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circumstances so
warrant; and



**ASSIGN
BUSTER**

The court has been empowered to rescind or modify the order at any subsequent stage if the circumstances so warrant; and if petitioner becomes inchoate or remarries at any subsequent stage the court may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just. Sub-section (1) of Section 25 requires that an application must be made by the wife or the husband who is party to the main proceeding, if she or he wants the incidental relief of permanent alimony and such an application may be made in the main proceedings either before or at the time of passing the decree granting substantive relief of divorce or at any time subsequent to the passing of such decree.

“ The relief of permanent alimony being an incidental relief it should not be a matter of any consequence whether the application for it is made prior to passing of the decree or subsequent to it. As a matter of fact, the relief of permanent alimony being a relief incidental to the granting of the substantive relief, it would be more consonant with reason that an application for such incidental relief should be maintainable after the passing of the decree granting the substantive relief. After the amendment of the Hindu Marriage Act in 1976, the scope of the Act has widened and now it is mandatory for the court to grant full opportunity to the parties to substantiate their rival contentions by leading proper evidence. The court should take into account the other circumstances which may influence the grant or refusal of permanent alimony besides considering the income and conduct of the parties. The right to permanent alimony accrues only when a decree has been passed in favour of the petition under Sections 9 to 13. In

case no such decree has been passed in favour of the petitioner, the right to claim any maintenance or alimony is ruled out.

Thus where a petition of the husband is dismissed under any of the sections i. e., Sections 9 to 14 the application for permanent maintenance filed by the wife under Section 25 of the Act will be rejected.

Still the wife could claim maintenance under Section 18(1) of the Hindu Adoption and Maintenance Act, 1956 or under Section 125 of the Criminal Procedure Code, 1973 The court cannot entertain any claim for maintenance in any proceeding under Section 25 of the Hindu Marriage Act, 1955, which are maintainable under Section 18 of the Hindu Adoption and Maintenance Act, 1956. The provisions contained under Section 25 of the Act, are not controlled by Section 18 of the Hindu Adoption and Maintenance Act, 1956. It is not necessary for a wife who has obtained a decree of judicial separation upon finding that the husband has deserted her to prove desertion within the meaning of Section 18(2) (a) of the Hindu Adoption and Maintenance Act.

Section 25 confers a special right on the indigent spouse while the Hindu Adoption and Maintenance Act confers an absolute right. Section 25 cannot be construed in such a manner as to hold that notwithstanding the nullity of marriage, the wife retains her status for purpose of applying for alimony and maintenance. The proper construction of Section 25 would be that where a marriage is admitted to be a nullity, the section will have application. But where the question of nullity is in issue and its contentions the court has to proceed on the assumption until contrary is proved that the applicant is the wife. It is in that sense that Section 25 should be appreciated. Under the

section, permanent alimony can be granted even to an erring spouse and the mere fact that the wife did not comply with the decree for restitution of conjugal rights and that was the cause for passing of a decree against her, cannot by itself disentitle her to claim permanent alimony under this section.

The fact that the wife was a guilty spouse can only be taken as a relevant factor in assessing the conduct of the parties and in determining the amount of permanent alimony. In an important case, *Gulab v. Kamal*, the husband got the decree of divorce against the wife on the ground of misconduct and adultery. The wife moved an application for maintenance under Section 25 of the Act. The court held that a decree passed against the applicant on the ground of unchastity is no bar to his or her claiming maintenance either at the time of passing such decree or any time subsequent thereto.

The court has ample discretion to grant or refuse maintenance and the extent to which to grant the same, depending on the facts and circumstances of each case. But an adulterous conduct on the part of wife subsequent to the order of maintenance in her favour after the decree of divorce is passed would certainly negate her claim to get maintenance allowance in future. In *Patel Dharmshree Premji v. Bai Shankar Kanji*, the Gujarat High Court affirmed the above proposition and held that even a guilty party to a marriage could obtain permanent alimony.

