USEFUL

JUDGMENT

ON

Cr. P. C:-125

A.P.RANDHIR

:::-A P RANDHIR:::-

JUDICIAL APROACH ON 125 OF CR P C

	PARTY NAME	RATIO
1.	**K.A. Abdul Jaleel Vs. T.A. Shahida, AIR 2003 SC 2525.**	**Provisions of the Family Courts Act, 1984 should be construed liberally :**It is well settled principle of law that the jurisdiction of a court created especially for resolution of disputes of certain kinds should be construed liberally. The restricted meaning if ascribed to Explanation (c) to sub-section (1) of Section 7 of the Family Courts Act, 1984 would frustrate the object where for the Family Courts were set up.
2.	**(i) Badshah Vs. Urmila Badshah Godse & Another, (2014) 1 SCC 188 (ii) Dwarika Prasad Satpathi Vs. Bidyut Prava Dixit, AIR 1999 SC 3348**	**Nature of provisions u/s 125 CrPC is social justice legislation :**Nature of provisions u/s 125 CrPC is a social justice legislation. Distinct approach should be adopted while dealing with cases u/s 125 CrPC. Drift in approach from "adversarial" litigation to social context adjudication is needed.
3	**(i) Vijay Kumar Prasad Vs. State of Bihar, (2004) 5 SCC 196. (ii) Savitri Vs. Govind Singh Rawat, (1985) 4 SCC 337.**	**Nature of proceeding u/s 125 Cr PC is civil :**The jurisdiction of magistrate under chapter IX Cr PC is not strictly a criminal jurisdiction. Proceedings u/s 125 CrPC are civil in nature
4	**(i)Shantha Vs. B.G. Shivananjappa, (2005) 4 SCC 468 (ii) Savitaben Vs. State of Gujarat, (2005) 3 SCC 636**	**Section 125 CrPC to be construed liberally**Section 125 CrPC is measure of social legislation and is to be construed liberally for the welfare and benefit of thewife & children.
5	**(i) Nagendrappa Natikar Vs. Neelamma, AIR 2013 SC 1541 (ii) Dwarika Prasad Satpathi Vs. Bidyut Prava Dixit, AIR 1999 SC 3348**	**Proceeding u/s 125 CrPC summary in nature**Proceeding u/s 125 CrPC is summary in nature and intended to provide speedy remedy to wife.
6	**Chanmuniya Vs. Virender Kumar Singh**	**Strict proof of marriage should not be insisted as pre-condition for maintenance u/s 125 CrPC :**Construing the term 'wife' broad and expansive

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	Kushwaha, **JT 2010 (11) SC 132.**	interpretation should be given to term 'wife' to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, strict proof of marriage should not be a pre-condition for maintenance.
7	**A. Jayachandra** **Vs.** **Aneel Kaur,** **AIR 2005 SC 534** **(Three-Judge Bench)**	**Human conduct or behavior to constitute 'cruelty' u/s 13 of the Hindu Marriage Act, 1955 should be grave and weighty** Human conduct or behavior to constitute 'cruelty' u/s 13 of the Hindu Marriage Act, 1955 should be grave and weighty.
8	**Vishwanath Agrawal** **Vs.** **Sarla Vishwanath Agrawal,** **(2012) 7 SCC 288.**	**Human conduct or behavior relevant for purposes of deciding 'cruelty' :**The expression 'cruelty' has an inseparable nexus with human conduct or human behavior. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that are conditioned by their social status. The facts and circumstances are to be assessed emerging from the evidence on record and thereafter a fair inference has to be drawn whether the petitioner in the divorce petition (u/s 13 of the Hindu Marriage Act, 1955) has been subjected to mental cruelty due to the conduct of the other.
9	**K. Srinivas Rao** **Vs.** **D.A. Deepa,** **AIR 2013 SC 2176.**	**False complaint, criminal proceedings, indecent & defamatory statements made in complaint, pursuing criminal proceedings to higher forums in appeal & revision amount to mental cruelty warranting grant of divorce :** False complaint, criminal proceedings, indecent & defamatory statements made in complaint, pursuing criminal proceedings to higher forums in appeal & revision amount to mental cruelty warranting grant of divorce**.**
10	**(i) Sirajmohammedkhan Janmohamadkhan** **Vs.** **Hafizunnisa Yasinkhan,** **AIR 1981 SC 1972** **(ii) Smt. Savitri Pandey** **Vs.** **Judge family court Allahabad,** **2004 Cr LJ 3934 (All)** **(iii) Smt. Mithlesh Kumari** **Vs.** **Bindhwasani,** **1990 Cr LJ 830 (All)(LB)**	**Demand/torture of wife for dowry sufficient reason for separate living :** In the cases noted below, it has been held by the Hon'ble Supreme Court and also by the Hon'ble Allahabad High Court that if the wife is tortured by her husband for demand of dowry or she has a reasonable apprehension arising from the conduct of the husband that she is likely to be physically harmed due to persistent demands of dowry by her husband, parents or relations, such an apprehension also would be manifestly a reasonable justification for the wife's refusal to live with her husband.
11	**Sirajmohammedkhan Janmohamadkhan** **Vs.** **Hafizunnisa Yasinkhan, AIR**	**Impotency of husband ground for wife for separate living :** A wife refusing to live with her husband on the ground of his impotency is a just cause and she is entitled to maintenance u/s 125

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	1981 SC 1972.	CrPC
12	**Savitaben Vs. State of Gujarat, (2005) 3 SCC 636.**	**'Wife' in Section 125 CrPC and under Hindu Adoptions & Maintenance Act, 1956 means only legally married wife :** 'Wife' in Section 125 CrPC and under Hindu Adoptions & Maintenance Act, 1956 means only legally married wife. Scope of Section 125 CrPC cannot be enlarged by introducing any artificial definition to include a woman not lawfully married in the expression 'wife'. Woman not legally married is not entitled to maintenance u/s 125 CrPC.
13	**Madan Mohan Singh Vs. Rajanikant, AIR 2010 SC 2933.**	**Live-in-relationship & presumption of marriage u/s 114 Evidence Act : L**ive in-relationship between parties if continued for a long time, cannot be termed in as "walk in & walk out" .There is a presumption of marriage between them.
14	**D. Velusamy v. D. Patchaiammal, AIR 2011 SC 479.**	**Live-in relationships & its preconditions to be treated as marriage** : Merely spending weekends together or a one night stand would not make it a 'domestic relationship' u/s 2(f) of the Protection of Women from Domestic Violence Act,2005.All live-in relationships will not amount to marriage. Live-inrelationships in the nature of marriage under 2005 Act must fulfill the following conditions – (a) the couple must hold themselves out to society as being akin to spouses. (b) they must be of legal age to marry (c) they must be otherwise qualified to enter into a legal marriage, including being unmarried. (d) they must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time
15	**Shobha Hymavathi Devi Vs. Setti Gangadhara Swamy, (2005) 2 SCC 244 (Three-Judge Bench).**	**Presumption in favour of marriage :** Referring to Sections 50 & 114 of the Evidence Act, it has been held by the Hon'ble Supreme Court that the law presumes in favour of marriage and against concubinage when a man & woman have cohabited continuously for a number of years. But this presumption is rebuttable and if there are circumstances which weaken or destroy that presumption, the court cannot ignore them.
16	**Smt. Mayadeve Vs. Jagdish Prasad, AIR 2007 SC 1426.**	**Standard of proof beyond reasonable doubt not required in matrimonial disputes:** The concept of proof beyond the shadow of doubt is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical

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		cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence. Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial matters.
17	**Savitaben Vs. State of Gujarat, (2005) 3 SCC 636** *(para 13)*	**Standard of proof of marriage :** In the case of **Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit, AIR 1999 SC 3348,** it has been held by the Hon'ble Supreme Court that the validity of the marriage for the purpose of summary proceeding u/s 125 Cr PC is to be determined on he basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceeding is not as strict as is required in a trial of offence 494 of the IPC. If the claimant in proceedings u/s 125 of the code succeeds in showing that she and the respondent have lived together as husband and wife. The court can presume that they are legally wedded spouses, and in such a situation the party who denies the marital status can rebut the presumption. One it is admitted that the marriage procedure was followed then it is no necessary to further probe in to whether the said procedure was complete as per the Hindu rites in the proceedings u/s 125 Cr PC from the evidence which is led if the magistrate is prima facie satisfied with regard to the performance of marriage in proceedings u/s 125Cr PC which are of summary nature, strict proof of performance of essential rites is not required. After not disputing the paternity of the child born few days after marriage and after accepting the fact that marriage ceremony was performed, though not legally perfect as contended, it would hardly lie in the mouth of the husband to contend in proceeding u/s 125 Cr PC that there was no valid marriage as essential rites were not performed at the time of said marriage. The provision u /s 125 Cr PC is not to be utilized for defeating the rights conferred by the Legislature to the destitute women, children or parents who are victims of social environment. Moreover order passed u/s 125 Cr PC does not finally determine the rights and liabilities of parties and parties can file civil suit to have their status determined.
18	**Sumitra Devi Vs. Bhikan Choudhary, 1985 Cr LJ 528 (SC)**	In the case of **Sumitra Devi Vs. Bhikan Choudhary, 1985 Cr LJ 528 (SC)** for maintenance u/s 125 Cr PC, it has been held by the Hon'ble Supreme Court that in order that there may be a valid marriage according to Hindu law, certain religious rites have to be performed. Invoking the fire and performing Saptapadi around the sacred

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		fire have been considered by the Supreme Court to be two of the basic requirements for a traditional marriage. It is equally true that there can be a marriage acceptable in law according to customs which do not insist on performance of such rites as referred to above and marriages of this type give rise to legal relationship which law accepts
19	**Amit Agarwal Vs. State of UP, 2007 (1) ALJ 277 (All) and Bhirari Singh Vs. State of UP, 1990 Cr LJ 844 (All),**	**Standard of proof of marriage :** In the cases of **Amit Agarwal Vs. State of UP, 2007 (1) ALJ 277 (All) and Bhirari Singh Vs. State of UP, 1990 Cr LJ 844 (All),** it has been held by the Hon'ble Allahabad High Court that Sec. 125 CrPC proceeds on the basis of de facto marriage and not on marriage de jure because the foundation for payment of maintenance u/s 125 Cr PC is the existence of conjugal relationship. Interpretation of laws which are enacted as measures of social welfare has to be made in a manner so as to give effect to their enforcement irrespective of minor crucial obstacles. Sec. 125 Cr PC is a social welfare legislation meant for benefit of destitute women and the operation of the same should not be allowed to be obstructed or hindered because of pleas about marriage being void, voidable or irregular.
20	**Vishwanath Agrawal Vs. Sarla Vishwanath Agrawal, (2012) 7 SCC 288**	**Standard of proof required in matrimonial disputes :** In a matrimonial dispute, it would be inappropriate to expect outsiders to come and depose. Family members and sometimes the relatives, friends and neighbors are the most natural witnesses. Veracity of their testimony is to be tested on objective parameters and not to be thrown overboard on ground that witnesses are related to either spouse
21	**Savitri Vs. Govind Singh, AIR 1986 SC 984.**	**Magistrate may insist for affidavit before passing ex-party order for grant of interim maintenance u/s 125 CrPC :**The Magistrate may insist upon an affidavit being filed by or on behalf of the applicant concerned stating the grounds in support of the claim for interim maintenance to satisfy himself that there is a prima facie case for making such an order. If a Civil Court can pass such interim orders on affidavits, there is no reason why a magistrate should not rely on them for the purpose of issuing directions regarding payment of interim maintenance
22	**Mohd. Naim Siddiqui Vs. Sultana Khatoon, 1983 SCC (Criminal) 103.**	**Ex-parte order u/s 125 CrPC to be set aside where husband was not served :** Ex-parte order u/s 125 CrPC to be set aside where husband was not served
23	**Rajathi Vs. C. Ganesan,**	**Burden of proof lies on husband that he did not neglect or refuse to maintain his wife or children :** Discharge of obligation that husband has

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	AIR 1999 SC 2374.	no means and did not neglect or refuse to maintain lies on husband
24	**Vishwanath Agrawal Vs. Sarla Vishwanath Agrawal, (2012) 7 SCC 288.**	**Family members, relatives, friends and neighbors are the most natural witnesses in matrimonial disputes** : In a matrimonial dispute, it would be inappropriate to expect outsiders to come and depose. Family members and sometimes the relatives, friends and neighbors are the most natural witnesses. Veracity of their testimony is to be tested on objective parameters and not to be thrown overboard on ground that witnesses are related to either spouse.
25	**Savitaben Somabhai Bhatiya Vs. State of Gujarat, 2005 Cr LJ 2141 (SC),**	**Woman not lawfully married not to be treated as 'wife' and not entitled to maintenance u/s 125 Cr PC :** In the case of **Savitaben Somabhai Bhatiya Vs.State of Gujarat, 2005 Cr LJ 2141 (SC),** it has been held that the legislature considered it necessary to include within the scope of Sec. 125 an illegitimate child but it has not done so with respect to woman not lawfully married. As such, however, desirable it may be to take note of the plight of the unfortunate woman, who unwittingly entered into wedlock with a married man the legislative intent being clearly reflected in Sec. 125 of the Cr PC, there is no scope for enlarging its scope by introducing any artificial definition to include woman not lawfully married in the expression 'wife'. This may be an inadequacy in law, which only the legislature can undo. Even if it is true that husband was treating the woman ashis wife it is really inconsequential. It is the intention of the legislature which is relevant and not the attitude of the party. The principle of estoppels cannot be pressed into service to defeat the provision of Sec. 125 of the Cr PC.
26	**Badshah Vs. Urmila Badshah Godse and Another, (2014) 1 SCC 188.**	**Second wife entitled to maintenance u/s 125 CrPC if the husband had concealed from her the subsistence of his first marriage :** Where the husband had duped the second wife by not revealing to her the fact of his earlier marriage,it has been held by the Supreme Court that the husband cannot deny maintenance to his second wife u/s 125 CrPC in such a case and he cannot be permitted to take advantage of his own wrong by raising the contention that such second marriage during the subsistence of his first marriage, being void under the Hindu Marriage Act, 1955, the second wife was not entitled to maintenance as she was not his legally wedded wife. The earlier judgments of the Supreme Court reported in **(i) Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav, (1988) 1 SCC 530 and (ii) Savitaben Somabhai Bhatiya Vs. State of Gujarat, (2005) 3 SCC 636** supporting the said

