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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 6th August, 2020

+ FAO 369/1996

KUSUM SHARMA Appellant

Through: None.

versus

MAHINDER KUMAR SHARMA Respondent

Through: Mr. Sunil Mittal, Senior Advocate as
Amicus Curiae with Ms. Seema Seth
and Mr. Dhruv Grover, Advocates
Ms. Anu Narula, Advocate as Amicus
Curiae.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T

1. In matrimonial cases, the Court has to ascertain the financial capacity/status of both the parties for fixing maintenance. In many developed countries, the law prescribes a comprehensive format of assets, income and expenditure to be filed by both the parties at the very threshold of matrimonial litigation. However, there is no provision of law in our country for directing the parties to disclose their assets, income and expenditure in a particular format.

2. Vide judgment dated 14th January, 2015, this Court, after considering the *International Best Practices*, issued directions and formulated an affidavit of assets, income and expenditure to be filed by both parties at the very threshold of matrimonial litigation. This Court modified the aforesaid directions and format of assets, income and expenditure vide judgments dated 29th May, 2017 and 06th December, 2017.

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3. In the earlier judgments dated 14th January, 2015; 29th May, 2017 and 06th December, 2017, this Court considered ten affidavits of assets, income and expenditure used in five countries. Fifty more formats of affidavits of assets, income and expenditure of various countries namely U.S.A., U.K., Ireland, Singapore, Canada, Australia and South Africa have now come to the notice of this Court thereby warranting modification of the judgment dated 06th December, 2017.

4. The Family Courts have sent their response/feedback and further suggestions to the working of the guidelines mentioned in the judgment dated 06th December, 2017 which have been considered by this Court. Mr. Sunil Mittal, Senior Advocate and Ms. Anu Narula, Advocate, assisting this Court as amici curiae, have given further suggestions which have also been considered.

5. In *Bhandari Engineers & Builders Pvt. Ltd. v. Maharia Raj Joint Venture*, (2020) 266 DLT 106 (hereinafter referred to as *Bhandari Engineers I*), this Court formulated an affidavit of assets, income and expenditure to be filed by the judgment-debtor in execution cases. Vide judgment dated 05th August, 2020 in *Bhandari Engineers & Builders Pvt. Ltd. v. Maharia Raj Joint Venture* (hereinafter referred to as *Bhandari Engineers II*), this Court modified and improved the format of affidavits of assets, income and expenditure to make it more comprehensive and further directions have been passed so that the execution cases are decided within a period of one year from the date of their institution.

6. The affidavits formulated by this Court in *Bhandari Engineers II* are far more comprehensive than the affidavit formulated by this Court for matrimonial cases. This Court considers it appropriate to incorporate the

benevolent features of *Bhandari Engineers II* in the format of the affidavits of assets, income and expenditure in this case.

7. On careful consideration of the directions issued by this Court in *Bhandari Engineers II; International Best Practices* used in the developed countries; feedback and suggestions of the Family Courts and the suggestions of the learned amici curiae, the directions issued by this Court in judgment dated 18th September, 2014 - (2014) 214 DLT 493 (hereinafter referred to as *Kusum Sharma I*); judgment dated 14th January, 2015 - (2015) 217 DLT 706 (hereinafter referred to as *Kusum Sharma II*); judgment dated 29th May, 2017 - MANU/DE/2406/2017 (hereinafter referred to as *Kusum Sharma III*) and judgment dated 06th December, 2017 - (2018) 246 DLT 1 (hereinafter referred to as *Kusum Sharma IV*), are hereby modified.

8. The modified directions and the modified formats of affidavits of the assets, income and expenditure are as under:

MODIFIED DIRECTIONS

9. Maintenance is not merely a legal right. It is part and parcel of basic human right. For weaker sections, it is a problem in the sense that their very survival rests upon the maintenance. The object of providing maintenance is two-fold: firstly, to prevent vagrancy resulting from strained relations between the husband and wife, and secondly, to ensure that the indigent litigating spouse is not handicapped in defending or prosecuting the case due to want of money. On the breakdown of the marriage, it often so happens that the husband pays nothing for the support of his wife and children and the wife has to fall back upon her parents and relatives to fend for her immediate needs. Reasonableness too demands extension of such a relief in

favour of a needy spouse. Had not the parties drifted away from one another, the spouse, from whom support is sought, would have supported the other spouse entailing financial burden. Hence, it is but natural to make the husband bear the cost of maintaining his wife pending disposal of any dispute until some permanent relief is provided to her.

10. In *Bhuvan Mohan Singh v. Meena*, AIR 2014 SC 2875, the Supreme Court held that any delay in adjudication of maintenance cases by the Family Court is not only against human rights but also against the basic embodiment of dignity of an individual. The object of the provisions for grant of maintenance is to provide speedy remedy for supply of food, clothing and shelter to the deserted wife and to prevent vagrancy and destitution. The observations of the Supreme Court are as under:

—2. The two issues that pronouncedly emanate in this appeal by special leave are whether the Family Court while deciding an application under Section 7 of the Family Court Act, 1984 (for brevity, —the Act) which includes determination of grant of maintenance to the persons as entitled under that provision, should allow adjournments in an extremely liberal manner remaining oblivious of objects and reasons of the Act and also keeping the windows of wisdom closed and the sense of judicial responsiveness suspended to the manifest perceptibility of vagrancy, destitution, impecuniosity, struggle for survival and the emotional fracture, a wife likely to face under these circumstances and further exhibiting absolute insensitivity to her condition, who, after losing support of the husband who has failed to husband the marital status denies the wife to have maintenance for almost nine years as that much time is consumed to decide the lis and, in addition, to restrict the grant of maintenance to the date of order on some kind of individual notion. Both the approaches, as we perceive, not only defeat the command of the legislature but also frustrate the hope of wife and children who are deprived of adequate livelihood and

whose aspirations perish like mushroom and possibly the brief candle of sustenance joins the marathon race of extinction. This delay in adjudication by the Family Court is not only against human rights but also against the basic embodiment of dignity of an individual.

3. Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short —the Code) was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the Court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life —dust unto dust. It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able bodied. There is no escape route unless there is an order from the Court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.

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9. A three-Judge Bench in Vimla (K.) v. Veeraswamy (K.) (1991) 2 SCC 375 while discussing about the basic purpose under Section 125 of the Code, opined that Section 125 of the Code is meant to achieve a social purpose. The object is to

prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife.

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14.....It has come to the notice of the Court that on certain occasions the Family Courts have been granting adjournments in a routine manner as a consequence of which both the parties suffer or, on certain occasions, the wife becomes the worst victim. When such a situation occurs, the purpose of the law gets totally atrophied. The Family Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. When we say this, we do not mean that the Family Courts should show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation. A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before it. It not only gives rise to more family problems but also gradually builds unthinkable and Everestine bitterness. It leads to the cold refrigeration of the hidden feelings, if still left. The delineation of the lis by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to emotional fragmentation and delay can feed it to grow. We hope and trust that the Family Court Judges shall remain alert to this and decide the matters as expeditiously as possible keeping in view the objects and reasons of the Act and the scheme of various provisions pertaining to grant of maintenance, divorce, custody of child, property disputes, etc.¶

(Emphasis Supplied)

11. In **Pratibha Rani v. Suraj Kumar**, (1985) 2 SCC 370, Fazal Ali, J. made the following remarks while dealing with the rights of a women in a matrimonial dispute:-

-Sometimes the law which is meant to impart justice and fair play to the citizens or people of the country is so torn and twisted by a morbid interpretative process that instead of giving

haven to the disappointed and dejected litigants it negatives their well established rights in law. The present case reveals the sad story of a helpless married woman who, having been turned out by her husband without returning her ornaments, money and clothes despite repeated demands, and dishonestly misappropriating the same, seems to have got some relief by the court of the first instance but to her utter dismay and disappointment when she moved the High Court she was forced like a dumb-driven cattle to seek the dilatory remedy of a civil suit-such was the strange and harsh approach of the High Court, with due respect, which seems to have shed all the norms of justice and fair play. Even so, the High Court is not much to be blamed because in the process of following precedents or decisions of doubtful validity of some courts, it tried to follow suit ||

(Emphasis Supplied)

12. In **Sonia Khurana v. State**, (2006) 132 DLT 7, this Court held that maintenance petitions warrant expeditious disposal. The relevant portion of the said judgment is reproduced here under:

—1. *The petitioners are wife and child of the respondent No. 2 herein.*

According to the averments made in this petition, they have been deserted by the respondent No. 2. Petitioners, in these circumstances, have filed an application under Section 125, Cr.P.C. which came up for preliminary hearing on 17.7.2006. The Court of learned MM has issued notice to the respondent No. 2, returnable on 25.5.2007, i.e., to a date which is more than 10 months after the first hearing. It is alleged that the petitioner No. 1 and her Counsel pleaded for a shorter date, but the learned Magistrate refused to accede to this request of the petitioner and, therefore, the petitioners are before this Court.

2. No doubt, the Magistrates are burdened with heavy work and, therefore, normally it becomes difficult for the Magistrates to give short dates. However, that would not justify issuing of notice for a date after 10 months. At the same time, nature of

particular proceedings have to be borne in mind and if in a given case urgent hearing is required, preference is to be given to such case and short dates are to be given. In this case the petitioners state that they are destitutes and without any means of livelihood. It is for this reason that they have filed the proceedings under Section 125, Cr.P.C. they have also prayed for fixation of interim maintenance to get immediate support. Such a plea of the petitioners has to be adjudicated upon by the Courts without any delay and as expeditiously as possible.

3. No doubt, a Judge is supposed to decide the case before him/her according to law. Article 14 of the Constitution of India also stipulates equality before law and there cannot be any discrimination on the ground of sex, caste, religion, etc. Justice is open to all and nobody is disputing that. However, at the same time, we have to recognise that it does not happen in practice; or at least that positive step must be taken to ensure that there is real equality and fairness for all in the justice process. How a Judge arrives at the decision that is the decision making process and how a Judge treats those whose come before him/her are the factors which are as important as the decision itself. Whereas all cases need to be decided expeditiously as speedy justice is a part of right to life' enshrined in Article 21 of the Constitution of India. [see Hussainara Khatoon v. Home Secy., State of Bihar, (1980) 1 SCC 81 : AIR 1979 SC 1360]. Such a need would be much more in the cases of socially and/or economically backward people and the cases raising social issues. The case of destitute wife/child seeking maintenance would definitely fall in this category. Therefore, in a case like this, issuing the notice on the preliminary hearing for a date after 10 months would itself be travesty of justice. More so, when the law also mandates that this aspect has to be considered and to be decided within a period of two months.

