time of the presentation of the petition resides, or
   iii) parties to the marriage last resided together;
   iv) (not applicable in this case).
of Sec. 25 vis-a-vis Sec. 19 of the Act in their right prospective. Section 19 of the Act cannot be applied to determine forum of filing 'application' under Sec. 25 of the Act.

Later on, the same question was discussed by Justice Puranik of the Bombay High Court in Jagdish vs. Banumati. Dissenting from the Darshan Kaur decision, Justice Puranik has very rightly pointed out the distinction between the terms 'petition,' and 'application' used in the Act. While, according to the scheme of the Hindu Marriage Act, an aggrieved spouse has to file a 'petition' for the substantive relief of restitution of conjugal rights under Sec. 9, judicial separation under Sec. 10, divorce under Sec. 13 and divorce by mutual consent under Sec. 13-B of the Act. Section 19 of the Act lays down the forum for presenting any of these 'petitions.' Any of the parties to such proceeding can file an 'application' for the 'order' of maintenance pendente-lite (Sec. 24), permanent alimony and maintenance (Sec. 25) and custody of children (Sec. 26). The relief granted under Section 24, 25 and 26 is generally known as consequential or ancillary relief. The court passes 'decree' on 'petition' presented to it under Sec. 9 to 13-B where as it passes 'order' on an application made under

3. Besides this, an application can also be filed under sec. 14 of the Act, for the condonation of time of one year for presenting petition for divorce.
Sec. 24, 25, and 26 of the Act. Thus, a clear cut distinction is made between 'petition' and 'application' according to the scheme of the Act. The Punjab and Haryana High Court has not appreciated this aspect. Section 19 mentions the forum for presenting 'petition' and not 'application'. Therefore, application for permanent alimony and maintenance under Section 25 can be presented to that Court only which is hearing any of the petitions filed under Sections 9 to 13-B or which had passed the decree under any one of the said Sections. Mr. Justice Puranik, while pointing out the intention of Legislature stated that the object of the frame appears to be that the court having been seized of the matter relating to substantial relief of permanent alimony. Mr. Raghavacharirs while tracing the object and necessity states that, it is fairly clear that in as much as the matrimonial Court has been seized of the matter and has gone into the merits of the controversy between the parties and knows who committed the wrong and where the justice lay, the intention of the Legislature is that the party should only resort to this court and not to any other court in the realm for the relief of maintenance. As rightly explained by Dr. Paras Diwan, the court is required to consider the conduct of parties at the

2. Hindu Law,
3. Modern Hindu Law.
time of ordering maintenance under Section 25 of the Act. And if the Court has not gone through the substantive proceedings of the case, how can it know and consider the conduct of the parties towards marriage and Court. Mr. 1 Jaspal Singh approving the Oriisa High Court decision in 2 Ramachandran Vs. Snehlata, stated that the application contemplated under S. 25(1) of the Act lies to the Court which passed the decree. Thus, as rightly pointed out by Justice Puranik, Section 25 of the Hindu Marriage Act itself prescribes the forum before which the consequential relief of permanent alimony is to be secured, no reference to S. 19 of the Hindu Marriage is necessary, particularly, when it only refers to petition under the Act viz. those governed by Ss. 9 to 13-B.

Therefore, the true construction of the provisions would be that while determining the forum or presenting application under Sec. 25 of the Act, no assistance could be taken of Sec. 19 of the Act. Once the petition for substantive relief as filed in one of the Courts which has jurisdiction to deal with the substantive relief as defined under Sec. 19 of the Act, then the consequential or ancillary relief of maintenance under Sec. 25 of the Act has to be sought for only from the court exercising jurisdiction at the time of passing of the decree or

1. Hindu Law of Marriage and Divorce.
2. Supra
3. Supra
subsequent thereto.

At the time of passing any decree another expression causing controversies: Another controversy going on in different High Courts is regarding the interpretation of the term 'passing of any decree'. As discussed above the scheme of the Hindu Marriage Act, 1955 envisages the decrees of restitution of conjugal rights, judicial separation, nullity of void and voidable marriages, divorce and divorce by mutual consent. (Ss. 9 to 13-B). The position is crystal clear that where the court dismisses the petition or refuses to grant relief whether the court can pass order of maintenance under Sec. 25 of the Act in such a case or whether a spouse having failed to secure matrimonial relief is entitled to claim of permanent alimony under Sec. 25 of the Act? In other words, where the court dismisses the petition filed under any of the Ss. 9 to 13-B, can it pass order of maintenance under Sec. 25 of the Act? In short, the question is whether dismissal of petition would amount to 'passing of decree under the provisions of Hindu Marriage Act?.

Some High Courts are of the opinion that

maintenance under Section 25 of the Act can be granted only where the Court grants relief or passes decree of restitution of conjugal rights, judicial separation, nullity or divorce. But some other High Courts have opined that dismissal of petition filed under Ss. 9 to 13-B, is also a 'decree' and therefore, the Court can pass order of maintenance under Sec. 25 of the Act.

Interestingly, different Benches of the Bombay High Court have expressed divergent opinion at different times on the above said question. In 1962, Justice Patvardhan, J. of the Bombay High Court said in Shantaram Vs. Hirabai that where the husband petitioner withdrew the matrimonial petition before hearing, there being no decree the ancillary relief of permanent alimony and maintenance under Section 25(1) will not be available to the wife. Justice Shah of the same High Court has held in Shantaram Dinkar Karnik Vs. Malti Shantaram that the expression 'passing of any decree' only refers to the passing of any of the decrees provided for in Section 9 to 13 of the Act. Although technically speaking dismissal of a suit or a petition may be called a decree, such decree is not contemplated by Section 25(1) of


2. AIR 1962 Bom. 27.

3. AIR 1964 Bom. 83.
the Act. On the same lines in Chandrakant Vs. Nandana, a Division Bench consisting of Nathwani and jj., observed that to grant maintenance under Sec. 25 of the Act, the decree must be one granting substantive relief and not one dismissing the petition.

But Justice Vaze has observed in Manilal Vs. Bhanumati that a spouse is entitled to a claim of maintenance even if the petition of the husband for divorce is dismissed. Justice Manohar and Justice Dand of the same High Court have held in Meenakshi Vs. Ashok Dhirajlal and Sadanand Vs. Sulochana respectively, that a decree refusing the matrimonials claim is also inclusive in the term ‘any decree’ and as such even the losing spouse is entitled to claim maintenance under Section 25(1).

In 1991, Justice A.A. Desai of the same High Court had to examine the whole case law on the point in Modilal Kalaramji Jain Vs. Lakshmi Modilal Jain. It was argued before the learned judge that under the scheme of the Act of 1955 maintenance on alimony is ancillary relief. It is incidental to a decree or matrimonial relief. In the even the matrimonial relief is declined, a spouse is not

3. (1989) 15 Bom. C.R. 156,
4. AIR 1989 Bom. 220.
5. AIR 1991 Bom. 440.
entitled to a relief of maintenance. Therefore, the term 'any decree' under Section 25(1) of the Act comprehends only an affirmative decree granting matrimonial relief is not within the ambit of the term 'any decree.' Rejecting all these substantive arguments, Justice Desai held that,

'At any rate, grant of permanent alimony could not be a relief ancillary to the matrimonial relief'.