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		contention of the husband would apply only in those circumstances where a woman marries a man with full knowledge of subsistence of his first marriage. Second wife thus having no knowledge of first subsisting marriage is to be treated as legally wedded wife for purposes of claiming maintenance.
27	**Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav, (1988) 1 SCC 530= AIR 1988 SC 644**	**Woman not lawfully married not entitled to maintenance u/s 125 CrPC :** Where marriage is *void ab initio*, Section 125 CrPC does not apply to a de facto wife. An woman not lawfully married, is not entitled to maintenance u/s 125 CrPC. The marriage of a woman in accordance with the Hindu rites with a man having a spouse is complete nullity in the eye of law and she is not entitled to the benefit of Section 125 CrPC.
28	**(i) Badshah Vs. UrmilaBadshah Godse and Another, (2014) 1 SCC 188. (ii) Smt. Kiran Dhar Vs. Alok Berman, 2014 (84) ACC 807 (All).**	**Second wife when not entitled to maintenance ?**: Second wife marrying Hindu male having legally wedded wife, after coming into force of the Hindu Marriage Act, 1955 is *void ipso jure* u/s 5(i) of the Act and is not entitled to claim of maintenance either under the Hindu Marriage Act, 1955 or u/s 125 of the CrPC.
29	**Bai Tahira Vs. Ali Hussaid Fissalli Chothia, 1979 SC 362 (Three-Judge Bench) :** *Case of divorced Muslim woman*	**Wife not entitled to maintenance u/s 125Cr PC when living separately by mutual consent :** When (Muslim) wife is living separately from her husband by mutual consent (compromise), she is not entitled to maintenance from her husband u/s 125 Cr PC. But if her case is that she was not living separately by mutual consent, proof for separate living by mutual consent is not necessary.
30	**i) D. Velusamy vs. D.Patchaiammal, AIR 2011 SC 479. (ii) Rohtash Singh Vs. Smt. Ramendri, AIR 2000 SC 952 (iii) Bai Tahira Vs. Ali Hussaid Fissalli Chothia, AIR 1979 SC 362 (Three-Judge Bench)---***Case of divorced Muslim woman*	**Second wife when entitled to maintenance u/s 125 CrPC ?** : Word 'wife' includes divorced wife. However, if second wife has not even been married she could not be divorced and second wife cannot claim to be wife of her husband unless it is established that husband was not earlier married to another woman.Divorced woman continues to enjoy status of 'wife' for claiming maintenance u/s 125 CrPC.
31	**Rajathi Vs. C. Ganesan, AIR 1999 SC 2374**	**Second marriage or re-marriage by husband when not proved ?:** Where the wife had alleged that her husband had contracted a second marriage and filed a complaint against her husband for an offence u/s 494 IPC, the dismissal of complaint and acquittal of husband u/s 494 IPC cannot be taken against the wife to be a just ground for her refusal to live with her husband. The court must not loose the fact how it would be difficult for the wife to prove the second marriage. To prove the second marriage as fact essential ceremonies constituting it must be proved and if second marriage is not

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		proved to have been validly performed by observing essential ceremonies and customs in the community conviction u/s 494 IPC ought not to be made. Even though wife was unable to prove that husband has remarried, yet the fact remained that the husband was living with another woman. That would entitle the wife to live separately and would amount to neglect or refusal by the husband to maintain her. Proviso to sub-sec. (3) would squarely apply and justify refusal of the wife to live with her husband. Statement of the wife that she is unable to maintain herself would be enough and it would be for the husband to prove otherwise
32	**D.Velusamy vs. D.Patchaiammal, AIR 2011 SC 479**	**Allegations of second marriage by husband how to be proved ?:** Where it was alleged by wife u/s 125 CrPC that husband was married to one 'L' but no notice was issued to 'L' nor she was made party to proceedings, it has been held that any declaration about the marital status of 'L' vis-a-vis husband is wholly null and void as it will be violative of rules of natural justice.
33	**Rohtash Singh Vs. Smt. Ramendri, AIR 2000 SC 952.**	**Divorced woman continues to enjoy status of 'wife' u/s 125 CrPC :** A divorced woman continues to enjoy status of 'wife' for claiming maintenance till her remarriage or her inability to maintain herself even if the divorce was obtained by mutual consent.
34	**Poornima Mishra Vs. Sunil Mishra, 2010(3) ALJ 555**.	**Irretrievable breakdown of marriage & divorce :** When the break down of marriage is irretrievable then divorce should not be withheld.
35	**Bakulabai Vs. Gangaram, (1988) SCC 537.**	**Bigamous child entitled to maintenance:** Even though bigamous marriage is illegal u/s 11 of the Hindu Marriage Act, 1955 but when after such marriage Hindu male and female are living together for a number of years as husband and wife, the child born as a result of such union acquires legitimate status u/s 16(1) of the above Act and such child is entitled to maintenance u/s 125 Cr PC
36	**Vishwanath Agrawal Vs. Sarla Vishwanath Agrawal, (2012) 7 SCC 288.**	**Relevant considerations for grant of permanent alimony under family and personal laws (under Hindu Marriage Act, 1955) :** Permanent alimony is to be granted taking into consideration the social status, the conduct of the parties, the way of living of the spouse and such other ancillary aspects. Where the wife was already paid certain amount of alimony pursuant to interim orders of the court, it has been held that the amount of alimony paid to the wife under interim orders of the court should be ignored since the wife was bound to spend said amount for maintaining herself. The Supreme Court awarded Rs. 50 lacs as permanent alimony to be paid to the wife
37	**Chaturbhuj**	**Earning wife entitled to maintenance from her**

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	Vs. **Sita Bai,** **AIR2008 SC 530**	**husband u/s 125 CrPC :** Where the husband had placed material to show that the wife was earning some income, it has been held by the Hon'ble Supreme Court that it is not sufficient to rule out the application of Sec. 125 CrPC. It has to be established that with the amount she earned, the wife was able to maintain herself. Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient, she can claim maintenance u/s 125 CrPC. The test is whether the wife is in a position to maintain her in the way she was used to in the place of her husband. The factual conclusions of the court that the wife is unable to maintain herself cannot be interfered with in the absence of perversity
38	**Sunita Kachwaha** **Vs. Anil Kachwaha,** **AIR 2015 SC 554.**	**Earning wife & its effect :** Merely because wife was earning something, it would not be a ground to reject her claim for maintenance u/s 125 CrPC
39	**Manoj Yadav** **vs.** **Pushpa,** **AIR 2011 SC 847.**	**Upper limit of amount of maintenance u/s 125 CrPC :** **Upper limit of amount of maintenance u/s 125 CrPC in the State** After the amendment to section 125 CrPC which is a Central Act, by the Code of Criminal Procedure (Amendment) Act, 2001 which deleted the words "not exceeding five hundred rupees in the whole", all State amendments to section 125 CrPC by which a ceiling has been fixed to the amount of maintenance to be awarded to the wife have become invalid
40	**Bharat Singh Vs.** **State of UP,** **2011 (97) AIC 360 (All).**	**Enhancement of maintenance (Section 127 CrPC):** Due to passage of time,high inflation and rising prices, maintenance must be enhanced
41	**Savitri** **Vs.** **Govind Singh Rawat, (1985) 4 SCC 337**	**Interim maintenance u/s 125 CrPC (Second proviso to Section 125 (1) CrPC):** **Ex parte order of interim maintenance u/s 125 Cr PC :** In appropriate cases, magistrate may even pass interim order of maintenance ex parte pending service of notice of the application subject to any modification or even an order of cancellation that may be passed after the respondent is heard. The magistrate may however insist upon an affidavit being filed by or on behalf of the applicant concerned stating the grounds in support of the claim for interim maintenance to satisfy himself that there is a prima facie case for making such an order
42	**Shahbuddin** **Vs.** **State of UP,** **2006(1) ALJ 372(All)**	**Minor daughter entitled to interim maintenance u/s 125 Cr PC :** Where the minor daughter attained majority during the pendency of application u/s 125 CrPC, it has been held that she would be entitled to

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		get interim maintenance up to the date of attaining majority
43	**(i) Jagdish Jugtawat Vs. Manjulata, 2002 SCC (criminal) 1147(SC)** **(ii) Noor Saba Khatoon Vs. Mohd. Quasim, (1997) 6 SCC 233.**	**A major unmarried girl is entitled to maintenance from her parents :** Section 125 CrPC though does not fix liability on parents to maintain children beyond attainment of majority but a combined reading of Section 20(3) of the Hindu Adoptions And Maintenance Act, 1956 and Section 125 CrPC entitles an unmarried major daughter to maintenance from her parents
44	**Smt.Usha vs.** **Mahendra Pal Singh,** **2011 Cr LJ (NOC) 165 (All)**	**Major unmarried daughter not entitled to maintenance u/s 125 CrPC :** A major unmarried daughter is not entitled to maintenance u/s 125 CrPC.
45	**(i) Shail Kumari Devi Vs. Krishan Bhagwan Pathak, AIR 2008 SC 3006 (ii) Amit Kumar Das Vs. Basanti Das 2011 CrLJ 1187 (Calcutta)**	**Reasons must in granting maintenance u/s 125 CrPC from date of application :** Order of Magistrate granting maintenance u/s 125 CrPC from date of application without recording reasons is liable to set aside
46	**(i) Shail Kumari Devi vs. Krishan Bhagwan Pathak, AIR 2008 SC 3006** **(ii) Saygo Bai vs. Chueeru Bajrangi 2011 CrLJ 1007 (SC)** **(iii) Amit Kumar Das vs. Basanti Das 2011 CrLJ 1187 (Calcutta)**	**Power of Magistrate to grant maintenance u/s 125 CrPC from date of application** : Maintenance u/s 125 CrPC can be granted from the date of application if the court thinks fit and proper and it is with in the power of the court to grant such maintenance and in such circumstances the court is required to record reasons in support of such order
47	**Jaiminiben Hirenbhai Vyas & Another** **Vs.** **Hirenbhai Rameshchandra Vyas & another,** **AIR 2015 SC 300** *(Paras 6 & 7).*	**Court should record reasons whether maintenance u/s 125 CrPC would be payble from date of order or from date of application ? :** Provision of Section 125(2) CrPC expressly enables the Court to grant maintenance from the date of the order or from the date of the application. However, Section 125 of the CrPC must be construed with sub-Section (6) of Section 354 of the CrPC. Thus, every final order under Section 125 of the CrPC and other Section 354 must contain points for determination, the decision thereon and the reasons for such decision. In other words, Section 125 and Section 354(6) must be read together. Section 125 of the CrPC, therefore, impliedly requires the Court to consider making the 13 order for maintenance effective from either of the two dates, having regard to the relevant facts. For good reason, evident from its order, the Court may choose either date. It is neither appropriate nor desirable that a Court simply states that maintenance should be paid from either the date of the order or the date of the application in matters of maintenance. Thus, as per Section 354(6) of the CrPC, the Court should record reasons in support of the order passed by it, in both eventualities. The purpose of the provision is to prevent vagrancy and

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		destitution in society and the Court must apply its mind to the options having regard to the facts of the particular case.
48	(i) **Sudha Devi Vs. State of UP, 2015 (1) Crimes 510 (All)** (ii) **Lal Singh Vs. State of UP, 2014 (2) Crimes 34 All).**	**Magistrate has discretionary powers to grant maintenance u/s 125 CrPC from the date of application or from the date of order :** Magistrate has discretionary powers to grant maintenance u/s 125 CrPC from the date of application or from the date of order.
49	**(i) Shahbuddin Vs. State of UP, 2006(1) ALJ 372(All)** **(ii) Jagat Narain Vs. Sessions Judge, Mainpuri, 1998 (1) A Cr R 315 (All-DB)** (iii) **Paras Nath Kurmi Vs. Sessions Judge, Mau, UP Nirnay Partrika 299(All)** **(iv) Satish Chandra Gupta Vs. Anita, 1994 A Cr R 631 (All)**	**Interim Maintenance u/s 125 Cr PC whether from date of order or from date of application? :** Magistrate can provide u/s 125 Cr PC for interim maintenance with effect from date of order or from date of application. Sec. 125 Cr PC does not require magistrate to give separate reasons if he allows interim maintenance from the date of application. It is not mandatory for the magistrate to give reasons while granting maintenance from the date of applications, although, it is proper to do so. Non-assigning the reasons does not vitiate the order of Magistrate. It is the discretion of magistrate u/s 125 (2) Cr PC to grant maintenance from the date of order or from the date of application
50	**(i) Shahbuddin Vs. State of UP, 2006(1) ALJ 372(All)** **(ii) Jagat Narain Vs. Sessions Judge, Mainpuri, 1998 (1) A Cr R 315 (All-DB)** **(iii) Paras Nath Kurmi Vs. Sessions Judge, Mau, UP Nirnay Partrika 299(All)** **(iv) Satish Chandra Gupta Vs. Anita, 1994 A Cr R 631 (All)**	**Reasons granting maintenance from date of applications not necessary :** Magistrate can provide u/s 125 Cr PC for interim maintenance with effect from date of order or from date of application. Sec. 125 Cr PC does not require magistrate to give separate reasons if he allows interim maintenance from the date of application. It is not mandatory for the magistrate to give reasons while granting maintenance fro the date of applications, although, it is proper to do so. Non assigning the reasons does not vitiate the order of Magistrate. It is the discretion of magistrate u/s 125 (2) Cr PC to grant maintenance from the date of order or from the date of application
51	**Savitaben Somabhai Bhatiya Vs. State of Gujarat, 2005 Cr LJ 2141 (SC)**	**Personal law of parties relevant for claim of maintenance u/s 125 Cr PC :** The question of entitlement of maintenance u/s 125 Cr PC cannot but be decided by reference to personal law of the parties.
52	**Manoj Yadav VS. Pushpa, (2010) 15 SCC 289.**	**Different Quantum of maintenance fixed by different States by way of State amendments held to be unconstitutional** : Observing that different amounts of maintenance awardable u/s 125 CrPC have been fixed by different states by state amendments, the Supreme Court declared that prima facie these amendments are unconstitutional being violative of Articles 14 and 21 of the Constitution and issued notices to the States concerned as well as Union of India
53	**Savitaben Somabhai Bhatiya**	**Enhancement of amount of maintenance**

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	Vs. **State of Gujarat,** **2005 CrLJ 2141 (SC)**	**permissible u/s 127 Cr PC :** In the case of **Savitaben Somabhai Bhatiya Vs. State of Gujarat, 2005 CrLJ 2141 (SC),** it has been held by the Hon'ble Supreme Court that the request for enhancement of amount of maintenance already granted u/s 125 Cr PC cannot be refused on the technical ground that at the time of filing of the application u/s 125 Cr PC some maximum limit of maintenance was prescribed. Moreover Sec. 127 Cr PC permits increase in the quantum of maintenance
54	**(i) Shabana Bano Vs. Imran Khan, (2010) 1 SCC 666.** **(ii) Danial Latifi Vs. Union of India, (2001) 7 SCC 740 (Five-Judge Bench)(iii) Iqbal Bano Vs. State of UP, (2007) 6 SCC 785.(iv) Judgment dated 16.04.2014 of the Supreme Court in SLP (Criminal) No.4377/2012, Shamim Bano Vs. Asaraf Khan.(v) Rohtash Singh Vs. Smt. Ramendri, AIR 2000 SC 952**	**A divorced Muslim wife is entitled to maintenance u/s 125 CrPC so long as she does not remarry :** A divorced Muslim wife is ntitled to maintenance u/s 125 CrPC so long as she does not remarry**.**
55	**Danial Latifi** **Vs.** **Union of India,** **AIR 2001 SC 3958**	**Summary of law propounded by the Five-Judge Constitution Bench of the Supreme Court in the case of Danial Latifi Vs. Union of India, AIR 2001 SC 3958 :** The summary of law propounded by the Five-Judge Constitution Bench of the Supreme Court in the case of Danial Latiff Vs. Union of India, AIR 2001 SC 3958 is as under : (1) A Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period in terms of Section 3(1)(a) of the Act (Muslim Women (Protection of Rights on Divorce) Act, 1986). (2) Liability of Muslim husband to his divorced wife arising under Section 3(1)(a) of the Act to pay maintenance is not confined to iddat period. (3) A divorced Muslim woman who has not remarried and who is not able to maintain herself after iddat period can proceed as provided under Section 4 of the Act against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim law from such divorced woman including her children and parents. If any of the relatives being unable to pay maintenance, the Magistrate may direct the State Wakf Board established under the Act to pay such maintenance.(4) The provisions of the Act do not offend Articles 14, 15 and 21 of the Constitution of