(Emphasis Supplied)

13. In **Govindrao Ranoji Musale v. Sou. Anandibai**, AIR 1976 Bom 433, the Bombay High Court observed that Hindu Marriage Act, 1955 is a piece

of social welfare legislation. The relevant portion of the judgment is reproduced hereunder:

-7. ...Secondly, it must be remembered that Hindu Marriage Act, 1955, is a piece of social welfare legislation. One of the admitted aims of this legislation was to better the lot of women in Hindu society, which it was felt by legislature needed amelioration. It was with this end in view that certain rights were conferred on Hindu women by the Hindu Marriage Act as well as certain other measures, like the Act of 1956."

(Emphasis Supplied)

14. In *Geeta Satish Gokarna v. Satish Shankarrao Gokarna*, AIR 2004 Bom 345, the Bombay High Court held that permanent alimony and maintenance are a larger part of the right to life. The relevant portion of the judgment is as under:

—7.....as remarked by Lord Atkin "the wife's right to future maintenance is a matter of public concern which she cannot barter away....

8... ..permanent alimony and maintenance are a larger part of the right to life. These provisions have been included to enable a person unable to maintain herself ||

(Emphasis Supplied)

Relevant Provisions of Hindu Marriage Act, 1955

15. Section 24 of the Hindu Marriage Act empowers the Court to award maintenance *pendente-lite* and litigation expenses to a party who has no independent income sufficient for his/her support in proceedings pending under the Hindu Marriage Act, 1955, having regard to the income of the parties. The Proviso to Section 24 provides that the application under Section 24 shall be disposed of within 60 days of the date of service of notice on the opposite party

16. Section 25 empowers the Court to award permanent alimony and

maintenance to the spouse. The application under Section 25 can be filed either at the time of passing of the decree or at any time subsequent thereto. Section 25 lays down that the Court can direct the non-applicant to pay for maintenance and support of the applicant such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant having regard to the respondent's own income and other property, if any, and the income and other property of the applicant. It further lays down that the Court has also to take into account the conduct of the parties and other circumstances of the case. Sub-Section (2) also provides for the modification or revocation of the order passed under Sub-Section (1) in case of change in the circumstances of the party which were prevailing at the time of passing of the initial order. Sub-Section (3) further provides another contingency when the Court can interfere with the initial order of granting maintenance. Taking these aspects together, there are sufficient guidelines to adjudicate the claim of maintenance.

17. Section 25 is ancillary to the main proceedings under the Act. The limitations upon the exercise of power are contained in the provision itself. This is clarified by the provisions contained in Sub-Section (3) of Section 25 of the Act, where the circumstances in which the alimony is likely to be withdrawn are specified. However, the benefit of the provision is not to be denied to the parties who have suffered the misfortune to have their marriage dissolved by the decree of the Court, merely on account of the passing of the decree. If they are otherwise entitled to the maintenance and it was certainly not the intention of the law that the parties to the dissolved marriage must suffer further misery of starvation without grant of alimony.

18. Section 26 empowers the Court to pass an order with respect to

custody, maintenance and education of the minor children. The proviso to Section 26 provides that the application under Section 26 shall, so far as possible, be disposed of within a period of 60 days from the date of the service of the notice.

19. Section 27 of the Hindu Marriage Act empowers the Court to make provision with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.

20. The Hindu Marriage Act is a complete code which codifies all the rights, liabilities and obligations arising from a matrimonial tie between Hindus. Sections 21-B and 23-A of the Hindu Marriage Act, were added by Marriage Laws (Amendment) Act, 1976 with a view to expedite the trial under the Hindu Marriage Act. Section 21-B (1) requires the trial to continue from day to day until its conclusion. The Trial Court has to record reasons if it finds necessary to adjourn the case beyond the following day. Section 21-B (2) further requires the trial of every petition under the Act to be concluded within a period of six months. Section 23-A permits the respondent to make a counter claim for any relief under the Act.

Burden of Proving the Income

21. In matrimonial cases, the maintenance is claimed on the basis that the claimant has no independent income to support or the income of the claimant is not sufficient to maintain with the same lifestyle as it was before the matrimonial discord.

22. The monthly income of one party may not very often be within the knowledge of the other party, particularly when the relationship is considerably strained and the spouses are living apart for a considerable period.

23. The true income of the parties is within their personal knowledge and Section 106 of the Indian Evidence Act specifically casts the burden of proof of the income on them. Section 106 of the Indian Evidence Act reads as under:

—**Section 106** - *Burden of proving fact especially within knowledge* –

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.¶

24. This Court is of the view that a detailed affidavit of the assets, income and expenditure of both the parties is necessary to determine their true income.

25. The affidavit of assets, liabilities, income and expenditure of the parties is necessary not only to fix the maintenance under Section 24 but also to determine the permanent alimony under Section 25 of the Hindu Marriage Act and right to the joint properties under Section 27 of the Hindu Marriage Act.

Section 10 of Family Courts Act, 1984

26. The Family Courts Act adopts a less formal procedure. Although Section 10 of the Act makes the procedure laid down under the Code of Civil Procedure, 1908 applicable to Family Court proceedings, it also lays down that the Family Court is free to evolve its own rules of procedure.

27. Section 10(3) of the Family Courts Act specifically uses the word ‘*truth*’ and casts a duty on the Family Court to lay down procedure to determine the truth of the facts alleged by one party and denied by the other. Section 10 of the Family Courts Act is reproduced hereunder:

—**Section 10 - Procedure generally**

(1) Subject to the other provisions of this Act and the rules, the

provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings other than proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)], before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973, (2 of 1974), or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

*(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the **truth** of the facts alleged by the one party and denied by the other.¶*

(Emphasis Supplied)

Truth should be the Guiding Star in the Entire Judicial Process

28. It is the duty of the Court to ascertain the true income of the parties and then pass the appropriate order relating to maintenance. Truth is the foundation of justice. Dispensation of justice, based on truth, is an essential feature in the justice delivery system. People would have faith in Courts when truth alone triumphs. The justice based on truth would establish peace in the society.

29. **Krishna Iyer J. in *Jasraj Inder Singh v. Hemraj Multanchand*, (1977) 2 SCC 155** described truth and justice as under:

*—8. ...Truth, like song, is whole, and half-truth can be noise!
Justice is truth, is beauty and the strategy of healing injustice is discovery of the whole truth and harmonising human relations.
Law's finest hour is not in meditating on abstractions but in being the delivery agent of full fairness. This divagation is justified by the need to remind ourselves that the grammar of*

justice according to law is not little litigative solution of isolated problems but resolving the conflict in its wider bearings.¶

(Emphasis Supplied)

30. In ***Union Carbide Corporation v. Union of India***, (1989) 3 SCC 38, the Supreme Court described justice and truth to mean the same. The observations of the Supreme Court are as under:

—30. *...when one speaks of justice and truth, these words mean the same thing to all men whose judgment is uncommitted. Of Truth and Justice, Anatole France said:*

—Truth passes within herself a penetrating force unknown alike to error and falsehood. I say truth and you must understand my meaning. For the beautiful words Truth and Justice need not be defined in order to be understood in their true sense. They bear within them a shining beauty and a heavenly light. I firmly believe in the triumph of truth and justice. That is what upholds me in times of trial .. ¶

(Emphasis Supplied)

31. In ***Mohanlal Shamji Soni v. Union of India***, 1991 Supp (1) SCC 271, the Supreme Court observed that the presiding officer of a Court should not simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost. The presiding officer has a legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice.

32. In ***Chandra Shashi v. Anil Kumar Verma***, (1995) 1 SCC 421, the Supreme Court observed that to enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, pre-variation and motivated falsehoods have to be appropriately

dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in Courts when they would find that truth alone triumphs in Courts.

33. In *Zahira Habibullah Sheikh v. State of Gujarat*, (2006) 3 SCC 374, the Supreme Court observed that right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying existence of Courts of justice.

34. In *Himanshu Singh Sabharwal v. State of Madhya Pradesh*, (2008) 3 SCC 602, the Supreme Court held that the trial should be a search for the truth and not about over technicalities. The Supreme Court's observations are as under:

—5. ... 31. In 1846, in a judgment which Lord Chancellor Selborne would later describe as *‘one of the ablest judgments of one of the ablest judges who ever sat in this Court’*, Vice-Chancellor Knight Bruce said [*Pearse v. Pearse*, (1846) 1 De G&Sm. 12 : 16 LJ Ch 153 : 63 ER 950 : 18 Digest (Repl.) 91, 748] : (De G&Sm. pp. 28-29):

—31. *The discovery and vindication and establishment of truth are main purposes certainly of the existence of courts of justice; still, for the obtaining of these objects, which, however valuable and important, cannot be usefully pursued without moderation, cannot be either usefully or creditably pursued unfairly or gained by unfair means, not every channel is or ought to be open to them. The practical inefficacy of torture is not, I suppose, the most weighty objection to that mode of examination,... Truth, like all other good things, may be loved unwisely—may be pursued too keenly—may cost too much.*

matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth.||

(Emphasis Supplied)

Section 165 of the Indian Evidence Act - Judge's Power to put questions and order production

36. It is the duty of the Court to ascertain the truth and then, do justice on the basis of the truth. Section 165 of the Indian Evidence Act, 1872, invests the Judge with plenary powers to put any question to any witness or party; in any form, at any time, about any fact relevant or irrelevant. Section 165 is intended to arm the Judge with the most extensive power possible for the purpose of getting at the truth. The effect of this Section is that in order to get to the bottom of the matter before it, the Court will be able to look at and inquire into every fact and, thus, possibly acquire valuable indicative evidence which may lead to other evidence strictly relevant and admissible. The Court is not, however, permitted to base its judgment on any, but relevant statements. Section 165 of the Indian Evidence Act, 1872 reads as under:

“Section 165 - Judge's power to put questions or order production

The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149 ; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.¶

37. In *Ved Parkash Kharbanda v. Vimal Bindal*, (2013) 198 DLT 555, this Court discussed the meaning of *'Truth'* and how to discover it. This Court considered *Ram Chander v. State of Haryana*, (1981) 3 SCC 191, *Ritesh Tewari v. State of Uttar Pradesh*, (2010) 10 SCC 677, *Zahira H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158, *State of Rajasthan v. Ani*, (1997) 6 SCC 162, *Mohanlal Shamji Soni v. Union of India*, 1991 Supp. (1) SCC 271, *Jamatraj Kewalji Govani v. State of Maharashtra*, AIR 1968 SC 178, *Sessions Judge Nellore Referring Officer v. Intha Ramana Reddy*, 1972 CriLJ 1485 with respect to the scope of the power under Section 165 of the Indian Evidence Act.