Therefore, the Division Bench observed that the term 'any decree' includes order refusing to grant matrimonial relief. This view is clearly against the well established and recognised judicial opinion. The permanent alimony and maintenance is an ancillary or incidental relief.

Same question came for consideration before the Punjab and Haryana High Court in Smt. Swaranlata Vs. Sukhwinder Kumar, Justice G.C. Mittal applied the definition given to the term 'decree' in Section 2(2) of the Civil Procedure Code, 1908 and ruled:-

"Therefore, dismissal of husband's application (Sic-petition) in this case for annulment of marriage under Section 12 of the Act would amount to determination of the controversy between the parties and would this be a decree. Viewed from this angle the wife would be entitled to make claim for maintenance/permanent alimony under Section 25 of the Act."

Recently, a Division Bench consisting of Chief Justice J.V. Gupta and Justice R.S. Mongia has overruled the above Swaranlata case in Jawajar Lal Vs. Chand Dhawan. After

2. (1992) DMC 82.
refering to various decisions of different High Courts, the Division Bench concluded that:

"alimony can be granted on the proper construction of the Act only when a decree has been passed. If a decree is refused then no order for alimony can be passed. The word 'decree' is used in the matrimonial cases in a special sense different from that in which it is used in the code".(2)

The Division Bench has rightly overuled the Swaranlata case. The true interpretation would clearly lead to the conclusion that permanent alimony and maintenance under Section 25 can be ordered by the Court only where decree is passed granting substantive relief.

A Division Bench of the Delhi High Court, consisting of D.K.Kapur and S.Ranganathan, JJ., has throughly examined the ambiguity created by the words 'at the time of passing any decree or at any time subsequent thereto' in Smt. Sushma Vs. Satish Chander. The learned Bench ruled that:

1. Though the learned Bench has observed to follow its own High Court decision in Gurcharan Kaur's case, AIR 1979 P&H 206, but it is submitted that the decision in Gurcharan Kaur case has not bearing on the question under consideration. In that case, the point examined was, whether maintenance under Sec. 25 can be granted after the decree of divorce nullity or not. Similarly, the reference to Durga Das case, AIR 1971 P & H 141 (F.B.) is unwarranted because in that decision too, the law point decided was wather maintenance under Sec. 25 can be granted the decree of divorce or not or could maintenance be awarded only after the decree of restitution of conjugal right and judicial seperation. The point of controversy was the interpretation to the term husband and wife used in Sec.25 of the Act.

2. Emphasis supplied.

3. AIR 1984 Del.
"The word 'decreed' is used in matrimonial cases in a special sense different from that in which it is used in the Civil Procedure Code. In our view, on the proper construction of the Act, there is no doubt that alimony cannot be granted in a case where a decree for divorce or other decree is refused because in such a case the marriage still subsists".

In order to explain the reasons for the word 'decreed' having limited meaning, the leaned Division Bench explained three points of view. Firstly, there is a significance to the word 'permanent alimony' as understood in ordinary parlance. The learned Bench pointed out that in case of dismissal of petition, the (aggrieved) spouse has the right to maintenance simpliciter under Section 18 of the Hindu Adoption and Maintenance Act, 1956.

Secondly, there is the language specifically used in the Hindu Marriage Act, 1955, itself. In the view of learned Bench, no doubt, the Civil Procedure Code gives a different definition to the word 'decreed' than that in the Hindu Marriage Act, 1955.

Thirdly, from the historical perspective, it could be found that the word 'decreed' is used in its particular significance and that it has a different meaning in the law relating to marriage and divorce.

Thus, the Division Bench clearly laid down the law that having regard to the terminology of the entire Act, no court has the jurisdiction to grant alimony under Section 25 of the Act, where the petition had been dismissed.

The Madras High Court speaking through Justice
K.M. Natarajan in Ranganathan Vs. Shyamala has also elaborately dealt with the above stated question placing reliance on the Delhi High Court decision in Smt. Sushma and Allahabad High Court decision in Vinod Chandra Sharma, the leanred judge observed that:

"the passing of a decree u/section 25 of the Act means the passing of the decree of divorce, restitution of conugal rights or judicial separation and not the passing of a decree through which the petition itself is dismissed and therefore, it is clear that alimony cannot be granted in case where a decree for divorce is refused".

Justice Natarajan, while concluding, has rightly observed that:

"I have no hesitation in holding that the existence of any of the decrees referred to in Sections. 9 to 13 of the Act is a condition precedent to the exercise of the jurisdiction under Sections 25 (1) of the Act, and the granting of the ancillary relief for permanent alimony and maintenance and not when the main petition was dismissed and no substantial relief was granted under Sections 9 to 14 of the Act."

From the above discussion, it is now evident that the meaning to the term 'passing of any decree' is assigned in a limited way in the scheme of the Act. Passing of decree, in this matrimonial Act means only the affirmative decree granting substantive relief envisaged under Sections 9 to 13-B of the Act. It would not be a proper interpretation to term 'passing of any decree' if we include the dismissal of

1. 1990 (1) HLR 474.
2. Supra
3. AIR 1988 150.
petition filed by a spouse under Sections 9 to 13-B, of the Act. Where a spouse's petition is dismissed, a wife is not left without a remedy maintenance she can invoke the provisions of the Hindu Adoption and Maintenance Act 1956 or Section 125 of the Code of Criminal Procedure, 1973.

(a) RIGHT TO MAINTENANCE OF THE SPOUSE OF ANNULLED MARRIAGE

DOES IT COME WITHIN THE AMBIT OF THE TERM 'ANY DECREES':

The Court can pass the decree of nullity under Sections 11 and 12 of the Hindu Marriage Act 1955. A Hindu Marriage may be declared null and void by a decree of nullity under Sec. 11 of the Act, if it is solemnised in contravention to the Sub-Section I, IV, or V of Section 5 of the Act. A decree of nullity may be granted in case of voidable marriage under Section 12 of the Act also. Now, a precise question which arises for our consideration is, whether a spouse of annulled marriage is entitled to permanent alimony and maintenance under Section 25 of the Act? The answer to this question rests on another question, whether the term 'any decree' used in Section 25 includes the decree of nullity besides the decree of restitution of conjugal rights, judicial

1. S. 5: i) neither party has a spouse living at the time of marriage.
   ii) N.A.
   iii) N.A.
   iv) the parties are not within the degrees of prohibited relationship, unless the custom or usages governing each of them permits of a marriage between the two:
   v) the parties are not sapindes of each other, unless the customs or usage governing each of them permits of a marriage between the two.
As for as the spouse of voidable marriage is concerned, there is almost uniformity in judicial attitude that spouse of such marriage is very much entitled to permanent alimony and maintenance under Section 25 of the Act. But on the right of a spouse of vode marriage, there is conflicting judicial approach.

In 1965, a Division Bench consisting of Veeaswami and Kunhamed Kutti, JJ., of the Madras High Court held in A.P.K. Narayanaswami Reddiar Vs. Padmanabhan that:

"Section 25 cannot be construed in such a manner as to hold that notwithstanding the nullity of the marriage, the wife retains her status for the purpose of applying for alimony and maintenance. The proper construction of Section 25, in our view, would be that where a marriage is admittedly a nullity, the Section will have no application".