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		India.
56	**Danial Latifi Vs. Union of India, AIR 2001 SC 3958 (Five-Judge Bench).**	**Muslim husband liable to pay maintenance to his divorced wife even after iddat period provided she has not remarried and is unable to maintain herself :** Muslim husband is liable to make reasonable and fare provision for future of divorced wife which includes maintenance. Liability to pay maintenance is not confined to iddat period. Divorced Muslim woman unable to maintain herself after iddat period can proceed u/s 4 of the Muslim Women (Protection of 16 Rights on Divorce) Act, 1986 against her relatives or wakf board for maintenance. Such a scheme provided under the said Act is also equally beneficial like one provided u/s 125 CrPC. Provision under the said Act depriving Muslim women from applicability of Section 125 CrPC is not discriminatory or unconstitutional.
55	**(i) Shabana Bano Vs. Imran Khan, (2010) 1 SCC 666 (ii) Danial Latifi Vs. Union of India, (2001) 7 SCC 740 (Five-Judge Bench) (iii) Iqbal Bano Vs. State of UP, (2007) 6 SCC 785 (iv) Judgment dated 16.04.2014 of the Supreme Court in SLP (Criminal) No. 4377/2012, Shamim Bano Vs. Asaraf Khan.**	**Application for maintenance u/s 125 CrPC by a divorced Muslim wife is maintainable till she does not marry irrespective of her application u/s 5 of the Muslim Women (Protection of Right on Divorce) Act, 1986 :** Application for maintenance u/s 125 CrPC by a divorced Muslim wife is maintainable till she does not marry irrespective of her application u/s 5 of the Muslim Women (Protection of Right on Divorce) Act, 1986
56	**(i) Shabana Bano Vs. Imran Khan, (2010) 1 SCC 666(ii) Danial Latifi Vs. Union of India, (2001) 7 SCC 740 (Five-Judge Bench) (iii) Iqbal Bano Vs. State of UP, (2007) 6 SCC 785.(iv) Judgment dated 16.04.2014 of the Supreme Court in SLP (Criminal) No.4377/2012, Shamim Bano Vs. Asaraf Khan.**	**A divorced Muslim wife entitled to maintenance u/s 125 CrPC even in post*iddat* period as long as she does not marry :** A divorced Muslim wife entitled to maintenance u/s 125 CrPC even in post-*iddat* period as long as she does not marry.
57	(i) **Judgment dated 16.04.2014 of the Supreme Court in SLP (Criminal) No. 4377/2012, Shamim Bano Vs. Asaraf Khan.** (ii) **Noor Saba Khatoon Vs. Mohd. Quasim, (1997) 6 SCC 233.**	**Muslim Woman and her children entitled to maintenance u/s 125 CrPC as Section 3(1)(b) of the Muslim Women (Protection of Right on Divorce) Act, 1986 does not affect such right under Section 125 CrPC :** Muslim Woman and her children entitle to maintenance u/s 25 CrPC as Section 3(1)(b) of the Muslim Women (Protection of Right on Divorce) Act, 1986 does not affect such right under Section 125 CrPC. Benefit of Section 125 CrPC is available irrespective of religion and it would be unreasonable, unfair and inequitable to 17 deny this benefit to the children only on ground of

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		their being bourn of Muslim parents.
58	**Chand Patel** **Vs.** **Bismillah Begum,** **(2008) 4 SCC 774.**	**Wife and children of a Muslim husband having entered irregular marriage entitled to maintenance u/s 125 CrPC :** The bar of unlawful conjunction (jamabain-almahramain) renders a marriage irregular (fasid) and not void (batil). Consequently, under the Hanafi law as far as Muslims in India and concerned, an irregular marriage continues to subsist till terminated in accordance with law and the wife and the children of such marriage would be entitled to maintenance under the provision of Section 125 CrPC**.**
59	**Krishna Bhattacharjee** **Vs.** **Sarathi Choudhury,** **(2016) 2 SCC 705** *(paras 15 & 23).*	**Distinction between divorce and judicial separation :** There is a distinction between a decree for divorce and decree or judicial separation. In the decree for divorce, there is a severance of status and the parties do not remain as husband & wife where as in a decree of judicial separation, the relationship between husband and wife continues and the legal relationship continues as it has not been snapped. The observation of the High Court that the party having been judicially separated, the appellant wife has ceased to be an aggrieved person under the protection of Women from Domestic Violence Act, 2005, is wholly unsustainable
60	**(i) Rupesh Patel** **Vs.** **Ku. Siddhi Patel,** **AIR 2016 (NOC) 177 (Chhatisgarh)** **(ii) AIR 1991 Bombay 105.**	**Appearance of lawyers before family courts** : Section 13 of the Family Courts Act, 1984 reads thus : "*Notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner.* ***Provided that if the Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as amicus curiae.***" .**No absolute prohibition for appearance of lawyers before Family Court :** Section 13 of the Family Courts Act, 1984 pertinently deals with appointment of legal practitioner by the parties. Proviso to Section 13 deals with the power of the Family court to appoint a legal practitioner as amicus curiae. Section 13 only prohibits that party cannot claim to appoint legal practitioner to plead his/her cause as a matter of right but an exception is carved out in proviso vesting the jurisdiction in the Family Court to seek the assistance of a legal practitioner by appointing any Advocate as amicus curiae to assist the Court. Section 13 does not create a total embargo or prohibition on the parties before the Family Court to engage an Advocate.
61	**Dalip Kumar Vs. Family Court, Gorakhpur, 2000**	**Issuing Warrant & detention u/s 125(3) CrPC for recovery of arrear maintenance : The** Apex Court

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	CrLJ 3893 (All)	in the case reported in **Shahada Khatoon Vs. Amjad Ali, (1999) 5 SCC 672** has gone to the extent of saying that the confinement u/s 125 CrPC can extend to only one month and if even after the expiry of one month the delinquent husband does not make the payment of arrears then the wife can approach the Magistrate again for a similar relief but the confinement of the husband must be only of one month. In the own words of the Apex Court "by no stretch of imagination can the Magistrate be permitted to impose sentence for more than one month." The Apex Court further lays down a fetter in the exercise of this power by the Judicial Magistrate or the Family Court Judge to the extent that only a confinement for a period of one month can be passed on an application whether the amount claimed by the wife as arrears is for more than one month or for only a month. In one stroke no composite confinement can be directed by the Court. It very clearly flows from the above decision of the Apex Court. This power can be exercised only after a warrant for recovery of the unpaid maintenance allowance is issued by the Court. This warrant is to be executed like any warrant of recovery of fine. This fine can be recovered like any land revenue arrears. Unless that exercise is first adhered to, this power of confinement to jail for his failure cannot be resorted to by any 19 Court. Accordingly.
62	**Dilshad Haji Risal Vs. State of UP, AIR 2005 All 403.**	**Issuing warrant of recovery u/s 125 (3) CrPC without deciding objections of husband improper :** Issuance of recovery warrant against husband without firstly deciding his objection u/s 125 CrPC is improper. It is duty of the court to first decide objection filed by the husband.
63	**Shantha Vs. B.G. Shivnanjappa, (2005) 4 SCC 468.**	**Liability to pay maintenance is a continuing liability and filing successive applications u/s 125(3) CrPC not required :** Liability to pay maintenance is a continuing liability and filing successive applications u/s 125(3) CrPC cannot be insisted upon.
64	**Bhushan Kumar Meen v. Mansi Meen, (2010) 15 SCC 372.**	**Recovery or enforcement of payment of maintenance :** Trial court allowed Rs. 10,000 p.m. as interim maintenance u/s 125 CrPC to wife - Sessions Court and High Court affirmed the same - Appellant husband's approximate salary was Rs 34,900 p.m. of which Rs 21,329 was deducted towards home loan – takehome salary was about Rs 9000 p.m. - Respondent wife was able to maintain herself. The Supreme Court held that the amount awarded by way of interim maintenance is on the higher side - Having regard to the qualifications that respondent wife possesses, there is no reason why she ought not to be in a position

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		to maintain herself in future as well - Interim maintenance order modified - Appellant shall pay a sum of Rs 5000 p.m. instead of Rs 10,000 p.m.
65	**Bhushan Kumar Meen v. Mansi Meen, (2010) 15 SCC 372.**	**Attachment of salary for payment of arrear of maintenance when warranted ? :** Where husband had not paid payment of arrear of maintenance to his wife awarded u/s 125 CrPC, the Supreme Court directed that the arrears of maintenance be paid in three installments within three months of reassessment of amount. Order of attachment of salary of husband could be reimposed in case of non-compliance with the directions for payment of maintenance
66		**Limitation to issue warrant of recovery on application for recovery of maintenance is one year from the date of order :** First Proviso to sub-20 section (3) of Section 125 CrPC reads thus : "*Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due*."
67	**Kuldip Kaur Vs. Surinder Singh, AIR 1989 SC 232**	**Husband not to be released from detention till he makes the payment of maintenance :** Sentence of jail is no substitute for recovery of the amount of monthly allowance which has fallen in arrears. Husband shall not be released till he makes the payment. The liability cannot be taken to have been discharged by sending the person to jail. At the cost of repetition, it is only a mode or method of recovery and not a substitute for recovery.
68	**Priyanka Khanna v. Amit Khanna, (2011) 15 SCC 612.**	**Limitation of six months for dissolution of marriage u/s 13-B(2) of the Hindu Marriage Act, 1955 waived by the Supreme Court in exercise of its powers under Article 142 of the Constitution :** Family and Personal Laws Hindu Law : Section 13-B - Litigation quashed by Supreme Court on the basis of compromise - Litigation between appellant and respondent husband pending since year 2005 - Twelve cases of criminal as well as matrimonial disputes pending as on today - Disputes finally settled between parties - Respondent husband agreed to pay a sum of Rs 2,25,00,000 to appellant as full and final settlement of all disputes with clear understanding that all litigations pending between them will terminate - Appellant satisfied with payments she received and she does not wish to pursue the matter any further - Both parties agreed that entire dispute should be settled here and now - All litigations pending between parties quashed/terminated - Court(s) which were seized of the matters would not be required to make any

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		further orders in this respect - Application filed under S. 13-B of Hindu Marriage Act, allowed - Marriage between parties is dissolved, (2011) 15 SCC 612-A Family and Personal Laws Hindu Law S. 13-B(2) - Dissolution of marriage by mutual consent - Waiver of clause regarding limitation of six months – Litigation between appellant and respondent husband pending since year 2005 – Twelve cases of criminal as well as matrimonial disputes pending as on today - Relationship between couple had broken down in a very nasty manner – There was absolutely no possibility of a rapprochement between them even if the matter 21 was to be adjourned for a period of six months as stipulated under S. 13-B, Hindu Marriage Act - Parties had also filed an application under S. 13-B, Hindu Marriage Act, 1955 seeking dissolution of the marriage - Petition for divorce filed by husband in year 2007 - Period of six months waived in view of compromise, and all litigations pending between parties quashed – Application filed under S. 13- B, Hindu Marriage Act allowed - Marriage between parties dissolved.
69	**Ashutosh Kumar Vs. Anjali Srivastava, AIR 2009 All 100.**	**Section 19 of the Family Courts Act, 1984 supersedes Section 28 of the HM Act, 1955 & limitation to file appeal against the judgment and order of the family court would be 30 days and not 90 days :** The limitation provided under the Family Courts Act would prevail over the one which has been provided under the Hindu Marriage Act for the simple reason that the Family courts Act is in the form of super legislation vis-a-vis the Hindu Marriage Act. Insofar as procedure for settling family/matrimonial disputes is concerned. Section 20 of Family Courts Act in this regard specifically provided that in event of inconsistency between provisions of that Act or any other law for the time being in force, the provisions of Family Courts Act shall prevail. Accordingly where the family courts have been established and a judgment and order is passed by it, the appeal against such judgment and order would be one under Section 19 of Family Courts Act and the provision s of Section 28 of the Hindu Marriage Act insofar as it provides for filing an appeal pales into insignificance and stand superseded by Section 19 of Family Courts Act.
70	**(i) Smt. Varsha Lakhmani Vs.Hitesh Wadhwa,2008 (4) ALJ 446.(ii) Soumya Vs. Johny, AIR 2015 Karnataka 110 (DB)**	**Appeal against interlocutory order of family court not maintainable :** An interlocutory order passed by family court is not appealable before the High Court u/s 19 of the Family Courts Act, 1984.
71	**Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori,**	**Maintenance under Protection of Women from Domestic Violence Act, 2005 :** In view of Section 23 of the Protection of Women from Domestic

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	(2014) 10 SCC 736.	Violence Act, 2005, it is well within the jurisdiction of the Magistrate to grant the interim exparte relief as he deems just & proper. If the Magistrate is satisfied that the 22 application prima facie discloses that the husband is committing or has committed an act of Domestic Violence or that there is a likelihood that the husband may commit an act of domestic violence act.
72	**Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori, (2014) 10 SCC 736.**	**Maintenance under Protection of Women from Domestic Violence Act, 2005 is different and in addition to an order of maintenance u/s 125 CrPC or any other law :** Nature of relief available to a wife u/s 12 & 20 of the Protection of Women from Domestic Violence Act, 2005 is distinct from relief u/s 125 CrPC. Monetary relief as stipulated u/s 20 of the 2005 Act is different from maintenance which can be in addition to an order of maintenance u/s 125 CrPC or any other law. Such monetary relief can be granted to meet the expenses incurred and losses suffered by the aggrieved person and child of the aggrieved person as a result of the domestic violence which is not dependent on the question whether the aggrieved person, on the date of filing of the application u/s 12 of the 2005 Act is in a domestic relationship with the husband.
73	**Vikas Vs. State of UP, (2014) DMC 373 (All).**	**Family Court has powers to adjust the amount of maintenance already awarded by the Magistrate u/s 125 CrPC and the Domestic Violence Act, 2005** : Family Court has powers to adjust the amount of maintenance already awarded by the Magistrate u/s 125 CrPC and the Domestic Violence Act, 2005.
74	(i) **Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori, (2014) 10 SCC 736.(ii) V.D. Bhanot Vs. Savita Bhanot, (2012) 3 SCC 183**	**Relief available to wife u/s 18, 19, 20, 21 & 22 of the DVA Act, 2005 can also be sought from civil court and Family Court :** It is not necessary that relief available under Sections 18, 19, 20, 21 & 22 of the DVA Act can only be sought for in a proceeding under the Domestic Violence Act. Any relief available under the aforesaid provisions may also be sought for in any legal proceeding even before a civil court and Family Court, apart from the criminal court, affecting the aggrieved person whether such proceeding was initiated before or after the commencement of the DVA Act. This is apparent from Section 26 of the DVA Act. Even before the criminal court where case under Section 498-A IPC is pending, if the allegation is found genuine, it is always open to the 23 appellant to ask for reliefs under Sections 18 to 22 of the DVA Act and interim relief under Section 23 of the DVA Act**.**
75	**Savitaben Vs. State of Gujarat,**	**Section 125 CrPC & Section 18 of Hindu Adoptions And Maintenance Act,1956 compared**