38. **Section 30 of the Code of Civil Procedure - Power to order discovery**
Section 30 of Code of Civil Procedure empowers the Court, either of its own or on the application of any party, to make such orders as may be necessary for the admission of documents and facts, the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence; and any fact to be proved by affidavit. Section 30 of the Code of Civil Procedure reads as under:

Section 30 - Power to order discovery and the like -

—Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,—

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;
- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;
- (c) order any fact to be proved by affidavit.¶

Section 24 of the Hindu Marriage Act, 1955

39. In *Puneet Kaur v. Inderjit Singh Sawhney* (*supra*), this Court, while dealing with Section 24 of the Hindu Marriage Act, directed both the parties to file detailed affidavits of their assets, income and expenditure. The relevant portion of the said judgment is held as under:

—7. ...both the parties are directed to file their respective affidavits of assets, income and expenditure from the date of the marriage up to this date containing the following particulars:—

7.1 Personal Information

- (i) Educational qualifications.
- (ii) Professional qualifications.
- (iii) Present occupation.
- (iv) Particulars of past occupation,
- (v) Members of the family.
 - (a) Dependent.
 - (b) Independent.

7.2 Income

- (i) Salary, if in service.
- (ii) Income from business/profession, if self employed.
- (iii) Particulars of all earnings since marriage.
- (iv) Income from other sources:—
 - (a) Rent.

- (b) Interest on bank deposits and FDRs.*
- (c) Other interest i.e. on loan, deposits, NSC, IVP, KVP, Post Office schemes, PPF etc.*
- (d) Dividends.*
- (e) Income from machinery, plant or furniture let on hire.*
- (f) Gifts and Donations.*
- (g) Profit on sale of movable/immovable assets.*
- (h) Any other income not covered above.*

7.3 Assets

(i) Immovable properties:—

(a) Building in the name of self and its Fair Market Value (FMV):—

- Residential.*
- Commercial.*
- Mortgage.*
- Given on rent.*
- Others.*

(b) Plot/land.

(c) Leasehold property.

(d) Intangible property e.g. patents, trademark, design, goodwill.

(e) Properties in the name of family members/HUF and their FMV.

(ii) Movable properties:—

(a) Furniture and fixtures.

(b) Plant and Machinery.

(c) Livestock.

(d) Vehicles i.e. car, scooter along with their brand and registration number.

(iii) Investments:—

(a) Bank Accounts - Current or Savings.

(b) Demat Accounts.

(c) Cash.

(d) FDRs, NSC, IVP, KVP, Post Office schemes, PPF etc.

(e) Stocks, shares, debentures, bonds, units and mutual funds.

(f) LIC policy.

- (g) *Deposits with Government and Non-Government entities.*
- (h) *Loan given to friends, relatives and others.*
- (i) *Telephone, mobile phone and their numbers.*
- (j) *TV, Fridge, Air Conditioner, etc.*
- (k) *Other household appliances.*
- (l) *Computer, Laptop.*
- (m) *Other electronic gadgets including I-pad etc.*
- (n) *Gold, silver and diamond Jewellery.*
- (o) *Silver Utensils.*
- (p) *Capital in partnership firm, sole proprietorship firm.*
- (q) *Shares in the Company in which Director.*
- (r) *Undivided share in HUF property.*
- (s) *Booking of any plot, flat, membership in Co-op. Group Housing Society.*
- (t) *Other investments not covered by above items.*
- (iv) *Any other assets not covered above.*

7.4 Liabilities

- (i) *OD, CC, Term Loan from bank and other institutions.*
- (ii) *Personal/business loan*
 - (a) *Secured.*
 - (b) *Unsecured.*
- (iii) *Home loan.*
- (iv) *Income Tax, Wealth Tax and Property Tax.*

7.5 Expenditure

- (i) *Rent and maintenance including electricity, water and gas.*
- (ii) *Lease rental, if any asset taken on hire.*
- (iii) *Installment of any house loan, car loan, personal loan, business loan, etc.*
- (iv) *Interest to bank or others.*
- (v) *Education of children including tuition fee.*
- (vi) *Conveyance including fuel, repair and maintenance of vehicle. Also give the average distance travelled every day.*
- (vii) *Premium of LIC, Medi-claim, house and vehicle policy.*
- (viii) *Premium of ULIP, Mutual Fund.*
- (ix) *Contribution to PPF, EPF, approved superannuation fund.*

- (x) Mobile/landline phone bills.*
- (xi) Club subscription and usage, subscription to news papers, periodicals, magazines, etc.*
- (xii) Internet charges/cable charges.*
- (xiii) Household expenses including kitchen, clothing, etc.*
- (xiv) Salary of servants, gardener, watchmen, etc.*
- (xv) Medical/hospitalization expenses.*
- (xvi) Legal/litigation expenses.*
- (xvii) Expenditure on dependent family members.*
- (xviii) Expenditure on entertainment.*
- (xix) Expenditure on travel including outstation/foreign travel, business as well as personal.*
- (xx) Expenditure on construction/renovation and furnishing of residence/office.*
- (xxi) Any other expenditure not covered above.*

7.6 General Information regarding Standard of Living and Lifestyle

- (i) Status of family members.*
- (ii) Credit/debit cards.*
- (iii) Expenditure on marriage including marriage of family members.*
- (iv) Expenditure on family functions including birthday of the children.*
- (v) Expenditure on festivals.*
- (vi) Expenditure on extra-curricular activities.*
- (vii) Destination of honeymoon.*
- (viii) Frequency of travel including outstation/foreign travel, business as well as personal.*
- (ix) Mode of travel in city/outside city.*
- (x) Mode of outstation/foreign travel including type of class.*
- (xi) Category of hotels used for stay, official as well as personal, including type of rooms.*
- (xii) Category of hospitals opted for medical treatment including type of rooms.*
- (xiii) Name of school(s) where the child or children are studying.*
- (xiv) Brand of vehicle, mobile and wrist watch.*
- (xv) Value of jewellery worn.*

- (xvi) Details of residential accommodation.*
- (xvii) Value of gifts received.*
- (xviii) Value of gifts given at family functions.*
- (xix) Value of donations given.*
- (xx) Particulars of credit card/debit card, its limit and usage.*
- (xxi) Average monthly withdrawal from bank.*
- (xxii) Type of restaurant visited for dining out.*
- (xxiii) Membership of clubs, societies and other associations.*
- (xxiv) Brand of alcohol, if consumed.*
- (xxv) Particulars of all pending as well as decided cases including civil, criminal, labour, income tax, excise, property tax, MACT, etc. with parties name.*

8. Both the parties are also directed to file, along with affidavit, copies of the documents relating to their assets, income and expenditure from the date of the marriage up to this date and more particularly the following:—

- (i) Relevant documents with respect to income including Salary certificate, Form 16A, Income Tax Returns, certificate from the employer regarding cost to the company, balance sheet, etc.*
- (ii) Audited accounts, if deponent is running business and otherwise, non-audited accounts i.e. balance sheets, profit and loss account and capital account.*
- (iii) Statement of all bank accounts.*
- (iv) Statement of Demat accounts.*
- (v) Passport.*
- (vi) Credit cards.*
- (vii) Club membership cards.*
- (viii) Frequent Flyer cards.*
- (ix) PAN card.*
- (x) Applications seeking job, in case of unemployed person.*

9. The affidavit and documents be filed within a period of four weeks with an advance copy to opposite parties who shall file their response within two weeks thereafter.

11. Both the parties are directed to remain present in Court on the next date of hearing along with all original documents relating to their assets, income and expenditure.¶

40. In ***Kusum Sharma I*** (judgment dated 18th September, 2014), this Court directed that the petitions/applications relating to maintenance under Hindu Marriage Act; Protection of Women from Domestic Violence Act; Hindu Adoption and Maintenance Act as well as Section 125 Cr.P.C. shall be accompanied with an affidavit of assets, income and expenditure of the parties, which shall contain all the particulars mentioned in para 7 and shall be accompanied by the documents mentioned in para 8 of ***Puneet Kaur (supra)***. The affidavit shall also contain the particulars of the properties mentioned in Section 27 of the Hindu Marriage Act. This Court further directed that if the disposal of maintenance application takes time, and the delay causes hardship, *ad-interim* maintenance should be granted to the claimant spouse on the basis of admitted income of the respondent.

41. In ***Kusum Sharma II*** (judgment dated 14th January, 2015), this Court formulated an format of affidavit of assets, income and expenditure (***Annexure A***) to be filed by both the parties at the threshold of the matrimonial litigation. This Court directed that the parties shall file the affidavit of their assets, income and expenditure in format provided in ***Annexure A***, instead of the affidavit prescribed in ***Puneet Kaur (supra)***. This Court extended this procedure to maintenance cases under Special Marriage Act, 1954 and Indian Divorce Act, 1869 apart from maintenance cases under Hindu Marriage Act, 1955; Protection of Women from Domestic Violence Act, 2005; Hindu Adoption and Maintenance Act, 1956 and Section 125 of Cr.P.C, directed earlier.

42. In *Kusum Sharma III* (judgment dated 29th May, 2017), this Court modified the format of affidavit of assets, income and expenditure to make it more comprehensive. The modified affidavit of assets, income and expenditure is *Annexure A1* to the judgment. This Court extended this procedure to maintenance cases under Guardians and Wards Act, 1890 and under Hindu Minority and Guardianship Act, 1956 apart from maintenance cases under Hindu Marriage Act, 1955; Protection of Women from Domestic Violence Act, 2005; Hindu Adoption and Maintenance Act, 1956; Section 125 of Cr.P.C; Special Marriage Act, 1954 and Indian Divorce Act, 1869 directed earlier.

43. In *Kusum Sharma IV* (judgment dated 06th December, 2017) this Court noticed that the filing of the affidavit of assets, income and expenditure by the parties along with pleadings was giving unfair advantage to the party who files the affidavit later. This Court, therefore, modified the directions by directing the affidavits to be filed simultaneously by both the parties. It was clarified that the affidavit of assets, income and expenditure shall not be filed along with the petition and the written statement, as directed earlier. This Court further improved the format of affidavit of assets, income and expenditure.