But, from the reading of the whole judgement, it becomes evident that these observations of the Division Bench are obiter remarks. This obiter dictum did not find favour in Dayal Singh Vs. Bhajan Kaur, wherein Justice G.C. Suri of the Punjab and Haryana High Court, thoroughly discussed the question, whether a spouse whose marriage is void ipso jure, from its very inception under Section 11 read with Section 5 clause (1) of the Act is entitled to maintenance under Section 25 of the Act.

Justice Suri, while allowing maintenance under Section

1. Arya Kumar Bal Vs. Smt. Ill Bal, AIR 1961 Cal. 276 (Gopala Krishnan Nair Vs. Thembatty Romani 1990 (1) HLR 202; Subramaniam Vs Srilatha, 1 35 (ii) HLR 34; Gurbachan Kaur Vs Sher Singh, 1981 HLR 29 (P&H)
2. AIR 1966 Mad. 394.
3. AIR 1973 P & H 44.
25 of the Act, to the wife of annulled marriage justifies it by observing that:-

"Even if the marriage was void ipso jure, the lady had been made to go through a mock marriage and to lose her maidenhood under the belief brought out by false pretence that she was lawfully wedded wife".

Justice G.C. Mittal of Punjab & Haryana High Court has pointed in Amrik Singh Vs. Lakhwinder Kaur that a spouse will be entitled to maintenance under Section 25 of the Act on or after the passing of decree under the Act. His Lordship further observed:

"For this it would hardly matter whether the decree was under one Section or the other because the basic idea is to provide maintenance to the wife even after the close of the proceedings".

Justice U.P.L. Bhat of the Kerla High Court has also discussed the meaning of 'any decree' the term used in Section 25 of the Act, in Subramaniam Vs. Sreelatha. The learned judge says that the 'expression any decree is not limited by indicating the particular Section under which the decree is passed". All the decrees passed under Sections 9, 10, 11, 12 and 13 fall within the meaning of the 'expression' any decree'. The learned judge, further observed:

"In these circumstances, it would be clear that under Section 25 Court has jurisdiction to pass an order relating to permanent alimony and maintenance in the context of the Court passing any decree under any of the provisions of Section 9 to 13 of the Act."

A Division Bench consisting of G.N. Sarbhabhit and M. Nagappa,

1. 1985 (i) HLR 712
2. 1985 (2) HLR 308.
JJ., of the Karnataka High Court in *Ratnaprabha Vs. Shadakshararyya* has ruled that:

"Section 25(1) states in a general way, 'at the time of passing any decree or at any time subsequent thereto'. Hence, it is obvious that the parties to a decree of annulment of marriage, also are covered under Section 25(1) of the Hindu Marriage Act."

Justice B.C. Mishra of the Delhi High Court in *Kuldip Chand Sharma Vs. Geeta Sharma*, after examining the decision of various High Courts has very rightly opined that:

"My conclusion is this: The Act has to be read as a whole and in a harmonious way. The provisions of Section 25 empower the Court to exercise jurisdiction under the Act to grant permanent alimony at the passing of the decree or at any time subsequent thereto. The decree would embrace within it all the decrees that are passed under the Act and no exception has been made out in respect of the decrees of any particular kind, not even decree annulling the marriage passing of the decree of annulment of marriage, therefore, does not debar the court from granting alimony to the parties, who are otherwise entitled to it."

The Calcutta High Court in *Sisir Kumar Vs. Smt. Sabita Rani* has also observed that the wife whose marriage was void *ab initio* and who got decree of nullity is entitled to get maintenance subsequent to the decree of nullity of marriage.

4. AIR 1972 Cal.4.
Justice Kania of the Bombay High Court has elaborately discussed the 'right of the spouse of void marriage to claim maintenance under Section 25 of the Act in Gobindrao Vs. Anande Bai. The learned judge dissented from the view taken by Madras High Court in Narayaswami Vs. Padmanabhan, discussed above, on the ground that this Madras decision is given under the provisions of the Madras Hindu (Bigamy Prevention and Divorce) Act, 1949 and the provisions of Section 25 (1) never came up directly for consideration. Justice Kania, in unequivocal terms, ruled that notwithstanding the nullity of marriage on the ground of contracting second marriage during the subsistence of first marriage, either party thereto is entitled to claim maintenance. The term 'any decree' includes the decree of nullity passed under Section 11 of the Act.

In 1987, a Division Bench of the same High Court consisting of R.A. Jahagirdar and A.C. Aggarwal, JJ., has gone a step further in Shantaram Vs. Dagubai. The Division Bench after approving its own High Court decisions by Masodkar, J., in Rajesbai Vs. Shantabai and Kania, J., decision in Govindrao Vs. Anandibai has observed in para 27

1. AIR 1972 Cal. 4
2. AIR 1976 Bom. 433.
3. Supra
4. AIR 1987 Bom. 182.
5. AIR 1982 Bom. 231.
of the judgement:

"We now summarise the principal positions of law emerging from the discussion made above:-

In regard to a woman whose marriage is void or declared void under the provisions of the Hindu Marriage Act.

(1) Section 25, Hindu Marriage Act, confers upon a woman, whose marriage is void or declared to be void, a right to maintenance against her husband.

(2) This right of maintenance can be enforced by her not only in proceedings under Section 25, Hindu Marriage Act, but also in any other proceedings where the validity of her marriage is determined.

(3) This right can be enforced by her not only during the lifetime of her husband but also after his death against the property of her husband after his death.

(4) Of course, "his right of maintenance is available only during her lifetime and ceases if she remarries".

Thus, the Division Bench not only recognised the right of an illegitimate wife (the phrase used by their Lordships for the wife of void marriage) to maintenance under Section 25 of the Act, in any proceedings under the Act, but it has enlarged the jurisdiction of the Court to grant maintenance in other proceedings too, where the validity of her marriage is determined. This decision of Shantaram came under Strict scrutiny of Justice Nesarji of the Karnataka High Court in Kishan Vs. Sakharabai. Though the learned judge ruled that a wife of void marriage is entitled to enforce such right

1. ibid
2. 1987 (2) HLR 689.
under other Act. Justic Nesarji, therefore, disagrees with
the law enunciated in Shantaram's case that the right of
maintenance can be enforced by her in any other proceedings
where the validity of marriage is determined. Therefore, in
case the marriage of wife is declared void under Section 11
read with Section 5(1) of the Act, she will be entitled to
claim maintenance under Hindu Marriage Act and this right to
claim maintenance under Hindu Adoption and Maintenance Act,
1956 cannot be enforced. Consequently, it may be concluded
from the critical evaluation of above judicial approach that
the term 'any decree' used in Section 25(1) would certainly
include the decree of nullity also, passed under Section 11
of the Act. Denying maintenance to the spouse of void marriage
will surely be a misconstruction of the provision of the Act.

Undoubtedly, where no marriage is solemnised between
the parties, the spouse will not be entitled to maintenance
under Section 25 of the Act.