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	(2005) 3 SCC 636.	**:** There is no inconsistency between Section 125 CrPC & Section 18 of the Hindu Adoptions And Maintenance Act, 1956. The scope of the two laws is different
76	**Nagendrappa Natikar Vs. Neelamma, AIR 2013 SC 1541**.	**An order of maintenance u/s 125 CrPC does not disentitle the wife to claim maintenance under the Hindu Adoptions And Maintenance Act, 1956** : An order passed u/s 125 CrPC by compromise or otherwise cannot foreclose remedy available to a wife u/s 18(2) of the Hindu Adoptions And Maintenance Act, 1956. Order passed u/s 125 CrPC would not preclude wife from making claim u/s 18 of the 1956 Act**.**
77	**P. Jayalakshmi Vs. Ravichandran, AIR 1992 AP 190.**	**Jurisdiction of Family Courts** : Family Court has exclusive jurisdiction over all matters enumerated u/s 7 and 8 of the Family Courts Act, 1984. **Family Courts Act, 1984 does not bar remedies before other courts under other laws** : There are certain rights which are independent and their pendency under any other Act outside the jurisdiction of Family courts is maintainable and is not barred. There is no bar against the parties from approaching other courts outside the jurisdiction of Family Court.
78		**Procedure of Family Courts (Section 10) :** Section 10 of the Family Courts Act, 1984 provides for application of the CPC and other procedural laws to the Family Courts but not to the proceedings u/s 125 to 128 CrPC**.** Procedure of the CrPC applies to the cases u/s 125 to 128 CrPC. Section 10(3) of the Family Courts Act, 1984 empowers the Family Court to adopt its own procedure with a view to arrive at a settlement in between the parties.
79	**Sarishta Devi Vs. Kesho Dass Sharma, 1991 (2) Crimes 865 (P&H).**	**Enforcement of maintenance orders passed by courts in India in foreign countries (Maintenance Orders Enforcement Act, 1921) :** Section 5 of the Maintenance Orders Enforcement Act, 1921 reads thus : "*Transmission of* 24 *maintenance orders made in India : Where a Court in (India) has, whether before or after the commencement of this Act, made a maintenance order against any person, and it is proved to that Court that the person against whom the order was made is resident in a reciprocating territory, the court shall send to the Central Government, for transmission to the proper authority of that territory, a certified copy of the order.***" Section 125 CrPC can be applied to foreigner as well :** A wife can maintain an application in India as the provision of Section 125 CrPC do not exclude a foreigner from its purview and are applicable to all the persons irrespective of their citizenship and personal law of

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		the husband.
80	**(i) Ruchi Majoo Vs. Sanjeev Majoo, (2011) 6 SCC 479.** **(ii) Satya Vs. Teja Singh, AIR 1975 SC 105.**	**Judgment of a foreign court in matrimonial disputes relevant in India u/s 13 CPC :** Judgment of a foreign court in matrimonial disputes relevant in India u/s 13 CPC.
81	**Sau Mandakini B. Pagire Vs. Bhausaheb Genu Pagire, 2009 (2) ALJ (NOC) 255 (Bombay).**	**Application u/s 125 CrPC dismissed in default can be restored:** Proceedings for maintenance u/s 125 CrPC are quasi civil in nature. Order dismissing maintenance application can be recalled in exercise of inherent powers of criminal court
82	**(i) K. Srinivas Rao Vs. D.A. Deepa, AIR 2013 SC 2176** *(Paras 31 & 32)* **(ii) Bhavana Ramaprasad Vs. Yadunandan Parthasarthy, AIR 2015 Karnataka 6.**	**Reference of matrimonial disputes to mediation centre mandatory :** When a matrimonial dispute is taken up by the family court or by the court of first instance for hearing, it must be referred to mediation centers. Section 9 of the Family Courts Act enjoins upon the family court to make efforts to settle the matrimonial dispute and in these efforts, family courts are assisted by counselors. Even if the counselors fail in their efforts, the Family Courts should direct the parties to mediation centers where trained mediators are appointed to mediate between the parties. Being trained in the skill of mediation they produce good results.
83	**Raj Kishore Mishra Vs. Meena Mishra, AIR 1995 All 70.**	**Duty of Family Court is to first make efforts for conciliation between the parties** : According to Section 9 of the Family Courts Act, 1984, overall duty cast on the Family Court is to endeavour first for conciliation and settlement between the parties.
84	**Dwipen Saikia Vs. Smt. Jitumoni Saikia, AIR 2015 Guahati 134.**	**Family Court alone and not civil court is competent to decide matrimonial disputes :** In view of Section 7 of the Family Courts Act, 1984, Family Court alone can decide the matrimonial status of a party since only Family Court is conferred with the jurisdiction to decide such issues. Civil Court is not competent forum
85		**Addl. District & Sessions Judges of Fast Track Courts of 72 Districts of Uttar Pradesh conferred with the powers of the Family Courts :** The Governor of Uttar Pradesh vide Notification dated 25.02.2016 issued in exercise of powers under clause (b) of sub-section (1) of Section 3 & 4 of the Family Courts Act, 1984 read with the judgment dated 13.01.2016 of the Allahabad High Court passed in PIL No. 15895/2015 in Re Vs. Zila Adhivakta Sangh, Allahabad has conferred powers of the Family Courts also on the Addl. District & Sessions Judges of Fast Track Courts of 72 Districts of Uttar Pradesh**.**
86	**Baleshwar Mandal Vs. Anup Mandal, 2006 CrLJ (NOC) 273 (Jharkhand).**	**A rapist liable to maintain the child born as result of rape :** A child born as a result of rape is entitled to maintenance from the person who had committed the rape.
87	**Kirti Kant D. Vadadoria**	**Step mother not entitled to maintenance u/s 125**

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	Vs. State of Gujarat, (1996) 4 SCC 479.	**CrPC :** Mother is one who has given birth to the child. A step mother can be a dependent but she cannot claim maintenance.
88	**Bakulabai Vs. Gangaram, (1988) SCC 537.**	**Power of revisional court against an order passed u/s 125 CrPC : (A)**Finding of magistrate on disputed questions of fact recorded after full consideration of evidence should not be disturbed by revisional court in absence of any error of law.
89	**Deb Narayan Halder Vs. Anushree Halder, 2003(47)ACC 897 (SC)**	**Revisional Court when to set aside findings of facts recorded by lower Court :** Where the High Court in exercise of its revisional powers had set aside the findings of facts recorded by the lower court u/s 125 of the CrPC, it has been held by the Supreme Court that, "it is well settled that the Appellate or Revisional Court while setting aside the finding recorded by the Court below must notice those findings, and if the Appellate or Revisional Court comes to the conclusion that the findings recorded by the Trial Court are untenable, record its reasons for coming to the said conclusion. Where the findings are findings of fact it must discuss the evidence on record which justifies the reversal of the findings recorded by the Court below. This is particularly so when findings recorded by the Trial Court are sought to be set aside by an Appellate or Revisional Court. One cannot take exception to a judgment merely on the ground of its brevity, but if the judgment appears to be cryptic and conclusions are reached without even referring to the evidence on record or noticing the findings of the Trial Court, the party aggrieved is entitled to ask for setting aside of such a judgment".
90	**Preetpal Singh Vs. Smt. Ishwari Devi, 1991 CrLJ 3015 (All)**	**Second revision against an order passed u/s 125 CrPC not maintainable:** Where a revision filed by the husband against order of maintenance granted to wife u/s 125 CrPC was rejected, a second revision by the husband through his minor son would not be maintainable.
91	**S.D. Joshi Vs. High Court of Judicature at Bombay, 2011(1) SCJ 169=(2011) 1 SCC 252.Note :** *The aid decision of the Supreme Court has been rendered in relation to maharashtra Family Court Recruitment And Service Conditions) Rules, 1990.*	**Family court judge not covered within the word 'judicial officer'** : Judges presiding over family courts are neither members nor integral part of judicial services. The word "judicial officer" has not been defined in the Constitution of India. A family court judge cannot be considered for elevation to High Court.
92	**D. Joshi Vs. High Court of Judicature at Bombay, (2011) 1 SCC 252.**	**Presiding Officer of Family Court is 'Judge' :** Family Court has all trappings of court. Therefore, it is Court. Presiding Officer of Family Court is 'Judge'. See
93	**(i) Mobel Treeza Pinto Vs. Francis Pinto, (2005) 7 SCC**	**High Court u/s 22 to 24 CPC and u/s 407 CrPC has powers to transfer cases from one family**

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	761 *(transfer of case under Divorce Act, 1869)* **(ii) Munna Lal Vs. State of UP, AIR 1991 All 189 (DB)** **(iii) Smt. Jyotsna Dixit Vs. Civil Judge, Khiri, 1999 (1) AWC 107 (All).**	**court to other family court** : It has been declared by Section 7 of the Act to be a district court or subordinate civil court to which provisions of the CPC and CrPC have been applied by Section 10 of the Act. It will not cease to be a court merely because some restrictions are imposed by Section 11 to 16 of the Act. Looked at from every angle Family Court and as such, High Court has powers under Sections 22 to 24 of the CPC. I to transfer a case relating to the matters dealt with by explanation to sub-section (I) of Section 7 of the Act and likewise has powers under Section 407 of the CrPC to transfer a case relating to Chapter IX, CrPC
94	**1987 CRLJ P.849 (SC) (ALL) = AIR 1987 SC 1049.** **Smt. Dukhtar Jahan v/s Mohmmed Farooq**	***(A) CrPC, S.125 – Maintenance – Child – Legitimacy – Child born within 7 months time after marriage*** – No claim that it was prematurely born facts not conclusive that child is not legitimate – Refusal of maintenance to child held, was improper. ***- Evidence Act, S.112.***
96	**1987 CRLJ P.765 (Kerala)** **Sadasivan Pillai v/s Vijayalaxmi**	***(A) CrPC, S.125(1), Explanation and (4) – Hindu Marriage Act, S.13B – Joint application for divorce by husband and wife u/s.13B – Decree of divorce granted*** – Wife is divorced woman within S.125(1), Explanation – Nor can she be said to be living separately by mutual consent within S.125(4) because of divorce decree. ***(B) CrPC, S.125 – Hindu Marriage Act, S.13B – Contract Act, S.23 – Object of S.125 stated*** – Agreement that wife shall not be entitled to claim maintenance from husband – Agreement being opposed to public policy cannot be enforced in Court of Law in view of S.23 – It cannot be used as defence in proceedings u/s.125.
97	**1987 CRLJ P.977 (SC) (BOM) = AIR 1987 SC 1100.** **Dr. Mrs. Vijaya Manohar Arbat v/s Kashirao Rajaram Sawai**	***- CrPC, S.125(1)(d) – Married daughter – Liable to maintain her parent – Word "his" in Cl. (d) – Includes both male and female children*** – Purpose of the section is to enforce social obligation. ***- 1978 CrLJ 600 (P&H), Overruled. – IPC, S.8, General Clause Act, S.13(1).***
98	**1987 CRLJ P.980 (SC) (Kerala) = AIR 1987 SC 1103.** **Begum Subanu alias Saira Banu and another v/s A.M. Abdul Gafoor**	***- CrPC, S.125(3), Explanation – Maintenance – Muslim wife – Husband contracting second marriage or taking mistress*** – First wife is entitled to claim maintenance and separate residence – Husband can marry again under personal law – Immaterial – Husband's right to take more than one wife however is not affected – Nor status of second wife as legally married wife denigrated – Offer to take back first wife – Not accompanied with offer to set up separate residence – Not bonafide offer. ***- AIR 1956 Cal 134, AIR 1966 Cal 83, AIR 1959 Pun 295, AIR 1960 Punj 595, Impliedly overruled. -***

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		Muslim Law - Maintenance..)
99	**1987 CRLJ P.1278 (Gauhati) Shri Krishna Bahadur Pradhan v/s Smt. Tikaram Newar**	***CrPC, S.125 – Claim for maintenance u/s.125 – Nature of proof indicated –*** Wife claiming fixed monthly amount – Husband not contesting claim – Wife's claim must be accepted.
100	**1987 CRLJ P.1637 (Guj) Leelaben Amratpuri v/s Goswami Babupuri dhanpuri**	***CrPC, Ss.127(3)(c) & 125 – Relinquishment of right to maintenance –*** S.127 would be applicable only for purpose of cancellation of order passed u/s.125 – S.127 cannot be brought in at the time when application u/s.125 is to be heard and decided.
101	**1986 CRLJ P.41 (SC) Smt. Savitri v/s Govind sigh**	***CrPC, S.125 – Proceedings under – Interim maintenance pending final disposal can be granted.***
102	**1986 CRLJ P.282 (M.P.) Rewalal and another v/s Smt. Kamalabai**	***- CrPC, S.125 – Step mother cannot claim maintenance from her step son.***
103	**1986 CRLJ P.521 (Orissa) Bimala Dei v/s Karna Mullia**	***- CrPC, S.125(3), Proviso – Limitation – "Within one year from the date on which it became due" - Meaning of. - 1983 CrLJ 1935 (Guj), Dissented from.***
104	**1986 CRLJ P. 652 (Kerala) Mampekkattu Nanu v/s Mampekkat Vasantha**	***CrPC, S.125 – Earlier application for maintenance in capacity as wife –***Subsequent application for maintenance in capacity as divorced wife – Maintainable.
105	**1986 CRLJ P.692 (MAD) Subbayal v/s Mathuswamy**	***CrPC, Ss.125 & 127 – Change in circumstances*** – Application to enhance maintenance fixed at Rs.50/- per month in 1976 – Cost of living index rose from 286 to 558 in 1984 – Rs.50 does not now provide same purchasing power – Fact that nominal amount does not represent same real amount as granted is sufficient change – Enhanced to Rs. 96/-.
106	**1986 CRLJ P.697 (Kerala) Kongini Balan v/s M. Visalakshy**	***CrPC, S.125(1), Explanation (b) – "Wife" – Includes woman who obtains divorce by mutual agreement*** – She is also entitled to claim maintenance.
107	**1986 CRLJ P.1199 (CAL)** ***Biswanath Saha v/s Sikha Saha***	***CrPC, S.125 – Maintenance – Wife against whom divorce decree has been passed on ground of desertion – She can still claim maintenance*** – Word "wife" in State 125 includes a divorced wo
108	**1986 CRLJ P.1399 (BOM) Dr. Mrs. vijay Manaohar Arbat v/s Kashirao Rajaram Sawai**	***CrPC, S.125(1)(d) – Daughter though married is bound to maintain her indigent father.***
109	**1986 CRLJ P.1418 (Guj) Bai Laxmiben v/s Vechatbhai Patel**	***- CrPC, Ss.127(3)(c) & 125 – Application for maintenance by wife u/s.125 –Compromise – Application dropped – Deed of divorce executed*** – Husband paying lump sum of Rs. 901/ towards future maintenance – S.127(3)(c) is not attracted – Subsequent application for maintenance by wife is maintainable.