44. In this judgment i.e. *Kusum Sharma V*, all the directions issued by this Court in *Kusum Sharma I*, *Kusum Sharma II*, *Kusum Sharma III* and *Kusum Sharma IV* are being consolidated and the format of the affidavit of assets, income and expenditure is being made further comprehensive. The modified format of affidavit of assets, income and expenditure is *Annexure A2* to this judgment.

45. In *Shalu Ojha v. Prashant Ojha*, (2018) 8 SCC 452, the Supreme Court directed the petitioner to file the affidavit of her income in the format prescribed in *Kusum Sharma II*.

46. In *Joginder Singh v. Rita*, MANU/PH/1335/2019, the Punjab & Haryana High Court directed that the principles laid down by this Court in *Kusum Sharma III* be followed by all Courts in Punjab, Haryana and Chandigarh.

47. In *Jaspreet Singh v. Gurleen Kaur*, 2020 SCC OnLine P&H 55: (2020) 1 HLR 1, the Punjab & Haryana High Court held that the affidavit of assets, income and expenditure formulated in *Kusum Sharma IV* is very comprehensive to ascertain all possible sources of income, apart from ascertaining the financial status from the expenditure of the parties. The Court directed the procedure laid down in *Kusum Sharma IV* be followed by all Courts in Punjab, Haryana and Chandigarh. Relevant portion of the said judgment is as under:-

—19. A perusal of the above reproduced format of —Affidavit of assets, income and expenditure\ would show that a very detailed and comprehensive format has been prepared which virtually takes into account almost all the possible sources of income. Apart from sources of income, the financial status of a party can well be gauged from the expenditure incurred by such party. The chances of reaching at a more accurate assessment regarding the financial status are increased in case the proper information regarding expenditure is there which could take care of a situation where specific sources of income are not forthcoming. The format Annexure A-1, reproduced above also defines the details of expenditure which would normally be incurred by the parties.

20. Although in the first blush the aforesaid format may appear to be a bit too comprehensive and detailed but it would certainly serve the purpose effectively for which it has been prescribed. The learned counsel have informed that pursuant to the directions

issued by Delhi High Court Kusum Sharma's case in the year 2014, the Family Courts in Delhi are adhering to the practice of insisting upon the parties to furnish —Affidavits of assets income and expenditure\ and the said practice has yielded the desired results.

21. The best practices should always be followed particularly if the same are for furtherance of efficient and effective justice dispensation. Furnishing of such affidavits would check the practice of playing —hide and seek\ game in such cases where an attempt is made by a party to conceal the income and not come out with resources forcing the other party to make tiring efforts to collect information which would otherwise be readily available with such party. Sometimes the information is such the existence of which, a party can not even deny. As discussed above, the Courts handling such matters, particularly Family Courts, are competent to devise their own procedure for eliciting requisite information, though of course within the broad framework of law.

22. Consequently, the following directions are issued to Family Courts in the States of Punjab, Haryana and Union Territory of Chandigarh and also to all Courts handling matrimonial litigation in the said states:

(i) the Courts shall insist upon the parties to furnish —Affidavit of assets, income and expenditure\ in the format reproduced above;

(ii) the Courts shall generally follow the directions issued in Kusum Sharma's case, as have been reproduced above;

(iii) the Courts would be at liberty to modify the format and the directions as may be deemed necessary in the facts and circumstances of the case;

(iv) in exceptional cases, the Court may also dispense with the aforesaid requirement of furnishing affidavits especially in cases where the parties belong to the lowest strata of society and are absolutely not likely to be possessed of the sources detailed in the format or where the Court is of the opinion that directing the party to furnish such affidavit would cause unnecessary inconvenience to the party and is not likely to render any fruitful purpose;

(v) in case it is found that any of the party is making a deliberate attempt to conceal vital information or is trying to mislead the Court, then apart from the penal action which may be warranted

on account of such concealment/false statement, it shall be open to the Court to consider drawing an adverse inference against such party if the conduct of such party so warrants;

(vi) these guidelines be followed in all matrimonial cases including cases under Hindu Marriage Act, 1955, Protection of Women From Domestic Violence Act, 2005, Section 125 Cr.P.C, Hindu Adoption and Maintenance Act, 1956, Special Marriage Act, 1954, Indian Divorce Act, 1869, Guardians and Wards Act, 1890 and Hindu Minority and Guardianship Act, 1956.

(vii) the Courts concerned may also issue directions to the parties with regard to filing of requisite affidavits even in pending cases in case it is felt that the parties are not forthcoming with the requisite information with regard to their sources of income;

(viii) the Courts would be competent to issue any direction at any stage of the proceedings to any of the parties to elicit such information as may be required to reach at a just decision in the matter pertaining to award of maintenance;

(ix) in case it is found that requisite information as regards resources of any of the parties is not forthcoming, the Courts could even consider appointment of a local commissioner to visit the place of abode or business of any of the parties so as to get an idea about the standard of living and social status of the parties.

23. As already indicated above, the trial Courts concerned would be at liberty to suitably modify any of the aforesaid directions for reaching at a just decision and to achieve the underlying purpose of the beneficial provisions of social legislation. The Registrar General of this Court shall ensure that a copy of this judgement is conveyed to all the District and Sessions Judges in States of Punjab and Haryana and also Union Territory of Chandigarh who shall further circulate the same to all Judicial Officers working in their respective Sessions Divisions. A copy of this judgement be also sent to the Director, Chandigarh Judicial Academy so as to apprise the newly recruited Judicial Officers undergoing training, about the aforesaid guidelines.¶

48. In Civil Revision No.596 of 2020 titled ***Bavneet Kaur v. Aman*** decided on 28th January, 2020, the Punjab & Haryana High Court, after

referring to *Jaspreet Singh* (*supra*), held that the guidelines issued by this Court are salutary.

49. In Writ Petition No. 4118 of 2018 titled *Preeti Rani v. Giriraj Girdhar Dammani*, on 04th February, 2019, the Bombay High Court noted the directions of *Kusum Sharma II* and of the Supreme Court in *Shalu Ojha* (*supra*).

50. In *Shanmugasundaram v. Sudha*, (2018) 2 MWN (Civil) 329, the Division Bench of Madras High Court held that the procedure laid down by this Court in *Kusum Sharma II* should be applied by all Courts. Relevant portion of the said judgment is reproduced hereunder:-

—8. *In order to save time and ensure timely justice, the Courts need to follow expeditious methods. At this juncture, it would be appropriate to highlight the guidelines issued by the Delhi High Court in cases filed seeking maintenance, reported in AIR 2015 Delhi 53 (Kusum Sharma v. Mahinder Kumar Sharma) in which, the Honourable Justice J.R. Midha directed that, detailed affidavits, along with copies of relevant documents, have to be submitted by both parties, at the time of divorce proceedings, so that maintenance orders can be passed by courts within 60 days of the divorce proceeding being initiated on the basis of —true income*¶.

8.1. *The court held, —Maintenance is not merely a legal right, it is part and parcel of basic human rights. For weaker sections, it is a problem in the sense that their very survival rests on the maintenance*¶ while adding that —lengthy trial in matrimonial proceedings is uncalled for and contrary to the spirit of the Hindu Marriage Act¶.

8.2. *Directing all family courts to ensure that the affidavits are filed, the Court said the directions were —necessitated, because the parties in the matrimonial litigation do not disclose their true income and the claims of maintenance are dragged up to two years and the court, finding it difficult to determine the true income, tends to fix maintenance by drawing presumptions*¶.

8.3. *The documents which are identified for submission along with the affidavit includes copies of bank account statements of all accounts for the past three years, income tax returns along with statement of income for three years, wealth tax returns, cost to company certificate, CIBIL certificate, balance sheets and profit and loss accounts of companies, lease deeds and dividend certificates. Details of –lifestyle indicators like number of domestic helps, mode of travel and category of hotels used for stay also have to be submitted with the affidavit.*

8.4. *The court even directed that, —the aforesaid procedure be followed in all cases relating to maintenance, including cases under the Hindu Marriage Act, 1955, Protection of Women from Domestic Violence Act, 2005, Hindu Adoption and Maintenance Act, 1956, Special Marriage Act, 1954, The Indian Divorce Act, 1869 as well as Section 125 Cr.P.C.*

8.5. *The Court has directed family courts to remain vigilant to ensure that the affidavit —is not reduced to mere ritual and to —scrutinize the affidavit threadbare.*

9. This is high time that the procedure as suggested by the Delhi High Court is a model to be emulated by all the Courts dealing with matrimonial disputes, as a worthy specimen.

(Emphasis Supplied)

Section 25 of the Hindu Marriage Act, 1955

51. In *B.P. Achala Anand v. S. Appi Reddy*, (2005) 3 SCC 313, the Supreme Court observed that on the dissolution of marriage by a decree of divorce, the rights of the divorced wife are confined to Sections 25 and 27 of the Act. The relevant portion of the said judgment is reproduced hereunder:-

-29. ... Section 25 enables the court to pass an order for providing alimony and maintenance in favour of the divorced wife. Section 27 enables the court to make provisions in the decree in respect of a property that may belong to the wife or to both. On the status of wife being terminated by a decree for divorce under the Hindu Marriage Act, the rights of the divorced wife seem to be cribbed, confined and cabined by the

provisions of the Hindu Marriage Act and to the rights available under Sections 25 and 27 of the Act.||

(Emphasis Supplied)

52. In **Vinny Parmvir Parmar v. Parmvir Parmar**, (2011) 13 SCC 112, the Supreme Court laid down broad principles for determining permanent alimony. The relevant portion of the said judgment is as under:

-12. As per Section 25, while considering the claim for permanent alimony and maintenance of either spouse, the Respondent's own income and other property, and the income and other property of the applicant are all relevant material in addition to the conduct of the parties and other circumstances of the case. It is further seen that the court considering such claim has to consider all the above relevant materials and determine the amount which is to be just for living standard. No fixed formula can be laid for fixing the amount of maintenance. It has to be in the nature of things which depend on various facts and circumstances of each case. The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay, having regard to reasonable expenses for his own maintenance and others whom he is obliged to maintain under the law and statute. The courts also have to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and mode of life she was used to live when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party. These are all the broad principles courts have to be kept (sic keep) in mind while determining maintenance or permanent alimony.||

53. In **Vidhya Viswanathan v. Kartik Balakrishnan**, (2014) 15 SCC 21, the Supreme Court, while affirming the decree of divorce, awarded permanent alimony of Rs.40,00,000/- to the wife under Section 25 of the Hindu Marriage Act. The Supreme Court took into consideration that wife

was not working and would not be able to maintain herself. The relevant portion of the said judgment is reproduced hereunder:

—14. In view of the above principle of law laid down by this Court, and having considered the submissions of parties, and the evidence on record, we do not find any ground to interfere with the decree of divorce passed by the High Court on the ground of cruelty. However, we are conscious of the fact that the Appellant, as stated by her, was doing a job before her marriage, and she (Vidhya Vishwanathan) has stated as D.W.1 that at present she is not doing any work. As such we think it just and proper to direct the Respondent to pay to the Appellant (wife) one time lump sum amount of alimony. We are of the view that in the facts and circumstances of the case keeping in mind the economic status of the parties, a direction to the Respondent to pay Rs. 40 lakhs (Rupees forty lakhs only) as one time alimony to the Appellant, would meet the ends of justice, to which learned Counsel for the Respondent during the arguments stated that the Respondent is ready to pay the same.