Another, important point to be noted is that only that
spouse, who was a party to the substantive proceedings under
the Act, can claim maintenance under Section 25 of the Act.
It is immaterial, whether the decree is passed in favour of
the spouse or against that spouse with claim maintenance
under Section 25.

Guj.150; Ram Piari Vs. Piara Lal, AIR 1970 P & H 341.
5. FACTORS TO BE TAKEN INTO CONSIDERATION BY THE COURT FOR AWARDING MAINTENANCE: The Court can pass an order of maintenance on an application filed by the aggrieved indigent spouse under Section 25 (1) of the Act. The Court can order the respondent to pay to the applicant for his or her maintenance and support.

- such gross sum or
- such monthly or
- periodical sum.

for a term, not exceeding the life of the applicant, which seems to the Court to be just.

Thus, a Court can order the payment of maintenance on a monthly basis or periodically i.e. on weekly, yearly or by instalments as may be specified in the order of the Court.

The Court can order the gross sum or lumpsum to be awarded as permanent alimony. But all such orders of maintenance will not exceed the life of the applicant.

Section 25(1) says that while determining maintenance, the Court will have to regard

respondents own income and other property, if any,

1. When the parties agreed that an payment of lumpsum of Rs. 15000/-, the wife will not claim permanent alimony or return of Istri Dhan, the court passed the orders accordingly, Smt. Asha Rani Vs. Sh. Surinder Kumar, 1985 (2) HLR 386 (P & H).

2. No rescission is permissible for an order granting gross sum under Section 25(3) of the Act, not even on the remarriage of the wife, in whose favour maintenance order in lumpsum was passes under Section 25(1) of the Act, Nanigonal Chakravarty Vs. Renubala Chakarvarti AIR 1965 Ori 154.
-the income and other property of the applicant.
-the conduct of the parties
-other circumstances of the case

From the reading of Section 25, it is evident that the court is clothed with wide discretion: power to determine the amount or quantum of permanent alimony and maintenance.

No arithmetical formula has been enjoined upon a Court to award particular percentage of respondent's income as maintenance. Therefore no universal rule can be laid down to make arithmetical calculations in determining the quantum. Maintenance under Section 25 of the Act is to be granted in view of the income and property of applicant and respondent, conduct of the parties besides other circumstances of the case.

(a) INCOME AND PROPERTY OF APPLICANT AND RESPONDENT: The Court must take into consideration the income of both the applicant and respondent at the time of awarding maintenance to the applicant. Besides income, the court will take into account movable and immovable property, of the parties. Thus, we may say that the Court will take into consideration the present financial position of the parties at the time of granting maintenance.

(i) EARNING CAPACITY OF THE APPLICANT: It is pertinent to

1. This is added by 1976 Amendment Act.
note here that the judiciary has almost taken unanimous approach that earning capacity or potential income of the applicant will not debar her or him from claiming maintenance. The Madhya Pradesh High Court ruled in Smt. Leela Devi Shrivastava Vs. Manohar Lal Shrivastava that where the wife can earn independently, it is not justifiable ground to disallow maintenance to her. Thus, only independent income of the wife, if any, can be taken into consideration and not her capacity to earn independently. It is not permissible to take into consideration, the help or support which may be rendered by the father or other near relative of the wife. But at the same time, the husband's obligation is to maintain her and as such no provision can be made for education expenses of the wife.

(ii) EARNING CAPACITY OF THE RESPONDENT: Now, another interesting point arises for our consideration whether the Court is to take the factual income of the respondent (husband) or could it take into consideration the capacity to earn or potential income. No doubt, under Section 25, a husband too can claim maintenance, but in a society like ours that would be a much rarer happening. Practically, it is

2. AIR 1959 M.P. 349.
the wife, who claims maintenance under Section 25 of the Act. If a husband is unemployed or without any job, will she be entitled to maintenance on the basis of his capacity to earn? This question has been discussed under Section 24 of the Act and the High Court of Punjab & Haryana has taken the view in Kanta Prashad Vs. Smt. Jagat Rani speaking through Justice S.S. Sodhi, wherein it followed its own Court decision of Justice I.S. Tiwana in Dev Raj Vs. Smt. Harjit Kaur, where it was held that grant of maintenance pendente-lite must be based upon the actual earning of the opposite party. The capacity of the opposite party to earn cannot be taken into consideration while dealing with the matter. Later on, the law laid down in Dev Raj and Kanta Prashad under Section 24 of the Act has been extended to the provisions of Section 25 in Raj pal Mehndiratta Vs. Kamlesh Kumari, by Justice R.N. Mittal of the same High Court;

"The language of Section 24 is similar to that of Section 25 therefore the above observations (of Kanta Prashad case) are applicable to a case under Section 25 as well".

Therefore, the Punjab and Haryana High Court has taken the view that the husband’s actual income is to be taken into consideration while awarding maintenance to the wife under

1. 1984 HLR 35.
2. 1981 HLR 416, wherein the decision of Smt. Liladevi Vs. Tarlok Chand, 1978 PLR 744 was followed.
3. Supra.
4. Supra.
5. 1985 (1) HLR 63 (P & H).
Section 25 of the Act. His capacity to earn cannot be taken into consideration, but the Court must satisfy itself that the husband has no factual income. Therefore, the Court must seriously investigate into such circumstances as Justice R.N. Mittal has rightly ordered in Raj pal Mehandiratha and remanded the case back with following observation:

"However, a person cannot live without work. The applicant (husband) is about 30 years of age and if he was removed by his employer in February, 1983, he must have started doing something or joined some service. In this circumstance it will be proper that the matter may be decided afresh after giving the parties an opportunity to lead evidence".

This was the right decision in the right perspective and in consonance with the object of Section 25 of the Act. The Court should not allow an able bodied person to conceal his earnings, if, due to some unavoidable reason, the husband is really a non earning, the Court should not grant maintenance on the conjecture of his earning capacity only.

A Division Bench of the Mysore High Court has rightly held in Smt. Lalithaamma Vs. Kannan that only the property which is exclusively that of the wife can be taken into consideration, while determining the quantum of maintenance. The Division Bench ruled that there is no doubt a possibility of her inheriting the property which now belongs to her father. But, it is not proper to take in to account the possibility of the wife inheriting property

1. ibid.
2. AIR 1966 Mys. 178.
from her relations like the father.

Therefore, the Court shall take into account only that property of the applicant and respondent, which is being owned and possessed by the spouse at the time of the award of maintenance by the Court under Section 25 of the Act.

(b) CONDUCT OF THE PARTIES: The conduct of the parties is one of the most important factors which the Court is bound to take into account at the time of passing an order of maintenance under Section 25 of the Act.

The term ‘conduct’ used in Section 25 has very wide meaning. Here conduct means conduct of the parties during marriage towards each other and towards court. As we have discussed earlier, Section 25 comes into operation only at the time of passing any decree or subsequent thereto. Therefore, an aggrieved spouse can claim permanent alimony and maintenance only, where the Court passes any of the decrees stipulated under Section 9 to 13-B of the Act. This Section 25 makes it obligatory to take into account the conduct of parties. Sometimes, the conduct of a spouse may disentitle him or her to claim maintenance and sometimes it affects the quantum of maintenance. It depends from case to case. Even today the judicial approach is not uniform in India. A clear picture will emerge from the critical study of the case law on the point.