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110	**1986 CRLJ P.1633 (MAD) J. Samathkumar v/s Subashini**	***CrPC, S.125 – Petition by divorced wife – Wife not asking for any maintenance during pendency of proceedings for divorce*** – Neglect or refusal to maintain not proved – Petition u/s.125 not maintainable – Wife ought to have asked for maintenance in matrimonial proceedings itself or subsequently by interlocutory application to matrimonial Court.
111	**1984 CRLJ P. 1170 (A.P.) G. Balraj v/s Smt Mallamma**	***CrPC, Ss.127 & 126 – Petition u/s.127 for enhancement of maintenance granted u/s.125*** – To be filed before Magistrate who has passed first order of maintenance – S.126 is not attracted. ***- 1978 CrLJ 1406. Rel on.***
112	**1984 CRLJ P. 1297 (A.P.) Mohmmad Yameen v/s Smt Shamim Bano**	***(A) CrPC, S.125 – Object of – Remedy u/s.125 is not co-extensive with civil liability. (C) CrPC, S.125(1) Explanation (b) – Provision is not opposed to personal law of Mohammedans.***
113	**1988 CRLJ P.6 (MAD) Ahathinamiligai v/s Arumughnam**	***(A) CrPC, S.125 – Applicant by parent against one son alone – Maintainable even if other children are not made parties.***
114	**1988 CRLJ P.793 (SC) (BOM) = AIR 1988 SC 644 Smt. Yamunabai Anantra Adhav v/s Anant Rao shivram Adhav and another.**	***(A) Hindu Marriage Act, S.5(i), 11, 12, 4, 16 – Marriage with person having living spouse – Is null & void – Cannot be treated as voidable u/s.12. (B) CrPC, S.125 – Maintenance – Expression "wife" – Means legally wedded wife*** – Marriage of woman with man already having living spouse as per Hindu rites – Is complete nullity – She is not entitled to maintenance. ***- Hindu Marriage Act, Sec. 11, 5(i) - Evidence Act,1872, Sec.115.***
115	**1988 CRLJ P.1041 (Orissa) Sm.Jmamani Das alia Pandya v/s Umesh Chandra Panda**	***- CrPC, S.125 – Proof of marrige – Marriage performed according to Hindu rites such as Hastabandhan and Saptapadi during night*** – Held, marriage between parties was proved for purpose of petition u/s 125 – Strict proof of marriage is not necessary. ***- 1985 CrLJ 528 (SC), Rel.***
116	**1988 CRLJ P.1591 (M.P.) Mangilal petitioner v. Gitabai Respondent**	***CrPC, Ss.125(4), 127(2) – Scope of – Order of maintenance passed in favour of wife*** – Decree for divorce obtained by husband on grounds of desertion – Order of maintenance not liable to be cancelled on this ground.
117	**1988 CRLJ P.1891 (A.P.) Pellakuru Syamlamma Petitioner v. Pellakuru Sambiah**	***- CrPC, S.125(3) Expln. – Maintenance – Husband keeping a mistress or marrying another woman and living with her*** – First wife is entitled to live separately and claim maintenance – Further proof of negligence by husband is not necessary.
118	**1988 CRLJ NOC P.19 (ALL)**	***(B) CrPC, S.125 – Maintenance of wife and her minor son*** – Wife having no source of income, was unable to sustain herself as well as the son – She was, therefore, entitled to get a reasonable amount of maintenance for both from husband – Husband,

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		being otherwise well to do, possessing 10 to 12 bighas of agricultural land – Considering hard times and increasing dearness, grant of maintenance of Rs.100/- to wife and Rs.50 to the child was held to be not excessive, but reasonable.
119	**1988 CRLJ NOC P.36 (ALL) Masooda Begum v/s Ahmad Khan**	***CrPC, S.125 – Maintenance – Living separately – Muslim wife turned out by husband after beating*** – Living in her father's house along with her daughter – Income of wife's father and husband almost similar – Defence plea that wife wanted that her husband should live with her father and support him – Improbable – Husband taking second wife – No question of claimant-wife returning to matrimonial home arises – Wife not possessed of means to support herself and her daughter – She is entitled to maintenance.
120	**1988 CRLJ NOC P.41 (ALL)**	***CrPC, S.125 – Ex-parte order against husband*** – Plea that he could not attend Court due to his mother's illness found to be bogus – Revision against ex-parte order rejected.
121	**1989 CRLJ P.2295 (A.P.)**	***(A) CrPC, S.125 – Muslim Women's (Protection of Rights and Divorce) Act, S.7 – Maintenance – No repugnancy between two Acts*** – No implied repeal of S.125 as regards children of above 2 years – Therefore children above 2 years would be entitled to maintenance u/s.125. ***(B) CrPC, S.125 – Muslim Women's (Protection of Rights and Divorce) Act, S.7 – Maintenance – Sought for children above 2 years – Proceeding u/s.125*** – S.7 of 1986 Act not attracted to such proceedings as the Act 1986 itself is not applicable to said children – Proceedings in revision cannot be converted into those under Act of 1986. ***- AIR 1989 Gauhati 24 Foll.***
122	**1989 CRLJ P.1539 (Gauhati)**	***CrPC, S.125 – Hindu Marriage Act, S.7 – Application for maintenance by wife – Proof of marriage*** – Wife alleging that on assurance by opposite party, she was living with him prior to marriage – Inconsistent statments as to time of marriage – Marriage also said to be performed according to shastric form including saptapadi – Marriage not proved – No evidence also to raise presumption of marriage – Held, that there was no proof of marriage and she was not entitled to maintenance. ***- Evidence Act, 114.***
123	**1989 CRLJ P.1852 (H.P.)**	***CrPC, S.125 – Evidence Act, S.112 – Application for maintenance for child alleged to have been begotten from non-applicant*** – No evidence that applicant had taken divorce from her husband or had no access to him during the period when child was begotten – Presumption arises u/s.112 Evidence Act that child was from applicant's

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		husband – Hence, she cannot claim maintenance from the non-applicant. ***- Maintenance – Legitimacy of child – Proof.***
124	**1989 CRLJ P.2032 (MAD)**	***(A) CrPC, S.125(1)(c) – Maintenance – Grounds – Word "injury" used in S.125(1) (c)*** – Have to read in context of inability to maintain – It does not require recourse to definition of "injury" in S.44 of IPC. ***- IPC, 1860, S.44. (B) CrPC, S.125 – Maintenance – Claim against mother, by unmarried daughter on ground of 'injury'*** – Injury not falling within scope of S.125(1)(c) – Daughter cannot invoke S.125 to claim maintenance from her mother.
125	**1989 CRLJ P.2037 (MAD)**	***CrPC, Ss.125,127(2) – Civil Proceeding under Hindu marriage Act already pending between parties*** – Institution of proceedings u/s.125 – Liable to be quashed. ***- Hindu marriage Act Sec. 24. - Maintenance – Application by wife – Pendency of Civil proceedings – Effect.***
126	**1989 CRLJ P.2416 (A.P.)**	***CrPC, Ss.125, 127 – Maintenance – Enhancement*** – Private settlement between parties arrived at as regards future maintenance – Petition for enhancement of maintenance cannot be filed before criminal Court either u/s.125 of CrPC – Remedy lies in Civil Court.
127	**1991 CRLJ P. 247 Abdul Khader / Razia Begum.**	***Muslim women (Protection of Rights on Divorce) Act, 1986, S.3,4 – Scope – Act is prospective in operation*** – Vested right acquired by wife for recovery of maintenance prior to Act – Not affected.
128	**1991 CRLJ P.291 Chimata Nagarathanamma/ Chimata Nathanail.**	***CrPC, S.125 – Proceeding under – Maintainability – Husband and wife living separately with consent – Agreement to that effect, executed –*** Husband agreeing to pay monthly maintenance – Breach by him – Amounts to negligence on his part – Wife entitled to maintenance.
129	**1991 CRLJ P.1843 (Gauhati)**	***(B) CrPC, Ss.125, 431, 128 – Recovery of mainatenance – Maintenance money can be recovered as per procedure mentioned u/s.431 as if it were fine*** – Order issuing warrant of arrest or detention of husband for recovery invalid – Oreder was liable to be set aside.
130	**1991 CRLJ P.3015 (ALL) Preet pal Singh / Ishwari Devi and others.**	***CrPC, Ss.125,127 - Maintenance – Granted to wife and minor son in her custody – Father taking away son from custody of mother without adthering to proper procedure*** – Application by father u/s.127 for alteration of maintenance on ground of change of custody of son – Not maintainable.
131	**1991 CRLJ P.3216 (Orissa) Anupama Pradhan / Sulatan Pradhan.**	***(A) CrPC, S.125 – Hindu Marriage Act, S.2(2) – Claim of maintenance by wife – Both parties belonging to Scheduled Tribe – Hindu Marriage***

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		Act does not apply – Wife is entitled to maintenance even if husband has another wife – Ancient Hindu lawdoes not forbid marriage during subsistence of prior marriage.***(C) CrPC, S.125 – Claim for maintenance by wife*** – Husband taking plea of wife being in illicit connection with another – Failure of plea – It is sufficient to entitle wife to remain apart and also claim maintenance.
132	**1992 CRLJ P.835 (BOM)**	***CrPC, S.125(3) – Order for maintenance – Enforcement – Sufficient cause for not complying with order*** – Husband proving that the has no means to pay – Imprisonment would be unwarranted.
133	**1992 CRLJ P.1028 (M.P.)**	***CrPC, S.125(2) – Maintenance – Recording of reasons essential in either case i.e. when maintenance is granted from date of application or from date of order –*** No rule that normally maintenance be awarded from date of order - no rule that normally maintenance be awarded from date of order and only if it is awarded from date of application recording of reasons is necessary.
134	**1992 CRLJ P.2826 (CAL)**	***CrPC, S.125 – Maintenance – Recovery of – Limitation – Amount of arrears beyond one year of application cannot be recovered.***
135	**1992 CRLJ P.2605 (BOM)**	***CrPC, Ss.125, 397(2) – Maintenance – Proceedings for – Order granting interim maintenance pending proceedings – Is "interlocutory order" – Revision against, not maintainable.***
136	**1993 CRLJ P.238 (Orissa)** ***Baishnab Charan Jena V/s. Ritarani Jena.***	***A) CrPC, 1973, S.125(4) – Wife living in adultery*** – Merely proving one or more instances of lapses in character of wife is not sufficient to absolve her husband from liability to pay maintenance to her. ***(B) CrPC, 1973, S.125(4) – Wife living in adultery*** – Very allegation by husband and members of his family castigating wife as person living in adultery or having extra martial relationship is insulting and humiliating entitling to live separately from her husband and to claim maintenance from him.
137	**1993 CRLJ P.418 (Kant)** ***V.P. Shivanna / smt Bhadramma.***	***A) CrPC, S.125(3) – Maintenance – Recovery of – Notice to husband by registered A.D. and not as contemplated u/s.125(3) – Illegal*** – Illegality neither curable nor cured – Subsequent proceeding by Magistrate liable to be quashed. ***- 1960 CrLJ 1107 (Mys), Followed. (C) CrPC, S.87 – Issue of Warrant – Order of Magistrate directing issue of salary attachment warrant – Validity*** – Order not even remotely indicating circumstances reflected in S.87 – Order issuing warrant invalid.
138	**1993 CRLJ P.982 (Kant) Kum L. Usharani / D.S. Lakshmimaiah**	***CrPC, S.125(1)(b), (c) – Maintenance – Claim for – Children attaining majority*** – And not having physical or mental abnormality – Cannot claim maintenance.

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139	**1993 CRLJ P.2898 (CAL) Paritosh Das, / Sm.Kalayan Das**	***CrPC, Ss.125 & 127 – Maintenance to wife – Order granting interim maintenance passed ex-parte*** – Application by husband subsequently to reconsider order – Rejection of application on ground that it was ex-parte order is illegal – Court can alter modify or even cancel such ex-parte order on reconsideration. ***- 1986 CrLJ 41, Rel. on.***
140	**1993 CRLJ P.3233 (SC) (CAL) Goutam Kundust of west Bengal**	***CrPC, S.125 – Maintenance – Grant of, to child – Father disputing paternity of child – Seeking blood test of child*** – Purpose of his application is nothing more than to avoid payment of maintenance, without making any ground whatever to have resources to the test – Rejection of application – Was proper. ***- Maintenance – Paternity of child – Dispute as to – Permissibility of blood test.***
141	**1993 CRLJ P.3280 (A.P.) N.B. Bhikshu V/s State of A.P.**	***CrPC, Ss.126, 125 – Maintenance – Petition by parents – Place of suing –*** Court within whose territorial jurisdiction sons reside, only, can entertain such petition.
142	**1993 CRLJ P.3317 (Gauhati) Sri. Santi Ram Sharma / Smt. Knakalata Devi**	***CrPC, Ss.125, 401 – Maintenance – Grant of – Revision against – Order enhancing maintenance in revision*** – Non-giving of opportunity of hearing to husband – Violates S.401(2) and principles of natural justice.
143	**1993 CRLJ P.3813 (Orissa) Rajendra Kumar Pradhan / Smt. Pramilla Pradhan**	***CrPC, S.125(3) – Order of maintenance – Failure to comply – Exercise of power to pass sentence of imprisonment*** – Issue of distress warrant is normal pre-condition – Simultaneous order issuing distress warrant as well as warrant of arrest – Not permissible – However, wife need not wait till process under distress warrant comes to an end. ***- (1991) 71 Cut LT 110, Overruled. – 1968 CrLJ 335, Partly Overruled.***
144	**1994 CRLJ P.565 (A.P.) Laxmi and others / Nakka Narayan**	***CrPC, S.125(3), Proviso 1 – Applicability – Maintenance amount – Recovery of*** – Limitation of one year under the Proviso – Not applicable to minor maintenance holders in view of Ss.3, 6 and 29(2) of Limitation Act. ***- Limitation Act, 1963, Ss.3, 6, 29(2).***
145	**1994 CRLJ P.2336 (M.P.) Dr.Abdul Rashid / MSt Farida**	***CrPC, S.125 – Application for maintenance – Undivorced Muslim woman – Provision of S.125 would apply*** – But the moment she is divorced, provisions of Muslim Women (Protection of Rights on Divorce) Act would be attracted. ***Maintenance – Grant of to divorced Muslim woman – Confined to Iddat period – Remedy lies under Muslim Women (Protection of Rights on Divorce) Act, 1986.***
146	**1994 CRLJ P.2393 (BOM) Bhagvat Baburao Gaikwad / Baburao Bahaiyya Gaikwad**	***CrPC, S.125 – Maintenance – Recovery of*** – Can be effected against salary of a defaulting father or husband – Attachment of salary for recovery of