15. Accordingly, we dispose of this appeal affirming the decree of divorce granted by the High Court dissolving the marriage between the parties namely Karthik Balakrishnan and Vidhya Vishwanathan, with further direction under Section 25 of the Hindu Marriage Act, 1955 that the Respondent shall pay to the Appellant Rs. 40 lakhs (Rupees forty lakhs only) as a lump sum amount of permanent alimony, within a period of three months from the date of this judgment. No order as to costs.¶

(Emphasis Supplied)

54. In *Chandrika v. Vijayakumar*, 1996 (1) CTC 496, the Family Court dissolved the marriage by a decree of divorce which was challenged by the wife on various grounds inter alia that the Family Court did not even award permanent alimony to the wife and the child. Although no application was filed under Section 25 of the Hindu Marriage Act, the Madras High Court held that the Court is competent to award permanent alimony even without

any proper application. The Madras High Court confirmed the decree of divorce but granted permanent alimony to the wife and minor child. P. Sathasivam, J., as he then was, held as under:-

-13. The learned counsel for the appellant finally contended that in spite of desertion by the wife, she is entitled maintenance for herself and for her child. The court below rejected the request of the wife regarding maintenance on the simple ground that there has been no claim either for maintenance or for custody of the child. It is true that as per Section 25 of the Hindu Marriage Act, 1955, on application made to the Court either by the wife or by the husband, the Court may pass an order of maintenance at the time of passing decree for divorce. Even though section 25 says that the maintenance amount has to be fixed on the basis of an application, even without an application, on the basis of oral request, it is open to the court below to pass an order for maintenance to either party. In support of the above proposition, the learned counsel for the appellant relied upon Jayakrishna Panigrahi v. Surekha panigrahi (AIR 1996 A.P. 19). In the said judgment, the Division Bench of the Andhra Pradesh High Court has held that

—Despite the dissolution of marriage at the instance of husband, it would also be a fit case to grant maintenance to the wife, even in absence of formal application before the court.||

(emphasis supplied)

In 1995 1 M.L.J. Page 624 Chandra Rajan v. Radha alias Mahalakshmi Raju, J., while interpreting sections 24 and 25 of the Hindu Marriage Act, has held that,

—The provision of Sections 25 confer an enabling power upon the court itself while granting divorce or judicial separation to also pass an order for the maintenance of the wife. The contemplated application as noticed supra to be made by such parties has to be limited and confined to the case when the court, while disposing of the main

petition has not thought of passing an order for grant of maintenance and was silent on the said issue and not otherwise, becomes essential or necessary to separately make an application even when the court chooses to decide about the same as part of the main petition, particularly as in this case by also disposing of simultaneously an application filed by the wife for maintenance along with main petition for divorce.¶

In the said case an objection was taken that without an application for permanent alimony and maintenance the court has no power to order payment under section 25. After reading the provisions contained in section 24 of the Act along side with section 25, Raju, J., has held that,

—The plea taken for the petitioner that unless a separate application is... be in during the course or at the time of passing the decree also filed for permanent alimony and maintenance, the Court could not have ordered for the payment under section 25 of the Act is incorrect.¶

We are also in entire agreement with the view expressed by the learned Judge in the said judgment. The conjoint reading of sections 24 and 25 of the Act clearly shows that during the disposal of the main petition for divorce, it is open to the Court to pass appropriate orders for alimony or maintenance even without any proper application. It is brought to our notice by the learned counsel for the appellant that during the course of arguments, both parties have filed written submissions before the Family Court for the convenience of the court. In the written submissions filed by the wife/respondent before the Family Court, there is a specific plea for maintenance for herself and for her minor son aged about 11 years. We have also perused the same and the necessary contentions are there in para 6 of the written submissions filed by the wife. Hence, in view of the above fact as well as the law enunciated in the above referred decisions we are of the opinion that the wife and minor child are entitled for maintenance.¶

(Emphasis Supplied)

55. In *Umarani v. D. Vivekannandan*, 2000 (2) CTC 449, the Madras High Court held that a written application is not mandatory and the permanent alimony can be awarded even on an oral prayer. The relevant portion of the said judgment is reproduced hereunder:-

-10. It is true that Section 25 of the Act contemplates an application for the said purpose. When the lower court has not disposed of Section 24 application in time and has disposed of along with the main application, it should have disposed of the application under Section 25 also. Therefore, one more litigation could be avoided and on the basis of very same order, the maintenance could be provided for the wife and child. From the conduct of the respondent, it is clear that he will not pay the maintenance which is legally due to the petitioner. Under these circumstances, asking the petitioner to file another application under Section 25 or asking to file a separate suit and again seeking indulgence of the Court below will be harsh. The Act also does not say that there should be a written application. It only says that an application made to it. It can also be on the basis of oral application. Under these circumstances, I feel that the order of the lower court requires modification when the averments in the affidavit remain unchallenged. ||

(Emphasis Supplied)

56. In *Ritula Singh v. Rajeshwar Singh*, 2010 (4) Mah.L.J 797, the Bombay High Court examined the scope of Sections 24 and 25 of the Act and held as under:

-10. The distinction between the law laid down under Sections 24 and 25 of the Hindu Marriage Act is distinct and clear. It is so because of the specific circumstances that the Court would require to see at the time of each of these applications. It may be clarified that for considering the application for interim maintenance under Section 24 of the Hindu Marriage Act, which is decided upon affidavits of the parties alone, the Court cannot and would not consider the precise income, standard of living, conduct of the parties, other properties and other

circumstances of the case. The amount that would have to be granted for the maintenance of the wife would be for her support and necessary expenses of the proceedings. That amount would be granted if she does not have income sufficient for her support and necessary expenses of the proceedings. The ambit for grant of interim maintenance under Section 24 is, therefore, far narrower than the ambit under Section 25. It is the distinction between the two sections which is required to be understood for the Court to grant the maintenance amounts thereunder.

11. Under Section 25 of the Hindu Marriage Act as aforesaid, the entire evidence relating to the income, properties of both the parties and their conduct and circumstances would be and can be seen. That is because the evidence is led in that behalf at the time of final hearing.

(Emphasis Supplied)

57. In *Silla Jagannadha Prasad @ Ramu v. Silla Lalitha Kumar*, AIR 1989 AP 8, the Andhra Pradesh High Court held that a respondent can invoke Section 25 by filing a counter claim under Section 23-A of the Act. The relevant portion of the said judgment is reproduced hereunder:-

-8. ... This Section enables the opposite party not only to oppose the relief of divorce, judicial separation or restitution of conjugal rights, but also to make a counter claim for any relief under the Act..... The words used are —any relief which include a relief under Section 25 and if the opposite party makes a counter-claim for the relief under Section 25 while opposing the petitioners claim for divorce this Section empowers the Court to grant such relief. The word —any relief occurring in Section 23-A has been held to include not only the reliefs mentioned in Sections 9 to 13, but also a relief under Section 25 of the Hindu Marriage Act.

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10. The intention of the legislature is clear that inasmuch as the matrimonial Court has been seized of the matter and has gone into the merits of the controversy between the parties and know

who had committed the wrong and where the justice lay should be empowered to make an order of permanent alimony.... ॥

(Emphasis Supplied)

Section 27 of the Hindu Marriage Act, 1955

58. In ***Balkrishna Ramchandra Kadam v. Sangeeta Balkrishna Kadam***, (1997) 7 SCC 500, the Supreme Court held that Section 27 provides an alternative remedy to the wife to recover the property covered by Section 27 to avoid further litigation. The relevant portion of the judgment is as under:

-10. On a plain reading of the Section, it becomes obvious that the matrimonial court trying any proceedings under the Hindu Marriage Act, 1955, has the jurisdiction to make such provision in the decree as it deems just and proper with respect to any property presented —at or about the time of marriage ॥ which may belong jointly to both the husband and the wife. This Section provides an alternate remedy to the wife so that she can recover the property which is covered by the Section, by including it in the decree in the matrimonial proceedings, without having to take recourse to the filing of a separate Civil Suit and avoid further litigation. In the instant case, we find that the wife had laid claim to certain items of jewellery and in her deposition, she had mentioned the items of jewellery which she had received —at or about the time of her marriage ॥ and, in particular, had mentioned the items of jewellery which were given to her by her father at the time of the marriage.

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13. In our opinion, the courts have not gone into the question in its correct perspective. The trial court proceeded to negative the claim of the respondent-wife by holding that the court had no jurisdiction to deal with the property rights of the parties and gave no opportunity to the parties to lead evidence in support of their respective claims. The finding of the trial court clearly overlooked the provisions of Section 27 of the Hindu Marriage Act which unmistakably vests the jurisdiction in the court to pass an order, at the time of passing a decree in a

matrimonial cause, in respect of the property presented, at or about the time of marriage, which may belong jointly to the husband and the wife. The learned Single Judge also fell in complete error while concurring with the view of the trial court to say that there was no evidence on the record to show that the property claimed by the wife was presented to her at the time of her marriage. The learned Single Judge failed to take notice of the deposition of the respondent in that behalf. Moreover, the property, as contemplated by Section 27 is not the property which is given to the wife at the time of marriage only. It includes the property given to the parties before or after marriage also, so long as it is relatable to the marriage. The expression —at or about the time of marriage‖ has to be properly construed to include such property which is given at the time of marriage as also the property given before or after marriage to the parties to become their —joint property‖, implying thereby that the property can be traced to have connection with the marriage. All such property is covered by Section 27 of the Act.‖

(Emphasis Supplied)

59. In *Pratibha Rani v. Suraj Kumar* (*supra*), the Supreme Court held that Section 27 of the Hindu Marriage Act provides an alternative remedy to the wife. Section 27 of the Hindu Marriage Act empowers a Court, while deciding a matrimonial dispute, to also pass a decree in respect of joint properties of husband and wife. This section provides a civil remedy to an aggrieved wife and does not, in any way, take away her right to file a criminal complaint if the property belonging to her is criminally misappropriated by her husband.