(c) IS A GUILTY SPOUSE ENTITLED TO PERMANENT ALIMONY AND MAINTENANCE: The Hindu Marriage Act 1955,
incorporates guilt theory of divorce and after the amendment Act of 1976, cruelty and desertion are made grounds of divorce under Section 13 of Act. Before 1976 Amendment, living in adultery was the ground for divorce but after the said amendment, this ground is restricted and presently if a spouse after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse, the other spouse can get divorce. Now, the question which arises for our consideration is, whether a guilty spouse is entitled to permanent alimony and maintenance under Section 25 of the Act? In other words, where a husband gets decree of divorce or judicial separation on the ground of adultery, desertion or cruelty by wife, can court order maintenance to such guilty wife under Section 25 of the Act? Should the conduct of adultery, desertion or cruelty on the part of wife, disentitle her to claim maintenance? Sometime, a wife may be guilty of non-compliance with the decree of restitution of conjugal right passed by the Court in favour of husband, will she be entitled to maintenance under Section 25 of the Act in such a case? These questions have been discussed by various High Courts.

(i) ADULTERY OR UNCHASTITY: The most important point attracting divergent view by the judiciary is the claim of adulterous wife to maintenance under Section 25 of the Act.

1. Now, grounds of divorce and judicial separation are same Under Section. 13 and 10 of the Act.

2. See 9 of the Act.
A spouse is entitled to get dissolved his marriage by decree of divorce under Section 13(1) (i) of the Act on the ground that the other party:

has, after the solemnization of the marriage had voluntary sexual intercourse with any person other than his or her spouse.

Adultery is one of the grounds which comes within the orbit of Guilt theory of divorce. Thus, sexual intercourse outside wedlock or adultery committed by a spouse is so heinous a crime in the eyes of law that is one of the grounds of divorce under the Act. Now, the question arises, whether a wife whose husband has got the marriage dissolved on ground of her adultery, will she be entitled to maintenance under Section 25 of the Act. This question has been discussed by different High Courts in India and has attracted divergent opinions.

After the coming into force of the Hindu Marriage Act, 1955, the Bombay High Court in 1958, in Rajni Lokur Vs. P. Lokur rejected the claim of maintenance by an unchaste wife. Justice Dutta of the Calcutta High Court in Amar Kanta Vs. Sovana Seth granted only 'Starving Maintenance', to the wife under Section 25 of the Act, whose husband got decree of divorce on the ground of her adultery. Just after two months, Division Bench of the same High Court in

1. Adultery is an offence under Section 497 of Indian Penal Code, 1860.

2. AIR 1958 Bom. 264.

Sachindra Vs. Banmala, took the unchastity of the wife as an encourage offence and rejected her claim of maintenance under Section 25 of the Act. The learned Judge ruled;

"The unchastity on the part of a woman and also sexual intercourse by a man with a woman outside wedlock are the sins against the ethics of matrimonial morality in this country. Moral law, it is true, is not the positive Civil Law of a country, but these are many instances where law and morality meet. In our opinion, such a meeting place of law and morality is Section 25 of the Hindu Marriage Act, and for the matter of that Section 25 of the Hindu Adoption and Maintenance Act. In the exercise of Judicial discretion, expressly vested in the Court of law under Section 25 (1) of the Hindu Marriage Act, a judge should, unless there be very special grounds, leave a wife, divorced on the ground of proved unchastity or adultery, to the resources of her immorality and deny her lawful means of support, by passing a decree of maintenance in her favour.

Th. Kerala High Court in Raja Gopalan Vs. Rajamma has held that where a husband got decree of divorce on account of wife's adultery, she cannot claim maintenance, not even 'starving maintenance or subsistence allowance. But in 1973, Justice Krishna Iyre in K. Kunhikannan Vs. N.V. Malu allowed bare subsistence allowance of Rs.25 only to the adulterous wife.

Relying upon the Kerla High Court decisions in

2. AIR 1967 Ker. 181.
4. Supra.
Suchindra Nath Biswas, a Division Bench of the Jammu & Kashmir High Court in Sardari Lal Vs. Vishanu denied maintenance to an adulterous wife under Section 25 of the Act. Earlier also, the Jammu & Kashmir High Court in Sarita Devi Vs. Prna Nath observed that Section 25(1) emphasises the 'conduct of the parties' which must mean 'the conduct of the parties' during their matrimonial life and court must have due regard to that factor. The provision of Section 25(1) and (3) place considerable emphasis on the wife being chaste not only during the subsistence of the matrimonial relationship, but also after the decree so as to make her eligible to continue to get the maintenance.

A very interesting case came for decision before Justice Charanjit Talwar of the Delhi High Court in Ram Krrishan Singh Vs. Savitri Devi. The husband in this case got decree of divorce under Section 13(1) (i) of the Act against his wife on the ground of desertion by her, but it was also proved that during the desertion period she had conceived and given birth to a child. The question which arose for consideration before the learned judge was;

"In case, the marriage has been dissolved under Section 13(1) (i) of the Act on the ground that the wife was living in adultery or was leading an immoral life, her application for permanent alimony may be dismissed on the ground that even

1. Supra.
3. AIR 1967 J & K 89.
4. 1982 HLR 493, ii (1982) DMC 6 (Del.)
after the decree of divorce she continues to lead such a life".

To this, the learned Judge has reasoned well and correctly opined. But unfortunately, his Lordship conceived a wrong notion when it is observed that;

"Where, however, the evidence is, like the present case, that she had conceived during the period of desertion and delivered a child, her application for permanent alimony cannot be thrown out on that ground. It is well settled that illicit conception by itself is not living in adultery".

This conclusion does not stand on sound footing and proper meaning to the term 'conduct'. It is submitted that while an Act of single sexual intercourse is sufficient to get divorce under Section 13(1) of the Act, why it could not be sufficient to refuse maintenance to the unchaste wife, moreover, it is the unchastity on the part of the wife which makes her conduct abominable. Even otherwise, the learned Judge too, refused to grant maintenance in future in the present case and only allowed the withdrawal of the already deposited maintenance amount observing that;

"The grant of those amount in lumpsum is enough by way of 'starving allowance', which the respondent is entitled to".

Therefore, in other words, the learned Judge did not recognise absolute right of the unchaste wife to claim maintenance under Section 25 of the Act. The question of adulterous wife's right to claim maintenance under Section 25 of the Act has been discussed by the Punjab and Haryana High Court on different occasions. Firstly, it was examined in 1973 by Justice R.N. Mittal in Atam Prakash Vs. Jai
Devi, but was not finally decided. The facts of the case reveal that the trial court granted maintenance to the wife who had committed adultery with the connivance of the husband and his mother. In this case, the marriage was not dissolved on the ground that the wife was leading an unchaste wife. The learned Judge ruled:

"A wife is entitled to alimony from her husband in case she has not become unchaste or has not remarried."

The learned judge upheld the right of the wife, in this case, to claim maintenance because the husband and his mother had connived at the act of adultery of wife. It is pertinent to note that the learned judge prefers not to decide the question of 'unchaste wife's right' to alimony when he says:

"The contention of the learned counsel for the respondent (i.e. wife) that even if wife is leading unchaste life at the time of dissolution of marriage, is entitled to maintenance under Section 25 of the Act, need not be gone into in view of the above observation."