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		arrears of maintenance – Permissible.
147	**1995 CRLJ P.2726 (P&H) Nachachtara Singh / Harjinder Kaur**	***CrPC, S.125(2) – Maintenance – Grant of*** – Trial Court has discretion to award maintenance either from date of application or from date of order – Withholding of interim maintenance awarded pending petition of maintenance – On facts and circumstances order allowing maintenance from date of application – Is proper.
148	**1996 CRLJ P.1158 (A.P.) Oona Gowari Shakara Rao / Oona Rajeswari**	***CrPC, S.125 – Maintenance – Illegitimate child – Proof of paternity*** – Evidence of mother of child regarding illicit intimacy with certain person – Should establish that such person had opportunity of access to her at the time of conception – Evidence revealed that mother was working in house of petitioner, moving closely with inmates and helping petitiner in hotel business – Is sufficient to show that petitioner had opportunity of access to her.***- Evidence Act, 1872, S.112.***
149	**1996 CRLJ P.69 (ALL) Basant Lal / The State of U.P.**	***(B) Constitution of India, Art.14 – Maintenance to wife – Claim should normally be enforced from date of application*** – Denial of such claim should be with reasons to be recorded – S.125(2) granting maintenance from date of order reverses general proposition of law and nature – Provision held, ultra vires of Art. 14.***(C) Constitution of India, Art.14 – Constitutionality of provision – Who can challenge*** – Contesting opposite party who is likely to be adversely affected by application of law violating Art.14 is entitled to challenge its validity even by way of defence.
150	**1996 CRLJ P.1161 (CAL) Pradipkumar Mukharjee / smt. Chaitali alia Moli Mukhrjee**	***(C) CrPC, Ss.125, 401 – Revision – Filed against order granting maintenance to wife*** – Wife appearing in person seeking permission to take aid of close relative to make submissions on her behalf, in English due her deficiency in English – Court deprecated attitude of husband raising objection as regards to since that cannot be a ground to refuse or deny her claim – Court permitted wife to make her submissions in local language.
151	**1996 CRLJ P.2782 (Orissa) Nabin Chandra Kansabehera / Hemant Kumari**	***CrPC, Ss.125, 126(2) – Interim – Maintenance – Grant of*** – Magistrate passing order attaching salary without even serving notice / copy of petition on husband/his counsel – Order liable to be set aside – However on plea of necessity of maintenance for sustenance of life and to save applicant wife from beggary, interim maintenance awarded.
152	**1998 CRLJ P.3976 (MAD)**	***A) CrPC, S.125 – Maintenance proceedings – Legitimacy of children challenged by husband*** – Opportunities for blood group test given to husband not availed of by him – Order for payment of maintenance of children not invalid – Moreover, parties cannot be compelled for subjecting

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		themselves for blood test in maintenance proceedings.***(C) CrPC, S.9, O-39, R-1 – Maintenance proceedings – Grant of injunction –***Civil Court has no jurisdiction to grant injunction restraining maintenance proceedings before Criminal Court. ***- 1973 LW (Cri) 266 (Mad), ILR 30 Mad 400 and 1979 CrLJ 1301 (Cal), Foll.***
153	**1998 CRLJ P.4455 (BOM)**	***CrPC, S.125 – Maintenance – Claim for – Application by wife – Cannot be decided merely on basis of affidavit filed by wife.***
154	**1998 CRLJ P.4740 (Orissa)**	***CrPC, S.125(4) – Maintenance –*** Decree of divorce passed against wife on ground of desertion – She can still claim maintenance from date of decree.
155	**1999 CRLJ P.322 (Raj)**	***CrPC, S.125(3) – Maintenance – Muslim husband contracting second marriage*** – Same causing mental agony and irritation to his first wife – Wife living separately – Husband cannot deny maintenance to her by taking shelter of his Personal Law that he is permitted to contract four marriages.
156	**1995 CRLJ P.3371 (Kerala) K.Kunhammed Haji / K. Amina and others**	***(A) Muslim Women (Protection on Rights on Divorce) Act, S.3(1)(a) – Maintenance – Divorced Muslim women*** – Apart from her right to get maintenance during iddat period – Is entitled to get a fair and reasonable provision made for her livelihood for post iddat period.
157	**1997 CRLJ P.723 (Kant.)**	***CrPC,1973, S.125 – Applicability – Divorced Muslim woman –*** Not entitled to claim maintenance u/s.125 after coming into force of Act (25 of 1986), except as provided u/s. 5 of Act. ***The Muslim Women (Protection of Rights on Divorce) Act, 1986. S.5***
158	**1998 CRLJ P.2343 (ALL)**	***CrPC, S.125 – Grant of maintenance – Muslim wife*** – Entitled to maintenance u/s.125 till divorce is communicated to her – Provisions of S.125 however, not applicable for maintenance during iddat period. ***- Muslim Woman (Protection on Rights of Divorce) Act,1986, Ss.3,5.***
159	**1998 CRLJ P.4702 (Patna)**	***Muslim Women (Protection of Rights on Divorce) Act, Ss.3,4*** – Divorced Muslim Women – Not entitled to get maintenance from her former husband after expiry of iddat period by invoking S.125 of Cr.P.C. ***- CrPC, 1973, S.125.***
160	**2002 CRLJ P.4726 (SC)**	***A) Muslim Law – "Talaq" –*** Plea of previous divorced taken by husband in written statement in proceedings initiated by wife for maintenance – Cannot at all treated as pronouncement of "Talak" by husband on wife on date of filling of written statement in court followed by delivery of copy thereof to wife – Neither Marriage between parties stand dissolved on date of filing of written statement – Nor does liability of husband to pay maintenance

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		comes to an end on that day. ***(B) Muslim Law – "Talaq"-*** Law as ordinate by holy quran is (i) that Talaq must be for a reasonable cause and (ii) that must be preceded by an attempt of reconciliation between her husband and the wife by two arbiters, one choosen by wife from her family and other by husband from his – If their attempt fails "Talaq" may be affected.
161	**2003 CRLJ P.2540 (SC) (Kerala)**	***Muslim Law – Marriage with pregnant woman – Whether void – Pregnancy cannot be concealed specially when it is 5 months old –*** Plea that husband was not aware of pregnancy at time of marriage – Therefore, not tenable – Marriage not void or illegal – That apart, husband accepted pregnancy and marriage – Girl child born four months after marriage – Husband continues with such marriage for 4½ years and gave his name to child – Husband divorced wife after 4½ years – Husband cannot refuse to pay maintenance to wife on grounds that marriage was void and child was not his.***- Cr.P.C.,1973, S.125 - Contract Act, 1872, S.17 – H.M.Act, 1955, S.12.***
162	**2003(1) GLR P.80** **Shamim Ara V/s State of U.P. & Anr.**	***Muslim Law – Talaq – Unilateral statement by husband, oral or written, would not constitute a valid divorce of Muslim marriage*** – Talaq must be for a reasonable cause and be preceded by attempts at reconciliation by two arbiters, one from the wife's family and the other from the husband's – SC did not agree with the views of Mr. Mulla and Dr. Tahir Mahmood that husband can divorce his wife by his unilateral action.
163	**2003 CRLJ P.2143 (Orissa)**	***CrPC,1973, S.125 – Maintenance –*** Disentitlement of wife on basis of decree of Civil Court holding that petitioner was not legally wedded wife of respondent – No evidence brought on record to prove allegations relating to fraud and suppression of material facts in obtaining of decree – Effect of said decree not taken away by anyorder passed by competent Court – Decree of Civil Court binding on petitioner – Order disentitling petitioner for maintenance – Proper.
164	**2002 CRLJ P.3418 (Orissa)**	***CrPC, 1973, S.125 – Maintenance to wife and children –*** Grant of – Merely proving one or more instances of lapses in the character of the wife – Is not sufficient to absolve the husband from his liability to pay maintenance to her – Allegation with regard to a single instance of adultery – No material showing that alleged adultery was a continuous one – Even one act of adultery is enough for a decree of judicial separation but will not be enough to refuse maintenance to wife.
165	**2002 CRLJ P.2751 (Kant)**	***CrPC, 1973, S.125 – Muslim Women (Protection of Rights on Divorce) Act,1986, Ss.3(1), 5 -***

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		Maintenance – Claim by Muslim woman u/s.125 – Maintainability – Jurisdiction of Court u/s.125 not ousted by Act of 1986 nor rights vested in parties taken away – Question whether petitioner was divorced wife or not and her claim maintainable or not requires consideration by Family Court on production of evidence – Maintainability of petition could be decided on recording evidence.
166	**1990 CRLJ P.1364**	***Muslim women Act, S.3, 4, 5 – Maintenance – Divorced Muslim wife –*** Cannot claim maintenance u/s.125 of the code after passing of 1986 Act - Liability of husband is limited for and during period of Iddat.
167	**2002 CRLJ P.2282 (CAL)**	***CrPC, 1973, S.125 – Maintenance – Children of Muslim divorced Women -*** Age governed by provisions of S.125 – Provisions of Muslim Women (Protection of Rights on Divorce) Act – Do not come in their way from claiming such a right. ***Muslim Women (Protection of Rights on Divorce) Act, 1986, Ss.3, 4,5, 7.***
168	**2002 CRLJ P.1173 (P & H)**	***CrPC, 1973, S.125 – Maintenance – Claim for – Claimant a minor child of divorced wife –*** Said child born two years after decree of divorce was passed hence cannot be said to be child of petitioner husband – Claimant not entitled to maintenance
169	**2002 CRLJ P.380 (Raj)**	***Cr.P.C., 1973, S.125 – Interim maintenance – Grant of –*** Interim maintenance can be granted even on affidavit – Plea that interim maintenance cannot be allowed without recording evidence – Not tenable. ***AIR 1986 SC 984, followed.***
170	**2002 CRLJ P.493 (H.P.)**	***CrPC, 1973, S.125 – Maintenance – Claim made by illegitimate child –*** Only evidence of mother of child that petitioner is father of child – Not corroborated by direct or circumstantial evidence – Not sufficient to conclude paternity of petitioner – Claim cannot be allowed. (Para 16
171	**2003 CRLJ P.4470 (SC) (CAL)**	***CrPC, 1973, S.125 – Maintenance – Application by wife –*** Allegation of demand of dowry and cruelty by husband – Not supported by evidence on record – Thus reasons given for her ill-treatment, were non-existent – Wife left matrimonial home without any justifiable ground – Not entitled to maintenance.
172	**2003 CRLJ P.3807 (Jharkhad)**	***CrPC, 1973, Ss.125, 311 – Power to rectify mistake – Nature and extent of*** – Even after closure of case on petition filed by party, said party can reopen the case for leading some material evidence, for proper adjudication of the matter.
173	**2003 CRLJ P.3304 (CAL)**	***CrPC, 1973, S.125 – Maintenance to wife – Grant of –*** Finding of Civil Court in proceeding u/s.24 of Hindu Marriage Act some 8-10 years back about income of wife not binding – Proceedings under

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		both the enactments are parallel. ***- H.M. Act, 1955, S.24.***
174	**2003 CRLJ P.2625 (Patna**	***CrPC, 1973, S.125 – Maintenance – Entitlement –*** Unmarried daughter of Hindu Parent being "dependent" u/s.20, Hindu Adoptions and Maintenance Act – Is entitled for maintenance.***- Hindu Adoptions and Maintenance Act, 1956, S.20.***
175	**2003 CRLJ P.2566 (Kant)**	***CrPC, 1973, S.125 – Maintenance of Parents – Petition for maintenance by stepmother –*** Maintainable, if she proves that she is living alone and due to old age unable to maintain herself. (Para 10) ***- Hindu Adoptions and Maintenance Act, 1956, S.20.***
176	**2003 CRLJ P.3242 (Jharkhand)**	***(B) CrPC, 1973, Ss.482, 483 – Inherent powers – Dismissal of earlier revision before HC – Application u/s.482 in the garb of second revision –*** Though second revision before HC barred under S.397(3), inherent power u/s.482 and power of continuous superintendence u/s.483 available to petitioner immaterial of level of petition. (Para 10) ***- 2000 (3) Pat LJR 199, foll***
177	**2004 CRLJ P.1000 (Kerala)**	***CrPC, 1973, Ss.125, 362 – Maintenance – Order for – Is reviewable*** – S.362 barring review of certain order has no application to orders passed under chapter X of the Code – Further proceedings being more of a civil nature time prescribed for deposit of maintenance amount can also be extended by applying S.148 Civil Procedure Code
178	**Criminal Revision Application - C.K. Buch J.**	***CrPC, 1973, Ss.125(3) –*** Merely because the husband has undergone imprisonment for non-payment of maintenance allowance for a particular period, it does not follow that the amount becomes irrecoverable – The Magistrate committed an error in dismissing the execution application.
179	**2004 CRLJ P.1280 (A.P.)**	***CrPC, 1973, S.125 (3) –*** Failure to pay maintenance – Detention in prison – Cannot exceed one month – Fact that arrears are for 12 months or for any other durations – Not material.***1994 CrLJ 565 (A.P.) & (1990) 1 Andh LT 370, Overruled.Cases Referred : 1999 CrLJ 5060 : 1999 SCC (Cri) 1029 : 1999 AIR SCW 4780 (3)***
180	**2004 CRLJ P.2351 (Kerala)**	***CrPC, 1973, Ss.125, 482 – Muslim Women (Protection of Rights on Divorce) Act, 1986, S.3 – Maintenance petition – Amendment of pleadings –*** Allowing amendment of petition filed under Chap.9 of Code not specifically prohibited – Order of Magistrate allowing amendment not causing any injustice or abuse of process of Court – No interference u/s.482 warranted. (Para 4)
181	**2004 CRLJ P.3690 (P&H)**	***CrPC, 1973, S.125 – Maintenance of divorce wife –*** Wife is entitled to grant of maintenance irrespective of fact that she had earlier agreed not

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		to claim maintenance – Such an agreement by wife is invalid u/s.23 of Contract Act as it offends provision of law – Grant of interim maintenance by Court – Not proper – Amount of Rs.200/-being meagre, wife directed to move Magistrate for enhancement.***- Evidence Act, 1872, S.115. – Contract Act,1872, S.23.***
182	**2005 CRLJ P.1091 (H.P.)**	***CrPC, 1973, S.125 – Maintenance to wife –*** Decree of restitution followed by decree of divorce against wife – Still wife is entitled to maintenance until she remarries.
183	**2005 CRLJ P.1455 (Guj)**	***CrPC, 1973, S.125 – Maintenance – Magistrate passing order in absentia*** – Interim maintenance of Rs.3000/- per month awarded – Opportunity of leading evidence should be granted – Rule of Best Evidence is not applicable in maintenance proceedings being a quasi-civil proceedings – Matter remanded back.
184	**2003(1) GLR P.436 Daxaben Nileshkumar Shah V/s Nileshkumar Pravinchandra Shah & Anr.**	***CrPC, 1973, Ss.125, 397 & 401*** – Where an application for maintenance from the date of application is filed, but maintenance is granted from the date of order, the proceeding being judicial in nature, reasons must be stated for rejection of the part of the claim – Absence of reasons in the order would justify the HC to exercise revisional powers.
185	**1990 CRLJ P. 639**	***CrPC, Ss.125(3), 421(1)(a) – Maintenance – Recovery of arrears – Default by husband without sufficient cause*** – Warrant of attachment of future salary of husband – Salary due at the end of month is attachable – Till then warrant remains dormant
186	**1990 CRLJ P.2065**	***CrPC, S.125(1), (3) – Maintenance – Liability for absence of real estate – Not excuse to escape liability*** – Able bodied healthy person having capacity to earn must be subjected to pay maintenance – Non- compliance of order by such person he can be sentenced to imprisonment.
187	**1990 CRLJ P.2132**	***A. CrPC, S.125 – Maintenance – Entitlement as to – Allegation of husband living with another woman*** – Wife refusing to live with husband – She is still entitled to claim maintenance.***B. CrPC, S.125 – Maintenance to wife*** – Limit of Rs. 500 pm urgent need to increase it by amendment expressed.
188	**1991 CRLJ P.2353 (P&H) Gurvinder Singh / Murti Gurvinder singh**	***CrPC, S.125(3) – Stiriking off defence on non-payment of interim maintenance*** – Court cannot strike off the defence for non-payment of non-payment of maintenance u/s.125(3). ***- CPC, 1908, O-11, R-21.***
189	**1991 CRLJ P.2357 (ALL) Majot Ashok Signh / Vth Additional Sessions judge.**	***(A) CrPC, S.125 – Maintenance – Husband impotent qua his wife*** – Wife can live separately and claim maintenance on this ground.***(B) CrPC,***