60. In *Sangeeta v. Sanjay Bansal*, AIR 2001 Delhi 267, the Division Bench of this Court examined the scope of Section 27 and held as under:-

-5. The Section empowers the Court to make such provision in the decree in respect of property presented at or about the time

of marriage, which may belong jointly to both, husband and wife. The expression, —presented at or about the time of marriage suggests that such property must be connected with marriage and then it naturally comes to belong to both parties because all marks/areas of distinction/division are obliterated by the marriage. ॥

61. In *Nandani Sanjiv Ahuja v. Sanjiv Birsan Ahuja*, AIR 1988 Bom 239, the Bombay High Court held that Section 27 provides for sharing of properties received by the spouses, individually or collectively as presents at or about the time of marriage and which has come to be as a way of life in their joint use in their day-to-day living and thus may belong jointly to them. Such joint belongings require the attention of Court for proper apportionment. The relevant portion of the judgment is as under:

–8. ...Whereas Section 27 deals with the property belonging to the spouses, Section 26 deals with their children and section 25 with permanent alimony and maintenance that may be awarded in favour of a party. The power of the Court to pass an order under these sections is discretionary. Obviously the object in enacting these sections is to ensure severance in possibly all respects between those spouses, who, as the court thinks, cannot live together. The intention behind framing these sections is to make every possible attempt to settle all possible disputes between such spouses and that too once for all so that there should not be again an opportunity to enter into fresh litigation with each other. Section 27 does not envisage deciding any question as to the title of the property involved therein. Keeping in view the above legislative intent and the plain language used in section 27 the principles that emerge therefrom are as follows:—

(i) The power of the matrimonial Court is discretionary and it is not incumbent on the Court to make provision in the decree with regard to disposal of the property.

(ii) It must be a matrimonial proceeding pending under the Act and an application for disposal of the property must be made

before the decision of the proceeding.

(iii) The provision to be made must be just and proper as the Court deems having regard to the adjustment of equities between the parties and surrounding circumstances.

(iv) The property contemplated must be such as was presented at a time or stage which is in close proximity of the marriage, whether presented before or after the marriage.

(v) The property so presented may either be to the wife, husband or both and at the time the Court is required to exercise discretion the property may belong jointly to both the husband and the wife.¶

(Emphasis Supplied)

62. In *Surinder Kaur v. Madan Gopal Singh*, AIR 1980 P&H 334, the Punjab and Haryana High Court examined the scope of Section 27 and held as under:

-This first appeal involves the problems of salvage of a broken marriage. To what extent can the matrimonial Court indulge in the rescue operation and the sphere of its activity is the point of a combat between the warring divorced spouses involving disposal of property.

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4. It would seem that the object of studding this section in the fabric of the Hindu Marriage Act is intended to pass consequential orders in relation to certain properties between the parties while dealing with any proceedings under the Act and to make provision of the nature in the decree to be passed in those proceedings. Obviously, an application for the purpose must be made before the proceedings terminate and the order can be made at the time of the passing of the decree. The sequence in which the said section appears in the statute is, after the provision for the passage of decree in section 23 of the Act and then to provide remedially as well in the terms of granting permanent alimony and maintenance under section 25, deciding the custody of the children under section 26 and to dispose of property jointly belonging to both the husband and the wife under section 27, so as to ameliorate the lot of the

spouse or spouses left bruised by a broken or a shattered marriage. It would also seem that section 27 does not envisage deciding any question as to the title of the property involved therein or extending to all the properties of the spouses. It is couched in such a language so as to narrow its ambit within a small sphere. Analytically, the section pours out the following principles:—

(i) It must be a matrimonial proceeding pending under the Act before the Court and an application for disposal of property must be made before the decision of the proceeding;

(ii) it is not incumbent on the Court to make provision in the decree with regard to disposal of property and it is left to its judicial discretion;

(iii) the provision so made, if any, must be just and proper as the Court deems having regard to the adjustment of the equities between the parties and all surrounding material circumstances;

(iv) the order would envelope only that property which was presented at or about the time of the marriage, which means not only presented at the marriage but also at a time either prior to or after the marriage. That must be in close proximity of the time of the marriage and not to those made outside the extending limit of that time;

(v) the property so presented may either be to the wife or the husband or both; and

(vi) at the time the Court is required to exercise its discretion, the property may belong jointly to both the husband and the wife.

5. Now it is well understood that the word –belong|| necessarily does not reflect title to the property in the sense of ownership. It only denotes connection with property land is a term connecting a person with his possessions. It appears to me that the property thus presented to the spouses within the afore-explained time limit, may fall jointly to belong to both the husband and the wife, irrespective of the title in those properties to be vesting in one or the other, or both. To give an earthly example, a saree presented by the husband, or anyone else to the wife, may or may not involve transfer of title to the

saree to the wife, but will belong to her exclusively and not jointly to both the husband and the wife, as the very nature of the garment so suggests. Similarly, a suit presented to the husband in the same fashion would be exclusively belonging to the husband. Properties and articles presented from any source and to any one of them which by the very nature of the present or by intention of the donor, or by tacit agreement of spouses, has come to be jointly in use by both the husband and the wife, can well be said to belong jointly to both of them. An earthly example of such incident can be that of a set of dining table and chairs for joint user in the matrimonial home irrespective of the fact as to which spouse received it as a present within that allocated time. The said dining table and chairs would obviously be joint belonging of both the husband and the wife and capable of being subjected to orders under section 27 of the Act.

6. If any parity is permissible, it can be drawn with the principle underlying section 25 of the Act. Each spouse's earning capacity and other property, despite title thereto, is taken into account while equitably apportioning the income of both the spouse's in such a manner so as to keep the less provided one adequately maintained at the cost of the other having regard to their post-marital social status. In the same way, section 27 of the Act provides for sharing of that property which the spouses received individually or collectively as presents, at or about the time of the marriage and which had come to be, as a way of life, in their joint use in their day to day living and thus 'belongs' for the purpose. If matrimony is disrupted, such jointly belonging articles would require the attention of the Court to be apportioned between the spouses as measure of remedial relief.

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12. It took more than five years to finalise the proceedings before the Court below. Such lengthy trial in a matrimonial matter is uncalled for and contrary to the spirit of the Hindu Marriage Act as amended. Matrimonial jurisdiction is of a special nature and deserves special attention. Relegating such proceedings to the position of ordinary civil proceedings would

not only frustrate the object of the legislation but would lead to sorrowful results. In India where Hindu Marriage is by and large arranged by others than the spouses themselves, its breakage causes ripples in members of the society. It is one of the reasons why most of the judgments rendered by matrimonial Courts, which fall squarely within section 41 of the Indian Evidence Act, are judgments in rem affecting the world at large. If a contested issue of disposal of property were to engage the attention of the matrimonial Court predominating other proceedings regarding which decree is sought, then the decision cannot be rendered with promptitude. The disposal of property as envisaged under section 27 can only become part of the decree, subject to other conditions fulfilling, if it is capable of being settled without consuming much time so as not to entail delay in passage of the decree. But if the Court finds itself confronted with regular contest from the tenor of pleadings, the divergence of views and the anticipated quantity of evidence, it would well be within its right to refuse passing orders regarding disposal of property as a part of the decree. The disposal of property matter cannot outweigh the main proceedings before the Court regarding which it is required to pass a decree.”

(Emphasis Supplied)

International Best Practices

63. This Court has examined the formats of the affidavits of assets, income and expenditure to be filed by the parties in matrimonial litigation in United Kingdom, United States of America, Canada, Ireland, Australia, Singapore and South Africa. However, this Court has incorporated only important questions and documents to keep the format concise and precise. The Courts below are at liberty to consider the following formats used in various countries and to direct the parties to disclose further relevant facts and documents as may be considered necessary to determine the true assets, income and expenditure of the parties. The relevant particulars of the

formats in the other countries are as under:-

<u>S.No.</u>	<u>Country</u>	<u>Place/ Authority</u>	<u>Statue/ Applicable Rules</u>	<u>Form/Annexure /Appendix/ Affidavit</u>
1.	U.K.	Royal Court of Justice	Family Procedure Rules Practice Direction 5A – Forms Part - 9 Applications for a Financial Remedy Form - E Financial statement (01.16)	Form - E Financial Statement
2.	Ireland	Circuit Court (Ireland)	Circuit Court Rules (Family Law), 2018 [S.I. No. 427/2018] Rules – 8,42,43 Family Law Act 1995	Schedule of Forms Form: 37A Affidavit of Means
3.	Australia	Family Court of Australia	Family Law Rules - Rule 13.05 Federal Circuit Court Rules - Rule 24.02	Financial Statement
4.	Australia	Family Court of Australia	Principal Registrar pursuant to Sub-rule 12.06(2) [01-03-09] V3	Balance Sheet
5.	Singapore	Family Justice Courts of Singapore	Family Justice Rules, 2014 Family Justice Rules Rule 89 Family Justice Courts Practice Directions (w.e.f. 1 st January 2015) Part VI – Proceedings for the Dissolution of Marriage under Part X of Women's Charter Rule 21 – Affidavit of Assets and Means	Form 206 Affidavit of Assets and Means
6.	Republic of South Africa	Department of Justice and Constitutional Development, Republic of South Africa	The Maintenance Act, 1998 Chapter - 3 Maintenance Enquiries Complaints relating to maintenance - § 6(1)(b)	Form A [J101] Application for Maintenance Order