Later on, division Bench of the same High Court consisting of Chief Justice S.S. Sandhawalia and Justice J.V. Gupta has decided the said question in Maya Devi Vs. Mahabir Singh. In this case, even though the trial Judge came to the conclusion that the wife had been living in adultery and

2. Ibid p.839.
3. Emphasis added.
granted decree of divorce. On that ground in favour of husband, the District Judge still granted maintenance to the wife under Section 25 of the Act. The husband filed appeal against the order of maintenance in the High court. The single judge accepted the appeal of the husband and disallowed the unchaste wife to claim maintenance. The wife filed L.P.A. The learned Division Bench, upheld the decision of learned single judge and quoted with approval the conclusion of single Judge;

"On the question of maintenance it has been observed that as the respondent was guilty of unchaste Act in as much as she be got the child from a person other than the appellant, she is not entitled to any maintenance. The question of granting maintenance to an illegitimate child in these circumstances does not arise".

Justice G.C. Mittal of the same High Court again disallowed an unchaste wife to claim maintenance under Section 25 of the Act in Dalip Chand Sharma Vs. Smt. Promila. Therefore, the different Benches of the Punjab & Haryana High Court have laid down the law in clear terms that an unchaste wife will not be entitled to maintenance under Section 25 of the Act.

But, a Division Bench of the Bombay High Court in G.J. Kakwane Vs. K.G.Kakwane does not think the Act of adultery would operate as bar to her claiming maintenance under Section 25 of the Act. This bench consisting of P.B. Sawant and A.D.Tated, JJ., did not agree with the law laid

1. 1984 HLR 178.
2. AIR 1985 Bom. 88, 1985 (i) HLR 86.
down in Sachindra Nath Biswas, Raja Gopalan, Sardari Lal. It is unfortunate that the Division Bench did not consider the unchastity of the wife as serious 'conduct' to disentitle her to claim maintenance. Had the conduct of unchastity not been considered serious by the Legislature, it would not have been made a ground of divorce. As is the position today, even a single Act of sexual intercourse by wife outside wedlock is sufficient enough to obtain divorce. Therefore, the Court should not allow maintenance to an unchaste wife. Otherwise, it would encourage the wife to indulge in immoral Act of adultery, Particularly if she knows that even her conduct of unchasity will not debar her from claiming maintenance under Section 25 of the Act. The view of the Punjab and Haryana High Court in Maya Devi, Dalip Chand Sharma and Calcutta High Court in Sachindra, Jammu and Kashmir High Court in Sardari Lal and Kerala High Court in Raja Gopalan are in confirmity with the spirit of Section 25 of the Act. To award maintenance to an unchaste wife will also be an unchaste approach towards the

1. Supra
2. Supra.
3. Supra.
4. Supra.
5. Supra.
6. Supra.
7. Supra.
8. Supra.
interpretation of maintenance provisions. He who seeks equity must come with clear hands. This maxim should be made applicable in this case. Thus, a wife who is guilty of adultery and for breaking the matrimonial home should not be awarded with maintenance. Moreover, adultery is a criminal offence under the Indian Penal Code, 1860. It should in no case be encouraged either directly or indirectly.

(ii) GROUND OF DESERTION: In Rajinder Parkash Vs. Roshni Devi, the husband got decree of divorce on the ground of desertion by the wife. The trial Court granted maintenance under Section 25 of the Act to the wife. The husband challenged this order of maintenance in the High Court on two counts. Firstly, no order of maintenance can be passed against the husband because it was the wife who was guilty of desertion for continuous period of more than two years and on this ground decree of divorce was passed in favour of husband. Thus, to allow maintenance to wife would amount to take benefit of her own fault. Secondly, the court is to take into account the conduct of parties, therefore wife being guilty of desertion, her conduct will disentitle her to claim maintenance. Justice J.V. Gupta did not find any force in these contentions and opined:

"The reference in sub-Section (1) of Section 25 of the Hindu Marriage Act to the conduct of the parties is to be read with the provisions of

sub-section (3), thereof. No party will be entitled to maintenance keeping in view their conduct, if either of them remarried or, if the party claiming the maintenance is wife, has not remained chaste. Therefore, it cannot be said that simply because the divorce was granted on the basis of desertion on the part of wife, it is itself sufficient to deprive her of the maintenance under Section 25 of the Hindu Marriage Act."

Somewhat same are the facts of Umesh Chand Vs. Rameshwari Devi. Here, the trial court granted a decree of restitution of conjugal rights on the ground of desertion by the wife. The husband later on got decree of divorce on the ground of non-compliance with the decree of restitution of conjugal right. But the trial court granted maintenance of Rs. 125 P.M. under Section 25 of the Act in favour of wife. The husband challenged this order of maintenance on the ground that no maintenance whatsoever should have been allowed in view of the conduct of desertion by the wife. Thus, whether a guilty party could claim maintenance under Section 25 of the Act. The learned judge referred the case to law decided on the point by different High Courts and then opined that even a wife against whom decree is passed on account of her own desertion, will be entitled to permanent alimony under Section 25 of the Act, but her conduct of desertion will certainly be relevant for determining the

2. 1983 HLR 37.
maintenance amount. The learned judge reduced the amount of
maintenance from Rs. 125 to Rs. 100 p.m.

(iii) CRUELTY: In Jagdish Prashad Vs. Manjula, the trial
court granted the decree of judicial separation in favour of
husband on the ground of Cruelty by the wife. The trial
court also awarded maintenance to the guilty wife under
Section 2 of the Act. The husband filed appeal against the
order of maintenance. Though the learned Division Bench
consisting of A.K.Sinha and K.J.Sen Gupta, JJ., upheld the
order of maintenance in her favour, but at the same time
ruled that:

"Though the conduct of the parties may be
relevant factor in deciding a claim of
permanent alimony under Section 25 each case
has to be considered on its own merit. It is
not correct to say that grant of judicial
separation on ground of cruelty of wife is no
bar to her getting permanent alimony. Yet the
mere fact that she is the guilty party is not by
itself sufficient to disentitle her to alimony."

Thus, the conduct of cruelty on the part of wife in the
opinion of Division Bench is a serious matter and relevant
factor to determine maintenance under Section 25 of the Act.

(iv) NON-COMPLIANCE WITH THE DECREE OF RESTITUTION OF
CONJUGAL RIGHTS: The Gujrat, Rajasthan, Karnataka,

1. AIR 1975 Cal. 64, Wherein Dr. Harmurji Vs. Dinabai,
AIR 1955 Bom.413 was referred to approval.
2. Emphasis supplied.
Guj. 150.
5. Sainraia Vs. Padmini,1984 HLR 535( Kant.)
Madras and Punjab & Haryana High Court are of one view that the fact that a wife is guilty of not complying with the decree of restitution of conjugal rights, passed in favour of her husband cannot by itself disentitle her to claim maintenance under Section 25 of the Act.