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		S.125 – Maintenance – Wife an educated lady but unemployed – Maintenance cannot be refused merely because she is educated and capable of securing employment.***(C) Constitution of India, Art.226 – Practice and procedure*** – Members of Bar citing overruled decisions before court – May result in obtaining wrong decisions – Members advised to be careful in future.
190	**2004 SCC (Cri) P.164** **Deb Narayan Halder V/s. Anushree Halder.**	***Wife having left her matrimonial home without any justifiable ground – Held, not entitled to the grant of maintenance***
191	**1982(2) GLR P.359 (Proceedings u/s.24 of H.M. Act)** **Dr. Rameshodria Shambhubhai V/s. Dhirajgauri.**	Merely because petition is made u/s. 24 of Hindu Marriage Act, proceeding u/s.125 cannot be stayed. Court before passing final order has to consider the order passed by the other Court.
192	**2005 CRLJ P.1978 (ALL)**	***CrPC, 1973, S.128 – Enforcement of maintenance order –*** Recovery proceedings by wife – Insolvency of husband – No ground for quashing of proceedings – Husband under obligation to maintain wife and daughter – Mere filing of suit for declaring himself insolvent – No ground for not discharging said obligation – Even insolvent, if physically fit – Has to pay maintenance. (Para 5)
193	**1976 GLR P.335 (Verification)** **Jugat Ambalal V/s. State**	Application u/s. 125 is not a complaint within the meaning of S.2(d) of CrPC. Verification of applicant u/s.200 before issuing process is not necessary.
194	**1976 GLR P.457 (Able body)** **Nirmala V/s. Jayantilal.**	Merely because a person is able bodied, it cannot be said that he is always able to earn. Concept of able bodied person cannot be imparted while interpreting expression 'unable to maintain'. Husband contending that wife able to earn. Such contention is not tenable
195	**1977 GLR P.813 (Divorced wife)** **Bai Mani V/s. Khima Parbat.**	Divorced wife staying separately. Question of living separately by mutual consent does not arise. Expression 'wife' in the Sub-Sec. 4 used in narrower sense. Divorced wife entitled to maintenance u/s. 125(4).
196	**1978 GLR P.983 (Limitation – 1 Year)** **Chimanbhai V/s. Ghemabhai.**	Period of limitation starts only from the date of order of maintenance. Maintenance prior to the date of order becomes also due from the date of the order u/s.125.
197	**1978 GLR P.983 (Ex Parte order)** **Chimanbhai V/s. Pasiben.**	Order passed in presence of Advocate and ex parte against husband cannot be said to be nullity.
198	**1981 GLR P.1175 (SC) (Cruelty)** **Siraj Mahmedkhan V/s. Hafizunnisa.**	Persistent demand of dowry. Apprehension of physical harm on the part of wife. It is a just ground for the wife's refusal to live with husband.
199	**1981 GLR P.1175 (SC)**	Impotency – Non-availability of the husband to

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	(Cruelty) **Siraj Mahmedkhan V/s. Hafizunnisa.**	satisfy biological needs resulting in great mental torture to muslim wife. Wife cannot be compelled to stay with the erring one and she is entitled to claim maintenance
200	**1982(2) GLR P.359 (Proceedings u/s.24 of H.M. Act)** **Dr. Rameshodria Shambhubhai V/s. Dhirajgauri.**	Merely because petition is made u/s. 24 of Hindu Marriage Act, proceeding u/s.125 cannot be stayed. Court before passing final order has to consider the order passed by the other Court.
201	**AIR 1978 P.1807 (SC) (Delhi)** **Captain Ramesh Chander Kaushal V/s. Mrs.Veena Kaushal & Ors.**	***(A) CrPC, 1973, S.125 – Amount of maintenance*** – In divorce proceedings civil Court passing interim order for maintenance u/s. 24, Hindu Marriage Act – Jurisdiction of Magistrate to award higher maintenance. ***(B) CrPC, 1973, S.125 – Measure of social justice enacted to protect derelict women and children – Mode of interpretation – Interpretation of statutes.(D) CrPC, 1973, S.125(1), Expln.(b) – Divorced wife's right to maintenance – How long continues.*** (Para 22)
202	**1982 CRLJ P.485 (Orissa)** **Basanta Kumari Mohanty V/s. Sarat kumar Mohanty.**	***(A) CrPC, 1973, S.125*** – Application by wife for maintenance – Sufficient means of husband – Word 'Means' occurring in S.125 – Interpretation of. ***(B) CrPC, 1973, S.125 – Amount of maintenance – Determination of – Factors to be considered.***
203	**1982(2) GLR P.90 (Divorce by consent)** **Natvarlal Jaikishandas V/s. Bai Girja.**	Petition by divorced wife in case of customary divorce. It cannot be said that the wife is staying separate by consent and therefore, she is not entitled to maintenance
204	**1982 CRLJ P.901 (Delhi)** **Krishan Gopal V/s. Smt. Usha Rani.**	***CrPC, 1973, S.125(1), Expln.(b) – Hindu Marriage Act, 1955, Ss.12 & 13*** – Application for maintenance u/s.125 by wife whose marriage is annulled u/s.12 – Not maintainable.
205	**1983(2) GLR P.863 (Enhancement – Effect)** **Ismail K. Khokhar V/s. Khatun Allarkha.**	***CrPC, 1973, S.127*** – Magistrate has got powers to enhance maintenance from the date of application
206	**1983(1) GLR P.394 (Dismissal for default)** **Maniben Goswami V/s. Manibhai Goswami.**	If earlier application for recovery of amount dismissed for default, it does not debar wife from claiming that maintenance amount in another application if such application is made within one year of dismissal of earlier application.
207	**1983(2) GLR P.1098 (Muslim wife – Second Marriage)** **Banabibi Sikendarkhan V/s. Sikandarkhan Umarkhan.**	Mohammedan law permitting male to have four wives. Conduct of the husband may be permissible under personal law but if such behaviour proves to be an irritant to wife or source of mental agony, it can be ground of staying separate and claiming maintenance.
208	**1984(2) GLR P.1012 (Compromise – Effect)** **Subera I. Jujara V/s. Husen Abdul M. Khatuda.**	Order passed by the Magistrate on the compromise pursis directing maintenance is not merely an agreement between the parties but it is an order u/s.125.
209	**1984 GLR (U.J.35) P.24**	***CrPC, 1973, S.125(3) – Default in payment*** –

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	(Default – Imprisonment) Jubedaben Gani V/s. Pinjara balu Suleman.	Imprisonment will be one month or until payment if sooner made. Sentence not to be disproportionate with the amount of maintenance due, so that husband will refuse to pay for number of months and may get out of jail by getting to just for a month only.
210	**1985(1) GLR P.368 (Beating – Cruelty) Smt. Sarojben T. Patel V/s. Thakorbhai J. Patel.**	Beating a wife is sufficient ground for separate residence and claim maintenance. Allegation of infidelity also amounts to mental cruelty.
211	**1986(1) GLR P.544 (Mental Torture) Nitaben P. Shah V/s. Rameshbhai V. Shah.**	Husband telling wife that she does not like her. That amounts to mental torture justifying the wife to leave matrimonial home and claim maintenance.
212	**1986 GLH P.164 (Deduction – G.P.F.) Sakinabibi G. Chetan V/s. Hasankhan Mahin Khan.**	The amount which the opponent husband saves for himself i.e G.P.F., etc. cannot be deducted from his total income.
213	**1987(1) GLR P.234 (Divorce - Sufficient amount) Leelaben A. Goswami V/s. Goswami Bapugiri Dhanpuri.**	- Payment of insufficient amount to a wife on divorce would not debar a Magistrate from passing an order of maintenance.
214	**1988(1) GLR P.117 (Default – Imprisonment) Chandrikaben M. Dave V/s. State.**	Husband ordered to undergo imprisonment for failure to comply with the order for maintenance. Such sentence cannot be directed to run concurrently
215	**1988 CRLJ P.6 Ahathinamiligai v/s Arumughnam**	***(A) CrPC, S.125 – Applicant by parent against one son alone – Maintainable even if other children are not made parties.***
216	**1989(2) GLR P.776 (Adultery) Dharmisthaben V/s. Dr. Hashmukhbahi P. Ranpura.**	A wife is entitled to refuse to return to the matrimonial home and yet claim maintenance, if the husband is living in adultery and otherwise tortures the wife. Quantum of maintenance must be in proportion with the income of the husband.
217	**AIR 1989 P.232 (SC) (Delhi) Smt. Kuldip Kaur V/s. Surinder Singh and another.**	***A) CrPC, 1973, Ss.125, 401 – Revision – Dismissal – Speaking order –*** Maintenance allowance granted to wife and child – Default in payment by husband – Rejection of application for recovery of arrears by wife – Revision against – Summarily rejection by HC by non-speaking order – Not proper. ***(Maintenance – Arrears – Application for recovery – Rejection – Revision – Dismissal by non-speaking order – Improper.)(Speaking order – Revision – summarily rejection by HC must be by speaking order.) (Women's right – Maintenance – Recovery of arrears – Rejection of application – Revision against – Summarily dismissal – Must be by speaking order.) (Constitution of India, Art.226.)(B) CrPC, 1973, Ss.125, 128 – Maintenance to wife and child – Default in payment – Recovery of arrears – Sending of husband to jail – Is not a mode of discharging liability –*** It is only a mode of

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		recovery, not a substitute for recovery – SC directed to put defaulting husband in jail till he makes payment. (Maintenance – Arrears – Recovery – Sending of husband to jail – Not a mode of discharging liability) (Womens right – Maintenance – Application for recovery of arrears, by wife ***–Husband could not be absolved of his liability merely because he prefers to go tojail.)***
218	**1989 CRLJ P.2416**	***CrPC, Ss.125, 127 – Maintenance – Enhancement*** – Private settlement between parties arrived at as regards future maintenance – Petition for enhancement of maintenance cannot be filed before criminal Court either u/s.125 of CrPC – Remedy lies in Civil Court.
219	**1990(2) GLR P.996 (S.125(3) – Notice)** **Nilesh R. Dhruv V/s. State.**	Before issuing process for recovery of the amount payable by person under an order of maintenance, notice must be issued to that person and he must be given an opportunity to show cause that for a just reason, he has failed to pay the amount.
220	**1991(1) GLR P.610 (Marriage – Legality)** **Dhuliben Gordhanbhai V/s. Mahijibhai K. Chauhan.**	Husband denying liability to maintain applicant on the ground that she was not alegally wedded wife and that he had a wife when applicant cohabited with him. Claim regarding previous marriage of husband having been dissolved by divorce found by Sessions Court as not having been substantiated by cogent evidence. Applicant is not entitled to get maintenance.
221	**1991(2) GLR P.805 (Income – Burden of Proof)** **Vanitaben Naranbhai V/s. Naranbhai R. Makwana.**	Though the initial onus is on the wife, that what exactly is the income is within the special knowledge of the husband and therefore, he should produced evidence about his income. Maintenance includes expenses of clothing, education, medical expenses,etc
222	**1991(2) GLR P.1385 (Residence with parents)** **Prabhavati B. Rangunwala V/s. Bipinchandra Dhansukhlal.**	The fact that a married woman is residing with her parents is no ground for disallowing an application for interim maintenance.
223	**1991(2) GLH P.94 (Lawfully Married Wife)** **Sulochanaben H. Hariali V/s. Pandurang T. Khatri.**	It is prerequisite for claiming maintenance u/s.125 that the applicant is a lawfully married wife of the opposite party. The woman having entered into marriage with a married man having a spouse living will not be eligible or qualified for maintenance.
224	**(134) 1991(1) GLH P.646 (Labour Work - Earning)** **Pannaben R. Soni V/s. Jitendra C. Soni.**	Any wife neglected, refused or deserted by her husband would be said to be a wife unable to maintain herself, even though after her desertion for survival, she is engaged in some labour work and is earning something out of it.
225	**(135) 1991(1) GLH P.342 (Maintenance - Meaning)** **Sushilaben Mohanlal V/s. Modi Chunilal Hargovandas.**	The word 'Maintenance' occurring in S.125 is not statutorily defined, but it undoubtedly includes food, clothing, medical expenses and other expenses related to the normal pursuits of life. While considering quantum of maintenance, these

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		aspects have to be in mind.
226	**(136) 1992(2) GLR P.1520 (Interim – Notice) Kantilal P. Chavda V/s. Naranbhai K. Chavda.**	Interim maintenance can be granted by the Court on the basis of prima facie case in favour of wife even before issuance of notice to the otherside.
227	**1992(2) GLR P.1404 (Proceeding u/ss.24 and 125) Hansaben R. Patni V/s. Rameshkumar R. Patni.**	***CrPC, 1973, S.125*** – S.125 and S.24 Hindu Marriage Act are distinct provisions and provide for different situations. Payment made u/s.24 cannot be set off against the amount payable for maintenance u/s. 125. Order of Criminal Court must be satisfied.
228	**(138) 1993(1) GLR P.88 (Recovery Application – Inquiry) Gani Ali V/s. Sarabhai Gani.**	***CrPC, 1973, S.125*** – S.125 does not lay down that in every case, where a wife has applied for recovery of arrears of maintenance awarded to her, the Magistrate must hold an inquiry and reach a finding that the wife's refusal to live with husband is justifiable.
229	**1993(1) GLR P.356 (Question of Marriage) Jasoda S. Sekhavat V/s. State.**	Though Magistrate cannot decide marital status u/s.125 application, he can go into the question as to whether the applicant was a lawfully wedded wife or not for the purpose of deciding the question of maintenance.
230	**1993(1) GLR P.223 (Recovery – Priority) Miss Shilpa B. Shah V/s. Bansilal K. Shah.**	Maintenance awarded in a sense is not a money decree and the Courts should give the top most priority to such matters.
231	**1993(1) GLR P.437 (Allegations about character) Khadijabibi U. Aliya V/s. Husen Y. Aliya.**	Disowning the paternity of the children and intromen charge on the chastity of the wife constitute a classic example of 'cruelty'. Wife entitled to stay separate and claim maintenance.
232	**1993(1) GLR P.579 (Interim - Urgency) Manharlal M. Gandhi V/s. Saritaben M. Gandhi.**	- Proceeding u/s.125 of the Code are of a summary nature. Delaying tactics cannot be tolerated. Interim maintenance can be and should be granted in favour of deserted wife, minor children, mother or father to save them from starvation. Court must grant such relief without waiting for any one to approach it.
233	**1994(1) GLR P.427 (Revision – Scope) Ushaben G. Barad V/s. Devendrasinh R. Raj.**	Revisional Court can interfere with the order passed in maintenance proceedings, only if it is found that a finding recorded by the Magistrate is perverse.
234	**1994(1) GLR P.886 (Muslim Wife) Arefabanu M. Pathan V/s. Mohmad H. Sheikh.**	Muslim divorced wife. Whether the wife or husband belongs to one particular community or not is wholly irrelevant. Wife has only to show that the husband having sufficient means has neglected or refused to maintain her and this could be done on the basis of her evidence.
235	**1995(2) GLR P.1915 (Priority) Chanchalben P. Patel V/s. Madhukant P. Pate**	Proceedings for maintenance at interim or final stage, must be disposed off on priority basis.
236	**1995(1) GLR P.761**	The endorsement 'unclaimed' on a letter sent by