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7.	Canada	Victoria, British Columbia, Canada	Supreme Court Family Rules, British Columbia Regulations 169/2009 Form F8 (Rule 5-1 and 7-1 (8), 10) and (11)) [B.C. Reg. 133/2012, §. 31.]	Form F8 - Financial Statement
8.	Canada	Victoria, British Columbia, Canada	Supreme Court Family Rules, British Columbia Regulations 169/2009 Division 3 - Procedure for Applications for Final Orders Rule 10-10 - Final Orders in Undefended Family Law Cases	Form F37 - Child Support Affidavit
9.	Canada	Provincial Court of British Columbia	Court Rules Act Provincial Court (Family) Rules Rule 4 — Provision of Financial Information	Financial Statement
10.	Canada	Superior Court of Quebec Family Division	Rules of practice of the Superior Court of Québec in family matters Chapter - III - Divorce, Separation, Nullity of Marriage and Filiation Division - II - Personal Support for Applicant Rule 26 & 27	Form III Statement of Income & Expenditures & Balance Sheet
11.	Canada	Supreme Court of Yukon	The Judicature Act, 2002 - §38 (w.e.f. 15.09.2008) Rules of Court for the Supreme Court of Yukon Rule 63A – Family Law Proceeding Financial Disclosure Rule 63A (1)	Form 94 Financial Statement
12.	Canada	Queen's Bench for Saskatchewan Family Law Division Judicial Centre of Saskatoon	The Queen's Bench Act, 1998, S.S. 1998, c. Q-1.01, s. 28 (in force July 1, 1999), allows Saskatchewan Judges to make the Rules of Court, also called the _Queen's Bench Rules'. Queen's Bench Rules Part 15: Family Law Proceedings; Division - 3 - Financial Disclosure Rule 15-26(a)	Form 15-26A
13.	Canada	Family Court for the Province of Nova Scotia	Family Court Rules made under § 11 & §12 of the Family Court Act, 1989, Rule 6: Commencement of Proceedings - Disclosure by financial statements Rule - 6.07 (2)(a)	Form FC 3 Statement of Income
14.	Canada	New Brunswick	Rule - 72 Divorce Proceedings Rule - 72.14 Financial Statements	Form 72J Financial Statement

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15.	Canada	Supreme Court of Prince Edward Island (Family Section)	Family Law Act §41. Financial statement	Statement of Income Form 70 I(A)
16.	Canada	Nunavut Court of Justice	Consolidation of Family Law Act S.N.W.T. 1997 §26	Form Financial Statement 8
17.	Canada	Supreme Court of Newfoundland & Labrador	Rules of the Supreme Court, 1986 under the Judicature Act Part IV Trial Division Family Rules Rule F10 - Disclosure Requirements - F10.02 (1)	Form F10.02A: Financial Statement (Family Law)
18.	Canada	Ontario	Ontario Regulations 114/99: Family Law Rules under Courts of Justice Act, R.S.O. 1990, c. C.43 Rule – 13(1)(a)	Form 13: Financial Statement (Support Claims)
19.	Canada	Manitoba	Manitoba Regulation 553/88, Court of Queen's Bench Rules Part - XVII Particular Proceedings – Rule 70-Family Proceedings- Financial information required with initiating pleading – Rule - 70.05(1)	Form 70D Financial Statement
20.	Canada	Court of Queen's Bench of Alberta Provincial Court of Alberta	Alberta Rules of Court, Alberta Regulation 124/2010 (amended upto Alberta Regulation 156/2019) Rule 12 - Notice to disclose documents - Rule 12.41(3)	Form FL-17 - Notice to Disclose / Application Request for Financial Information
21.	U.S.A	Superior Court for the State of Alaska	Alaska Rules of Civil Procedure Rule 26.1 - Discovery and Disclosure in Divorce and Legal Separation Actions	DR-250 Financial Declaration Disclosures Between Spouses
22.	U.S.A	Superior Court of Arizona in Maricopa County	Arizona Revised Statutes - Title 25. Marital and Domestic Relations § 25-319. Maintenance Arizona Rules of Family Law Procedure Rule 49 - Disclosure –Rule 49 (e)(1), Rule 49 (f)(1) Rule 97-Form 6	Form DROSC13 f-010119 Affidavit of Financial Information

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23.	U.S.A	Circuit Court Arkansas	Arkansas Code, 2018 Title 9 - Family Law Title 9 - Appendix Administrative Order Number 10 - Child Support Guidelines	Affidavit of Financial Means
24.	U.S.A	Superior Court of California	Family Code, §§ 2030–2032, §§2100– 2113, §3552, §§3620–3634, §§ 4050– 4076, §§ 4300 – 4339	FL- 150 Income & Expense Declaration
25.	U.S.A	Colorado	2016 Colorado Revised Statutes Title 14 - Domestic Matters	Form 35.2 JDF 1111 - Affidavit with Respect to Financial Affairs JDF 1112 - Financial Affidavit - Simplified Version
26.	U.S.A	Connecticut	Connecticut Practice Book §§ 25-30, Chapter 25a Family Support Magistrate Matters Statements To Be Filed § 25a-15	Financial Affidavit JD-FM-6-LONG JD-FM-6- SHORT
27.	U.S.A	Family Court of the State of Delaware	Family Court Rule of Civil Procedure 16(c)	Form 465 - Ancillary Financial Disclosure Report Form 240 - Information Sheet
28.	U.S.A	Florida	Florida Family Law Rule Of Procedure Form 12.902(c) Florida Family Law Rules of Procedure Form 12.902(b),	Family Law Financial Affidavit (Long Form) Family Law Financial Affidavit (Short Form)
29.	U.S.A	Superior Court of Georgia	Georgia Code Title 19 - Domestic Relations Official Code of Georgia Annotated § 19-6-15	Domestic Relations Financial Affidavit
30.	U.S.A	Family Court of Hawai'i	Hawai'i Family Court Rules Rule 10. - Motions Rule 10 (c)	Income & Expense Statement 3F-P-270 Asset and Debt Statement 3F-P-272
31.	U.S.A	Idaho Supreme	Idaho Rules of Family Law Procedure Rule 126.1; Rule 401.A; Rule 504.A.1;	Form 5 CAO RFLPPi 1-

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		Court	Rule 504.A.2	1 Petitioner's/Respondent's Inventory of Property and Debts
32.	U.S.A	State of Illinois, Circuit Court	Section 5/1-104(b) of the Code of Civil Procedure Uniform Rules Of Practice Nineteenth Judicial Circuit Court of Illinois 4-3.02 Affidavit of Parties and Production of Documents A.1 Part 11.00 Family Law Rule - 11.02	Financial Affidavit 11.02
33.	U.S.A	State of Indiana County of Hamilton	Local Family Law Rules LR29-FL00-402.10 Financial Declarations, Dissipation Of Assets, Support Worksheets, Parenting Time, Disposition Of Property, Parenting Workshop, And Removal Of Children From The State	Financial Declarations (Form FL00- 402B) Indiana Child Support Obligation Worksheets (Form FL00- 402A)
34.	U.S.A	Iowa District Court	Iowa Code section 2B.5B. (5 th Edition) Iowa Court Rules Rule 17.200 Rule 17.100	Form 224: Financial Affidavit for a Dissolution of Marriage with Children Form 124: Financial Affidavit for a Dissolution of Marriage with no Minor Children
35.	U.S.A	Kansas Judicial Council	Kansas Supreme Court Rules, Rule 139 (a) Domestic Relations Affidavit; Support Order And Payment	Domestic Relations Affidavit w.e.f. 1st January, 2020
36.	U.S.A	Commonwealth of Kentucky Court of Justice	Family Court Rules Of Procedure And Practice FCRPP 2(3) FCRPP 3(3)	AOC-238.1 AOC-239.1 SIMPLIFIED FINAL VERIFIED AOC- 238 AOC- 239 Final Verified Disclosure Statement
37.	U.S.A	Louisiana	Louisiana Civil Code Rule 111 (2019)	Appendix 23.0B Family Law Affidavit
38.	U.S.A	State of	M.R.Civ.P. 108(c)	FM – 043

		Maine Judicial Branch	Rule 108. Child Support Affidavits & Worksheets, Financial Statements, & Real Estate Certificates	Financial Statement
39.	U.S.A	Maryland Courts	Code of Maryland Maryland Rules Rule 9-202 (e) Financial Statement-- Spousal Support Rule 9-202 (f) Financial Statement-- Child Support Rule 9-203(b)	Financial Statement
40.	U.S.A	Commonwealth of Massachusetts	Supplemental Rules of the Probate and Family Court (w.e.f.1 st November, 2019) Rule 401 (a): Financial Statement	Financial Statement (Short Form) (CJD-301S) Financial Statement (Long Form) (CJD-301L)
41.	U.S.A	State of Michigan	Michigan Court Rules of 1985 Chapter 3 - Special Proceedings and Actions Subchapter 3.200 Domestic Relations Actions Verified Financial Information Form: (C)(2)	Verified Financial Information Form MCR 3.206
42.	U.S.A	Minnesota	Minnesota Court Rules (Minn. Gen. R. Prac. 305) Rule 305.01 Parenting/Financial Disclosure Statement	Parenting / Financial Disclosure Statement
43.	U.S.A	Mississippi	Miss. Ch. C. R. 8.05 Mississippi Uniform Chancery Court Rules Rule 8.05 Financial Statement Required	Rule 8.05 Financial Statement
44.	U.S.A	Missouri 16 th Circuit Court of Jackson County Missouri	Missouri Supreme Court Rules Rule 88 - Rules of Civil Procedure - Rules Relating to Special Actions - Dissolutions Legal Separation & Child Support - Rule 88.01 and Form 14 Rule 68 - Dissolution of Marriage Rule 68.4 - Filing of Financial Statements	Form CAFC050 - Income and Expense Statement Form 1402B
45.	U.S.A	Montana	Montana Code Title 40. Family Law Chapter 4. Termination Of Marriage, Child Custody, Support Part 2. Support, Custody, Visitation, and Related Provisions §40-4-252, M.C.A	MP – 500 Financial Disclosure & Proposed Property Distribution MP - 510 Income and Expenses MP - 510-A Additional