(v) DESERTION, CRUELTY AND NON-COMPLIANCE WITH THE DECREE OF RESTITUTION OF CONJUGAL RIGHTS A RELEVANT CONDUCT TO DETERMINE MAINTENANCE: The judiciary has taken a very healthy approach that even though a wife guilty of desertion, cruelty or non-compliance with the decree of restitution of conjugal rights is not disentitled to maintenance under Section 25 of the Act, yet such guilty conduct will be taken into account at the time of determining and varying the order of maintenance made under the said Section.

Justice Ramanujain of the Madras High Court in Rajagopalan Vs. Kamalammal, though allowed maintenance under Section 25 of the Act to the wife who was guilty of non-compliance with the decree of restitution of conjugal rights, which resulted into divorce in favour of husband, but at the same time took into account the conduct of guilty wife into account and reduced the maintenance amount awarded at the rate of Rs. 111 p.m. to Rs. 75 p.m. only. The

3. Supra
learned judge termed the wife as 'guilty party' and observed:

"It is well established that a guilty party cannot take advantage of her guilt and make profit out of such conduct. Therefore, the respondents conduct cannot be completely ignored when qualifying the maintenance payable to the respondent by the appellant".1

A Division Bench consisting of P.N. Bhagwati and A.R. Bakshi, J.J., of the Gujrat High Court has also observed in Patel2 that:

"the fact that she was the guilty spouse, guilty in the sense that she did not comply with the decree for restitution of conjugal right would certainly be a relevant factor to be taken into account in assessing the conduct of the parties".

The facts of Nathu Lal Vs. Smt. Mana Devi are: the husband got decree of divorce on the ground of non-compliance with the decree of restitution of conjugal right. The District Court granted Rs. 15 p.m. as 'starving maintenance' to the wife under Section 25 of the Act. Upholding this 'starving maintenance' to the guilty wife, the Division Bench of the Rajasthan High Court consisting of Chief Justice D.M. Chhandari and Justice S.N. Modi ruled:

"But her earlier conduct in disobeying the decree for restitution of conjugal rights cannot be ignored altogether in arriving at the quantum of permanent alimony".

Thus, the High Courts have taken the view that wife's guilt

1. Ibid p.189. Emphasis supplied.
2. AIR 1968 Guj. 150 to 155.
of desertion, cruelty or non-compliance with the decree of restitution of conjugal right will not itself disentitle the wife to claim permanent alimony and maintenance under Section 25 of the Act, but her guilty conduct must be taken into account in determining the quantum of maintenance. The Rajasthan High Court has upheld the award of 'starving maintenance' to such erring spouse. It is submitted that in general, the natural law rule of 'not giving advantage to one's own wrong' must also be kept in mind at the time of regarding maintenance. Therefore, in case of wife guilty of immoral act of adultery should not at all be awarded with permanent alimony. But in case of other guilts, the erring wife may be allowed only with bare subsistence maintenance, so that the guilty party is not allowed to make profit out of her or his guilt.

(d) OTHER CIRCUMSTANCES OF THE CASE: The words 'other circumstances of the case' have been inserted in Sub-Section 1 of Section 25 of the Act by the Amendment Act No. 68 of 1966. Now, besides income, property and conduct of the parties, the court shall have regards to the other circumstances of the case for ordering maintenance under the said section. Dr. Diwan says that 'one of the factors which the court will have to consider in all cases will be the financial need, obligations and responsibilities which each of the parties to the marriage has or is likely to have

in the foreseeable future'.

Many a time, an application for permanent alimony and maintenance is moved more to harass the husband. It is submitted that this will certainly fall within the ambit of other circumstances of the case and the court in such a case must take into account this factor also. The obligation of the husband to maintain other members of the family will also be looked into by the Court even though there may not be strict liability to maintain them.

The Punjab and Haryana High Court speaking through Mr. Justice M.M. Punchhi in Gurbachan Kaur Vs. Sher Singh has held that:

"Other circumstances of the case which have to be borne in mind before passing an order of permanent alimony are those circumstances which would operate in the field after the passing of the decree for annulment."

Thus in the opinion of the learned judge, the circumstances of post post-decree only can be taken into account and not pre-decree. It is doubtful if this view can stand the test of the 'provisions of Section 25 of the Act. The use of the words 'circumstances of the case' leaves no room for doubt that the court is bound to take into account the pre-decree circumstances too.

Therefore, now after the 1976 Amendment, it is the duty

1. R.K. Singh Vs. Savitri Devi, 1982 HLR 493 (Del.).
of the court to look into other circumstances apart from income as well as conduct of spouses and these factors will qualify the phrase 'such gross sum or monthly or periodical sum'.

(6) PAYMENT MAY BE SECURED _ CHARGE ON IMMOVABLE PROPERTY :

Section 25 (i) of the act makes provision for securing the payment of maintenance by creating a charge on the immovable property of the respondent. The significance of such a provision is that where a charge on immovable property is created, the respondent is not free to transfer such property and secondly, if the respondent makes default in the payment of maintenance, the secured property, in-part or whole, if required may be sold to make the payment. The Court can create charge due roto and without any application for that.

The Punjab & Haryana High Court in Hardyal Singh Vs. Surjit Kaur upheld a compromise entered into between the parties and Rs. 50/- p.m. as permanent maintenance was awarded to wife under Section 25 of the Act. It is important to note that even where an order of maintenance was based on compromise, justice S.P. Goyal created charge on the property owned by the husband. Consequently, the court has wide discretionary powers to create charge on immovable property to secure the payment.

2. 1979 HLR 311.
But, it must be noted that amount payable as permanent alimony and maintenance does not ipso facto become charge on the respondent’s property. Justice S.S. Sodhi of the Punjab & Haryana High Court in Smt. Gurdev Kaur Vs. Mst Channo has ruled:—

"A plain reading of Section 25 of the Act would show that such a charge can be created only by a specific order to that effect in terms of the provisions thereof. In other words, the Section contains an enabling provision regarding creation of a charge on the immovable property of the respondent to secure the payment of alimony, but it nowhere lays down that a charge shall be inherent in an order awarding alimony".

Thus, the grant of permanent alimony and maintenance under Section 25 of the Act perse would not be a charge on the property of the the respondent. Though the court has full discretion to create a charge, yet it could be done only by a specific order to that effect.

It is pertinent to point out that under Section 25 (1) of the Act, charge can be created only on ‘immovable property’ of the respondent. Therefore, the court cannot create charge on movable property. In Anand Sarup Vs. Indrila, the trial court created charge on the salary of the husband

1. 1984 HLR 124.
2. The definition of the term movable and immovable property is not given in the Hindu Marriage Act, but the term movable has been defined in Section 22 of the Indian Penal Court, 1860. ‘the words movable property are intended to include corporeal property of every description, except land and things attached to the earth and permanently fastened to anything which is attached to earth’.
3. 1979 HLR 312.
under Section 25 of the Act. In appeal, before the Division Bench of the Punjab & Haryana High Court comprising B.S.Dhillon and S.S.Sidhu, JJ., it was contended on behalf of the husband that the trial court had erred in making charge of maintenance on salary. The Counsel for wife, rightly too, conceded this and the High Court relinquished the charge.

A Division Bench of the Punjab & Haryana High Court consisting of Chief Justice Mehar Singh and Justice P.C.Jain has ruled in Durga Dass Vs. Tara Rani that charge under Section 25 is not admissible in-respect of provident fund amount in view of Section 3 Provident Fund Act, 1925.