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	(Endorsement – Unclaimed) Bai Bachiben Velabhai V/s. State.	registered post cannot justify an inference that the addressee had "refused" to accept the letter.
237	**1995(2) GLR P.1679 (Proof of Marriage) Shardaben Vyas V/s. Pankaj Kumar S. Vyas**	***Proof regarding factum of marriage***. Even in absence of proof regarding ceremony of marriage, Court can infer factum of marriage from conduct of parties such as long cohabitation, etc
238	**1995(4) SCC P.137 (Jurisdiction) Darshan Kumari V/s. Surinder Kumar**	***Jurisdiction*** – Even temporary residence if not casual, is sufficient to confer jurisdiction on Magistrate at that place or of the District concerned
239	**1996(3) GLR P.976 (Step-Mother) Kirtikant D. Vadodaria V/s. State.**	Step-mother is not entitled to claim maintenance from her step-son. ***(1991(2) GLR 1281 Overruled.)***
240	**1996(3) GLR P.976 (Step-Mother) Kirtikant D. Vadodaria V/s. State**	A childless step-mother may claim maintenance from his step-son provided she is widow or her husband, if living is also incapable of maintaining her.
241	**. 1996(2) GLR P.683 (Minors - Dismissal) Jayesh R. Popat V/s. Bhartiben J. Popat.**	Magistrate has no power to dismiss an application for default or to restore the application which was dismissed for default, when the application for maintenance is also for minors. In case of default by guardian, Magistrate should appoint some officer of the Court, as guardian of the minor and prosecute the application qua the minor.
242	**1997(2) GLR P.1036 (Decree of Divorce) Koli Gomi Shyamji V/s. Koli Laxman Premji.**	Once decree of divorce is passed, previous decree of restitution becomes insignificant and she is entitled to get maintenance.
243	**1997(3) GLR P.2304 (Step-Mother and Brother) Kardiben V/s. Rajubhai.**	Step-mother has no claim of maintenance against her step-son. A minor has no claim for maintenance against legitimate or illegitimate brother.
244	**1998(1) GLR P.452 (Muslim Wife – Iddat Period) Arab Ahmodbin Abdulla V/s. Arab Bail Mohmunna.**	The Muslim Woman (Protection of Rights on Divorce) Act, 1986, does not say that the husband is liable to pay maintenance to the divorced wife only during the period of 'Iddat'. The liability lasts so long as the woman does not remarry and so long as she is in need of maintenance.
245	**1998(1) GLR P.187 (SC) (Children – M.W.(P) Act) Noorsabu Khatoon V/s. Mohmad Quasim.**	Children of divorced Muslim parents can claim maintenance u/s.125 of the Code of Criminal Procedure
246	**1999(1) GLR P.609 (Muslim Woman) Mumtab Josab V/s. Mahebub V. Pathan.**	***- S.3 of Muslim Woman (Protection) Act.*** In certain circumstances, the criminal Court does not cease to have power to award maintenance to Muslim Women after divorce.
247	**1999(5) SCC P.672 (Default – Imprisonment Maxi. 1 month) Shahada Khatoon V/s. Amjad Ali.**	Non-compliance with order of Magistrate to make payment of maintenance, Magistrate has no power to impose sentence for more than one month
248	**1999(6) SCC P.326 (Prima Facie Case)**	Trial Court to take a prima facie view of the matter and need not go into the matrimonial disputes

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	Rajathi V/s. C. Ganeshan.	between the parties in detail.
249	**1999(6) SCC P.326 (Second Marriage)** **Rajathi V/s. Ganeshan**	Husband living with another woman, wife entitled to live separately and claim maintenance even if she failed to prove her allegation of second marriage by the husband u/s.494, IPC.
250	**1999(7) SCC P.675 (Marriage - Proof)** **Dwarika Prasad V/s. Bidyut Prava Dixit.**	Standard of proof in respect of marriage, is not as strict as is required in a trial for offence of bigamy u/s. 494 of the I.P.Code. Where the establishes fact she and the opponent lived together as husband and wife, a rebuttable presumption arises that they are legally married.
251	**1999(7) SCC P.675 (Paternity - Test)** **Dwarika Prasad V/s. Bidyut Prava Dixit.**	Where the opponent denying paternity of the child but refusing to undergo DNA Test, such a opponent disentitled from disputing paternity.
252	**2000(2) GLR P.1692 (Legal Marriage – Proof)** **Duliben R. Parmar V/s. Ramanlal R. Parmar**	At the time of alleged marriage, wife of the opponent husband was alive and no evidence that the opponent husband obtained divorce from his earlier wife. No evidence that present parties ever lived together as husband and wife. Therefore, the wife is not entitled to get maintenance.
253	**2000(3) GLR P.2456 (Maintenance from Son)** **Mesubhai Odedare V/s. Raniben Odedara.**	If a husband is alive and able to maintain a woman, she cannot claim maintenance from her son also. Maintenance cannot be claimed both u/s.125 and the Hindu Marriage Act.
254	**2001(4) GLR P.3161 (Unmarried Daughter)** **Bhadur D. Desania V/s. State.**	Daughter entitled to maintenance, if unable to maintain herself, till she marries
255	**2002(5) SCC P.422 (Major Girl)** **Jagdish Juglawat V/s. Manjulata**	Though S.125 does not fix liability of parents to maintain children beyond attainment of majority, but right of minor girl for maintenance from parents after attaining majority till her marriage is recognised u/s.20(2) of Hindu Adoption and Maintenance Act. Therefore, on a combined reading of the two provisions, the HC has rightly uphold the order of maintenance passed by the trial Court
256	**2003(1) GLR P.436 (Date of Effect – Reasons)** **Daxaben N. Shah V/s. Nilesh P. Shah.**	Where an application for maintenance from the date of application is filed, but maintenance is granted from the date of order, the proceedings being judicial in nature, reasons must be stated for rejection of the part of the claim.
257	**2005(2) GLR P.1378 (SC) (Guj.) = AIR 2005 P.1809 (SC)** **Savitaben Somabhai Bhatiya V/s. State of Gujarat and others**	***(A) CrPC, 1973, S.125 – Expression 'wife' means legally wedded wife –*** Marriage of a woman in accordance with the Hindu rites with a man having a living spouse "is a complete nullity in the eye of law" – Such a woman is not entitled to the benefit of S.125 of the Code – Question as to whether the woman is "wife" has to be decided with reference to the personal law applicable to the parties – Decision of Gujarat HC affirmed. ***(B) CrPC, 1973, S.125*** – Only legally wedded wife is entitled to

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		maintenance from husband – Provision likely to work harshly against woman – Legislature alone can undo the "inadequacy in law".***(C) Constitution of India, Arts.15(3) and 39 – CrPC, 1973, S.125 –*** Provisions of S.125 are applicable and enforceable "whatever may be personal law by which the persons concerned are governed". ***(D) CrPC, 1973, S.125 – IPC, 1860, S.494 – Standard of proof of marriage in proceedings u/s. 125 of the CrPC*** – Standard is not as strict as required in trial for offence of bigamy – Once, it is admitted that marriage procedure was followed, it is not necessary to further probe whether the procedure was complete as per the religious rites.***(E) Interpretation of Statues – Benevolent statutes*** – Statutes have "Social functions to fulfil" – Faced with two alternative interpretations, Court would adopt the interpretation that advances cause of the weaker sections of society.
258	**1993(1) GLH P.444** **Arunaben V. Davda V/s State of Gujarat.**	***Indian Evidence Act, 1872, S. 106 – CrPC, 1973, S. 125 – Maintenance –*** Income of the husband – Averment of the applicant wife that the husband's i ncome was Rs. 1500/- per month – Since question of income was within special knowledge of the husband, on his failure to prove the income the Court can draw the inference that the husband's income was Rs. 1500/- per month.
259	**2007(1) GLH P.145** **Abdul Razak Haji Gulabbhai Qureshi V/s. Horabhai Haji Kalubhai Qureshi & Anr.**	***CrPC, S.125*** – Maintenance granted to the daughter who was conceived when petitioner-husband had no access to the respondent-wife – Revision filed by husband dismissed on the ground that even an illegitimate minor child is entitled to a reasonable amount of maintenance – Setting aside both orders of lower Courts, held that though the child was born during the period of wedlock but without the father having access to the wife at the relevant time, the child could not have even the status of an illegitimate child of the petitioner – Both the Courts below have lost sight of the word "his" occurring in S.125(1)(b) of CrPC – Petition allowed.
260	Chanmuniya v. Virendra Kumar Singh Kushwaha , Civil Appeal of 2010 arising out of SLP (Civil) No. 15071 of 2009; Decided on 7-10-2010 (SC) [G.S. Singhvi and Asok Kumar Ganguly, JJ.]	MAINTENANCE: Word 'Wife' in Section 125 CrPC There is a divergence of judicial opinion on the interpretation of the word 'wife' in section 125 CrPC. In Yamunabai Anantrao Adhav v. Anantrao, AIR 1988 SC 644, a two Judge Bench of the Supreme Court held that the expression 'wife' in section 125 of the Criminal Procedure Code should be interpreted to mean only a legally wedded wife. Again in a subsequent decision in Savitaben Somabhat Bhatiya v. State of Gujarat , AIR 2005 SC 1809, reiterating the same finding, the Court held that this inadequacy in law can be

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		amended only by the Legislature. Very recently, the Supreme Court has held that in light of the constant change in social attitudes and values, which have been incorporated into the forward-looking Act, Domestic Violence Act of 2005, the same needs to be considered with respect to section 125 CrPC and accordingly, a broad interpretation of the same should be taken. A request has been made to refer the following questions to be decided by a larger Bench: 1. Whether the living together of a man and woman as husband and wife for a considerable period of time would raise the presumption of a valid marriage between them and whether such a presumption would entitle the woman to maintenance under section 125 CrPC. 2. Whether strict proof of marriage is essential for a claim of maintenance under section 125 CrPC having regard to the provisions of the Protection of Women from Domestic Violence Act, 2005. 3. Whether a marriage performed according to customary rites and ceremonies, without strictly fulfilling the requisites of section 7(1) of the Hindu Marriage Act or any other personal law would entitle the woman to maintenance under section 125 CrPC? It has been held that a broad and expansive interpretation should be given to the term 'wife' to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time.
261	***Yamunabai vs Anantrao AIR 1988 SC 644***.	A 'wife' is entitled to maintenance under section 125 ofCr.P.C ; PWDV Act; Hindu Marriage Act; Hindu Adoption and Maintenance Act and The Muslim Women (Protection of Rights On Divorce) Act as the case may be. To claim maintenanance under section 125 of Cr.P.C a Wife must be legally wedded wife of the husband.
262	***Shabana Bano vs. Imran Khan MANU/SC/1859/2009 : (2010) 1 SCC 666,***	it is held that petition Under Section 125 Code of Criminal Procedure would be maintainable so long as applicant/woman does not remarry. The amount of maintenance to be awarded Under Section 125 Code of Criminal Procedure cannot be restricted for the iddat period only.
		the question that is raised for consideration in this case is whether a compromise entered into by husband and wife under Order XXIII Rule 3 of the Code of Civil Procedure, agreeing for a

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		consolidated amount towards permanent alimony, thereby giving up any future claim for maintenance, accepted by the Court in a proceeding under Section 125 of the Code of Criminal Procedure. Would preclude the wife from claiming maintenance in a suit filed under Section 18 of the Hindu Adoption and Maintenance Act , 1956. It is held that Section 25 of the Contract Act provides that any agreement which is opposed to public policy is not enforceable in a Court of Law and such an agreement is void, since the object is unlawful. Proceeding under Section 125 Cr.P.C. is summary in nature and intended to provide a speedy remedy to the wife and any order passed under Section 125 Cr.P.C. by compromise or otherwise cannot foreclose the remedy available to a wife under Section 18(2) of the Act.
263	***Smt Hemalata Karayat vs Vijay Kumar Karayat 2014 CRI.L.J. 4935 (Chhattisgarh High Court)***,	It is held that a already married women cannot claim maintenance from second husband during subsistence of her first marriage.
264	***Shamim Bano vs Asraf Khan 2014 ALLMR (Cri) 2200***	it is held that even application filed under section 3 of the Muslim Women (Protection of Rights On Divorce) Act, Magistrate under the Act has power to grant Maintenance in favour of divorced muslim women under section 125 of Cr. P. C. as parameters are same as stipulated in section 125 of Cr.P.C.
265	***Dwarika Halba .Vs. Savitri Bai and another 2014 CRI.L.J. 4681 (Chhattisgarh High Court)***,	it is held that result of DNA test is scientifically accurate and can be relied upon to determine paternity of child. Therefore, the grant of monthly allowance to illegitimate child is held to be proper by holding the person as biological father based on DNA report.
266	***Jayvardhan Sinh Chapotkat vs. Ajayveer Chapotkat MANU/MH/2581/2014 [Bombay High Court]***	it is held that A major son may not be entitled for maintenance under the Hindu Marriage Act. In the present case, the Petitioner has made out a specific claim for educational expenses which can be availed by him after attaining the age of 18 years. The son/claimant would attain majority as far as age is concerned, however, it would not be the proper age for becoming economically independent so as to earn his living. In the given facts of the case, a major son of the well-educated and economically sound parents can claim educational expenses from his father or mother irrespective of the fact that he has attained majority. It is not maintenance in strict sense as contemplated under Section 125 of the Code of Criminal Procedure or maintenance as contemplated under Section under Hindu Marriage Act.
267	***Rachna Oswald Malhotra -v-***	the Division Bench of our High Court observed that

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	Oswald, 2014 (3) Mh L J 711,	in assessing financial liability one must have regard not only to disclose sources of income but to the true state of affairs as revealed by cross examination.
268	***Jaimini Ben Hirenbhai Vyas and another ..vs.. Hirenbhai Rameshchandra Vyas and another, 2015 All MR. (Cri) 376, Supreme Court*,**	The allowances either can be granted from the date of application or from the date of order. The Division Bench of Hon'ble Apex Court observed in that the Court should record reasons while granting maintenance either from date of order or from date of application.
269	***Sachin Suresh Bodhane vs. Sushma Sachin Bodhane 2015 (1) ABR Criminal 435***	an interim order was passed granting monetary relief the husband had not paid the amount. A non bailable warrant was issued for non payment of interim maintenance. The said order was challenged by husband before Hon'ble High Court. By considering provisions of section 28 of D.V. Act, 125 (3) and 421 of Cr.P.C. As such the first option available to the Magistrate was to issue a warrant for levying fine. If whole of the amount was recovered by adopting the procedure under Section 421 of the Code of Criminal Procedure, the question of putting the defaulter in prison did not arise. In case amount was not recovered or part of it was recovered and part of it was not recovered, then the question would have arisen as to how much sentence should be imposed on the defaulter as per the provision laid down in the Code of Criminal Procedure. The stage of issuing warrant comes only after sentencing and not before that.
THANK YOU		

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