It has further been said that a mother claiming maintenance for herself cannot include the amount of maintenance for her children therein and she must bring a separate suit for the purpose. On the question of reducing the amount of maintenance under Section 25 of the Act in proceedings for

Judicial separation the fact that the wife had been leading an adulterous life would be relevant and significant. Under this section application for permanent alimony can be moved by either party to the marriage. The provision for permanent alimony even after the grant of divorce or decree of nullity is the speciality of the Act. There may be circumstances in which divorce between the spouses could be decreed by the court yet it is felt necessary that some amount of maintenance be fixed. For example, where after the performance of marriage the wife becomes victim of some venereal disease or leprosy and on that ground divorce is decreed in favour of husband, if no permanent arrangement is made for her upkeep and amount of maintenance is not specified for the purpose, her life would become too miserable. Keeping such eventualities in mind the provision for permanent maintenance has been made which is very much desirable and reasonable.

In *Verna Kallia v. Jatinder Nath Kallia* the husband a doctor had settled in foreign country leaving his wife and a marriageable daughter in India. The payment of maintenance was denied by the husband upon the ground that the husband obtained divorce in foreign country to which the wife had acquiesced by accepting the maintenance under foreign judgment. The court held that the foreign judgment of divorce was not binding upon her.

Upon the facts of the case relying the Supreme Court's view given in *Surinder Kaur Sandlin v. Harbax Singh Sandlin*. Further court allowed the decree of divorce in favour of wife upon the ground of cruelty, desertion and adultery since her husband had married in foreign country and was having three children there. Considering the status of parties, their future

necessities, and claim for maintenance by wife for herself and daughter was allowed at the rate of Rs. 10, 000 per month.

Husband was also directed to deposit Rs. 10 lakhs for marriage of his daughter. In *Suresh v. Phoolwanti*, there was decree of judicial separation in favour of husband on the ground of wife's renunciation, as she had become a Brahma Kumari after taking a vow of celibacy as per requirement of the seat. The court also passed an order of permanent alimony in favour of wife at the rate of Rs. 450/- per month. It was said by the court that even though the family life was disrupted on account of the act of the wife yet she was entitled to get permanent maintenance. Simply because the wife had deserted her husband without any lawful excuse ultimately resulting in a decree of divorce against her, she could not be deprived of her right to claim permanent maintenance on that account after the said decree.

But where a decree of judicial separation is passed in favour of the husband followed by a decree of divorce after two years on the ground that during that period the husband had made no effort to compromise and there was in fact no compromise between them, they said omission on his part would be relevant fact to be considered while passing an order of permanent alimony against him. In *Shanta Ram v. Dagoo Devi*, the court held that Section 25 of the Act, confers upon a woman whose marriage is void or is declared to be void, a right of maintenance against her husband. The right of maintenance can be enforced by her not only in proceeding under Section 25 but also in any other proceeding where the validity of her marriage is determined. It can be claimed by her not only during the lifetime of her husband but also after his death against the property of her husband. Of course, his right of

maintenance is available only during her life time and ceases if she remarries. Recently in Babu Shahab v.

Leela Bai, Bombay High Court has given a very important decision on Section 25 of Hindu Marriage Act, 1955. After considering the fact, the Court upholding right of maintenance to “ illegitimate wife” or faithful “ mistress” by liberal construction of word “ wife” as contained in Section 25 of the Hindu Marriage Act cannot be said to be a good law, arc required to be overruled to that extent. The Court observed that illegitimate wife too can claim maintenance.

In Abbayolla M. Subba Reddy v. Padmamma, The court held that if the marriage admittedly is nullity of the Hindu Marriage Act, section 25 of the Act is not applicable, the relief of maintenance cannot be granted. The court is empowered under the section to take note of changed circumstances and vary the amount of maintenance.

In such matters neither the principle of res-judicata nor of estoppel would have any application to frustrate proceedings on the application for increasing the amount of maintenance. It is well recognised in Hindu law that the right of maintenance is a substantive and continuing right and the quantum of maintenance is variable from time to time. Hence the extension of the principle of res-judicata or of estoppel in matters relating to variation of the amount of maintenance is beyond all contemplations and outside the purview of judicial considerations. Under the section the right to permanent maintenance comes to a close in the following circumstances: (1) Where the wife or husband has remarried; (2) Where the wife ceases to remain chaste

and in the case of husband where he develops illicit relations with another woman.