7. VARIATION OF MAINTENANCE ORDERS: Sub-Section (2) of Section 25 of the Act makes provisions to vary, modify or rescind the maintenance order made undersub-Section (1) of the Act, by the Court. Either party i.e. claimant and non-claimant of maintenance, at any time after the orders are made, may request the Court to make such variation on the ground of change in the circumstances of either party and if the Court is satisfied of such change, it may make variations as the court may deem fit.

Thus, under this sub-Section (2), the claimant can request the court to enhance the maintenance amount ordered and the none-claimant can ask to decrease the amount or to cancel it. But, the order made for gross sum or lumpsum

1. AIR 1971 P & H 141.
payment should not be varied.

Change in the circumstances of the case is a wide term and entrusts the court with absolute discretion. The words 'the court may deem fit' also substantiate the absolute discretion of the Court.

The Allahabad High Court Division Bench comprising of S.K. Dhaon and B.L. Yedev, JJ., has ruled in Ram Shanker Rastogi vs. Vinay Rastogi that judicial notice can be taken of rising prices with the result that the cost of bare existence is regularly rising, rather mercurially. The Division Bench also opined that even where the orders of maintenance were passed under Section 25 of the Act, on the basis of consent of the parties, the Court is not barred to make variation in such maintenance order later on whenever there is a change of circumstances as would justify a charge in the fixed amount of maintenance.

Justice Surinder Singh of Punjab & Haryana High Court was also confronted with same circumstances the same was the point of consider in Smt. Shanti Devi vs. Kuldip Chand. Here the trial court granted Rs.80/- p.m. on the basis of compromise between the parties under Section 25 of the Act. On an application by the wife, the trial court enhanced this amount to Rs. 150 p.m. The learned judge of the High Court not only upheld the variation, but, again increased the

2. I(1991) DMC 204.
3. 1979 HLR 346.
maintenance amount to Rs. 225; in the wake of the present high prices'.

Thus, the Court has wide discretion to make variation in maintenance order made under Sub-Section (1) of Section 25 of the Act, wherever there is a change of circumstances justifying such a change by the court. The Punjab & Haryana High Court has held in Amar Nath Vs. Shakuntla that as the decree annulling the marriage of the trial court between the spouses has been set aside by the High Court, the order of permanent alimony passed by trial court becomes infructuous.

8. EFFECT OF REMARRIAGE AND UNCHASTITY: 'Dum Sola Et Caste Vixerit' which means 'while she remains , chaste and unmarried', is the basic principle underlying in Sub-Section (3) of Section 25 of the Act. The Court is empowered under Sub-Section (3) of Section 25 of the Act to make variation in maintenance orders on two specific grounds:

1. Remarriage
2. Unchastity

Therefore, if the claimant is remarried or if the claimant is wife, she has not remained chaste and, if the claimant is husband, he is guilty of sexual intercourse with any woman outside wedlock, the court if satisfied, and at the instance of non-claimant i.e. husband or wife may vary, modify or rescind the maintenance order, as it may deem fit.

It must be noted that before the amendment of 1976 to

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Sub-Section (3) of Section 25 the Court could only rescind the order of maintenance, if other conditions stated above existed. But after the 1976 amendment, the Court is empowered with wide discretion. It may not only rescind, but vary or modify too the maintenance order as it may deem fit.

It is submitted, that this amendment is unwarranted. Practically, the effect of Sub-Section(2) and sub-Section (3) of Section 25 is same now. Remarriage and unchastity certainly fall within the ambit of 'change of circumstances'. Then what remains the significance of Sub. Section (3) an view of 'all those terms 'vary'' 'dify' and 'rescind'.

Remarriage by the claimant party is absolute severance of all remaining relations or ties with the non-claimant spouse. Adultery or unchastity is sin against the ethics of matrimonial morality and society, therefore, these two grounds are surely serious enough to debar the claimant to claim maintenance. Consequently, the original position should be restored and the court should be empowered only to 'rescind' the maintenance order, if the claimant party remarries or commits the sexual offences. In 1982, the Punjab & Haryana High Court has held in *Jaipal Kaur Vs. Ishar Singh* that permanent alimony ceases from the date of her remarriage. This ruling is in consonance with the rule of dum sola at caste viserit.

1. AIR 1983 HLR 119.
9. APPELLATE COURT'S POWER TO AWARD PERMANENT ALIMONY AND MAINTENANCE: Justice G.G. Mittal of the Punjab & Haryana High Court, while examining the provision of Section 25 of the Act, in Darshan Kaur Vs. Malook Singh doubted the appellate Court's jurisdiction to entertain application for maintenance under section 25. The learned judge posed on example saying:

"Suppose, divorce petition is dismissed by the first court and the dismissal is confirmed by the High Court and the matter goes to the Supreme Court and the Supreme Court grants a decree of divorce. The interpretation sought to be placed on Section 25 of the Act and on the word 'it' (used in Section 25 on application made to it) would mean that a petition for grant of permanent alimony under Section 25 of the Act will have to be filed before the Supreme Court. Similarly, if divorce petition was declined by the first court, but was granted by this Court (High Court) the application for the grant of permanent alimony will lie to this court. This is not the scope of either Section 25 or conveyed by Section 19 of the Act".

It is submitted that this view will not stand the scrutiny of the provision of Section 25 of the Act, the opening words of Section 25 (1) are 'any court exercising jurisdiction under this Act may, at the time of passing any decree or subsequent thereto,' which means that the Court, whether it is trial court of appellate Court, can grant maintenance at the time of passing any decree or subsequent thereto. The Division Bench of Calcutta High Court has 'recognised the appellate court's power to grant maintenance under Section...

2. Words in bracket added.

In Hardyal Singh Vs. Surjit Kaur the wife filed Civil Misc. Application for permanent alimony under Section 25 of the Act in the High Court, itself. Justice S.P. Goyal allowed the application and granted maintenance at the rate of Rs. 90 p.m. as compromised by the parties.

10. APPEAL AGAINST PERMANENT ALIMONY AND MAINTENANCE ORDER:

Appeal against the order of maintenance passed under Section 25 of the Act is permissible according to section 28 of the Act. Appeal shall lie to the court to which appeals ordinary lie from decree or order of such court. According to Section 19 of the Act, petition can be filed in District Court, therefore appeal shall lie to the High Court only. Since, order of permanent alimony and maintenance under Section 25 of the Act are passed by the Court, which passed the decree of substantive relief, appeal against order of maintenance shall lie to the High Court. A letter patent appeal is also permissible against the decision of single judge of the High Court.

The period of limitation for filing appeal is mentioned in Section 28 of the Act itself. Section 28 (4) says that

1. 1983 HLR 72, C. Mookerji and Sharma, JJ.
2. 1979 HLR 311.
every appeal shall be preferred within a period of 30 days from the date of decree or order.

1. It is not 90 days, Devi Bhaduri Vs. Kumarjit, AIR 1980 Cal. 1 (F.B.) The Indian Limitation Act is applicable to calculate the period, Kuttimal Vs. Subramonaim, 1981 HLR 576 (Ker.).