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				Income MP - 510-B Additional Expenses
46.	U.S.A	The State of Nebraska Judicial Branch	Nebraska Supreme Court Rules Neb. Ct. R. §§ 4-204, 4-205	Financial Affidavit for Child Support
47.	U.S.A	Nevada	Nevada Rule of Civil Procedure, Rule-16.2. Mandatory Prejudgment Discovery Requirements in Family Law Actions Rule-16.2 (c)(1) Rule-16.2 (c)(2)	General Financial Disclosure Form Detailed Financial Disclosure Form
48.	U.S.A	New Hampshire	Family Division - Modified and New Forms For Family Division Rule 1.25-A (B) Initial Disclosures	Financial Affidavit NHJB-2065-F
49.	U.S.A	Superior Court of New Jersey Chancery Division, Family Part	Rules Governing the Courts of the State of New Jersey Rule 1:38. Public Access to Court Records & Administrative Records Rules 1:38-3(d)(1) and 5:5-2(f)	Appendix V Family Part Case Information Statement
50.	U.S.A	New Mexico	New Mexico Rules of Civil Procedure for the District Courts Rule 1-123 - Mandatory disclosure in domestic relations and paternity actions; preliminary disclosure requirements	Domestic Relations Form 4A-212, 4A-214, 4A-215 NMRA
51.	U.S.A	Family Court of the State of New York	F.C.A. §§413-1, 424-a; Art. 5-B D.R.L. §§236-B, 240	Form 4-17 (Financial Disclosure Affidavit) 4-17a Financial Disclosure Affidavit (Short Form)
52.	U.S.A	North Carolina County of Wake	10 th Judicial District Family Court Rules For Domestic Court Rule 9: Post separation Support & Alimony Rule - Financial Information Required 9.2	Financial Affidavit (WAKE-DOM-10)
53.	U.S.A	State of Ohio Judicial Branch	Supreme Court of Ohio Uniform Domestic Relations Form – Affidavit 1 Affidavit of Income and Expenses Approved under Ohio Civil Rule 84 Local Domestic Rule 17	Affidavit Of Income And Expenses

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54.	U.S.A	State of Rhode Island and Providence Plantations	Rhode Island Family Court Rules of Domestic Relations R.I. Fam. Ct. R. Dom. Rel. P. 64(b) R.I. Fam. Ct. R. Dom. Rel. P. 64A (b)	DR-6 Financial Statement - Statement of Assets, Liabilities, Income, & Expenses
55.	U.S.A	South Carolina	South Carolina Family Court Rules Rule - 20(a)	SCCA430 Financial Declaration
56.	U.S.A	Utah	Utah Rule of Civil Procedure Rule 26.1 Disclosure and Discovery in Domestic Relations Actions	Financial Declaration
57.	U.S.A	State of Vermont Superior Court Family Division	Vermont Rules for Family Proceedings Vt. R. Fam. Proc. 4.0 Vt. R. Fam. Proc. 4.0 (g)(4) Vt. R. Fam. Proc. 4.0 (g)(6) Vt. R. Fam. Proc. 4.1 (b)(4) Vt. R. Fam. Proc. 4.2	Form 813A - Financial Affidavit: Income and Expenses (400-813A) Form 813B - Financial Affidavit: Property and Assets (400-813B)
58.	U.S.A	Wisconsin	Wisconsin Statutes Chapter 767 Actions Affecting The Family §767.127 (1) - Financial disclosure.	FA-4139V, 05/17 Financial Disclosure Statement
59.	U.S.A	Family Court of West Virginia	Rules of Practice and Procedure for Family Court, West Virginia Rule 13 - Financial disclosure Rule – 13 (a)	SCA-FC-106: Financial Statement
60.	U.S.A	Wyoming	Wyoming Statutes Title 20. Domestic Relations Article 3 - Child Support § 20-2-308 (2013) - Financial affidavits required; financial reporting	Confidential Financial Affidavit [Approved by the Wyoming Supreme Court (2012)]

Conclusion

64. The Court has to ascertain the financial capacity/ status of the parties for determining the maintenance and permanent alimony. A comprehensive affidavit of assets, income and expenditure of both the parties is necessary to determine their financial capacity/status.

65. In exercise of the powers under Section 10(3) of the Family Courts Act, 1984 read with Sections 106 and 165 of the Indian Evidence Act and Article 227 of the Constitution of India, this Court formulated the affidavit of assets, income and expenditure in ***Kusum Sharma II*** [judgment dated 14th January, 2015 – (2015) 217 DLT 706] which was modified in ***Kusum Sharma III*** [judgment dated 29th May, 2017 – (2017) 241 DLT 252] and ***Kusum Sharma IV*** [judgment dated 6th December, 2017 – (2018) 246 DLT 1]. The format of the affidavit of ***Kusum Sharma IV*** is being modified by this judgment in order to make it more comprehensive. The modified affidavit of assets, income and expenditure is ***Annexure A2*** to this judgment.

66. The modified affidavit of assets, income and expenditure (***Annexure A2***) is very comprehensive and is useful to determine the maintenance in matrimonial litigation. A salaried person is required to disclose the particulars of his employment including salary, D.A., commissions, incentives, bonus, perks, perquisites, other benefits, Income tax etc. A self-employed person is required to disclose the nature of business/ profession, share in the business, net worth of the business, number of employees, annual turnover/gross receipts, gross profit, Income Tax, net income and regular monthly withdrawal/drawings from the business. The parties are further required to disclose income from other sources, namely, agricultural income, rent, interest on bank deposits and other investments, dividends,

mutual funds, annuities, profit on sale of movable/immovable assets etc. With respect to the assets, the parties are required to disclose the particulars of the immovable properties, financial assets including bank accounts, DEMAT accounts, safety deposit lockers; investments including FDRs, stocks, shares, insurance policies, loans, foreign investments; movable assets including motor vehicles, mobiles, computer, laptop, electronic gadgets, gold, silver and diamond jewellery etc.; intangible assets; garnishee(s)/trade receivables; corporate/business interests; disposal and parting away of properties; properties acquired by the family members, inheritance. The affidavit requires the parties to disclose their standard of living and lifestyle, namely, credit/debit cards, membership of clubs and other associations, loyalty programmes, social media accounts, domestic helps and their wages, mode of travel in city and outside city, category of hotels, category of hospitals for medical treatment, frequency of foreign travel, frequent flyer cards, brand of mobile, wrist watch, pen, expenditure ordinarily incurred on family functions, festivals and marriage of family members etc.. The affidavit further requires the disclosure of expenditure on housing, household expenditure, maintenance of dependents, transport, medical expenditure, insurance, entertainment, holiday and vacations, litigation expenses, discharge of liabilities etc.

67. Upon completion of the pleadings in the maintenance application, the Court shall fix the date for reconciliation and direct the parties to simultaneously file the affidavits of their assets, income and expenditure. The Court shall also direct the party seeking maintenance to produce the passbook of his/her savings bank account in which maintenance can be directly deposited/transferred by the opposite party.

68. The Court shall simultaneously take on record the affidavit of assets, income and expenditure of both the parties. The simultaneous filing of the affidavit by the parties is very important and should be strictly adhered to. The simultaneous filing of the affidavit by the parties would avoid any undue advantage to the party who files his/her affidavit later. It is clarified that the affidavit of assets, income and expenditure is not to be filed along with the petition/application/ or written statement/reply.

69. If a party is carrying on the business as proprietor of proprietorship concern/partner of a partnership concern/director of a company/member of a HUF/trustee of a trust/ member of a society/ or in any other form/entity, the Court may consider directing the party to file an additional affidavit with respect to the assets of the proprietorship concern/partnership concern/company/society/HUF/Trust, as the case may be, in the format of **Annexure B1** attached to **Bhandari Engineers II**.

70. In pending maintenance cases, if the parties have not already filed the affidavit of their assets, income and expenditure, the Court shall direct the parties to file their affidavit in the format of **Annexure A2**.

71. If the reconciliation fails, the Court shall grant an opportunity to the parties to respond to the affidavit of the opposite party and list the maintenance application for hearing.

72. The Courts shall ensure that the filing of the affidavits by the parties is not reduced to a mere ritual or formality. If the affidavit of the party is not in the prescribed format or is not accompanied with all the relevant documents, the Court may take the affidavit on record and grant reasonable time to the party to remove the defects/deficiencies.

73. In appropriate cases, the Court may direct a party to file an additional

affidavit relating to his assets, income and expenditure at the time of marriage and/or one year before separation and/or at the time of separation.

74. If the party does not truly disclose all his assets and income, the opposite party is at liberty to serve the interrogatories under Order XI of the Code of Civil Procedure and/or seek production of relevant documents from the party filing the affidavit.

75. In appropriate cases, Court may order interrogatories, discovery, inspection, production of any document and/or order any fact to be proved by affidavit under Section 30 of the Code of Civil Procedure.

76. The Court shall, thereafter, consider whether the oral examination of the party is necessary under Section 165 of the Evidence Act. If so, the Court shall proceed to examine the party to elicit the truth. The principles relating to the scope and powers of the Court under Section 165 of the Evidence Act have been summarized in *Ved Parkash Kharbanda v. Vimal Bindal*, (2013) 198 DLT 555, which may be referred to.

77. If the admitted income of the parties is on record, such as, in the case of a salaried employee whose salary slip is on record, the Court may fix *ad-interim* maintenance on the basis of the admitted documents pending filing of the affidavit of the assets, income and expenditure by both the parties. The Court may record the statement of the parties, if considered necessary for fixing the *ad-interim* maintenance.

78. If any party delays in filing of the affidavit of assets, income and expenditure or the affidavit filed by a party is not in terms of these directions or a party delays the disclosure of further information/documents and the delay is causing hardship, the Court is at liberty to fix *ad-interim* maintenance after hearing the parties.

79. If the statements made in affidavit of assets, income and expenditure are found to be incorrect, the Court shall consider its effect by drawing an adverse inference or imposing additional cost, while fixing the maintenance. However, an action under Section 340 Cr.P.C. is ordinarily not warranted in matrimonial litigation till the decision of the main petition unless the Court, for the reasons to be recorded, considers it expedient in the interest of justice, to deal with it earlier.

80. At the time of issuing notice on the petition for dissolution of marriage, the Court shall consider directing the petitioner to deposit such sum, as the Court may consider appropriate for payment to the respondent towards interim litigation/part litigation expenses; except in cases, such as, divorce petition by the wife who is unable to support herself and is claiming maintenance from the respondent husband.

81. The interim litigation expenses directed by the Court at the stage of issuing notice, does not preclude the respondent from seeking further litigation expenses incurred by the respondent at a later stage. The Court shall consider the respondent's claim for litigation expenses and pass an appropriate order on the merits of each case.

82. At the time of passing a decree of divorce, the Court shall bring to the notice of the concerned party, as the case may be, that he/she can claim permanent alimony without prejudice to his/her right to challenge the decree of divorce and if the party seeks permanent alimony, at that stage, for which an oral prayer/application is sufficient, the Court shall fix the permanent alimony on the basis of the affidavits of assets, income and expenditure, after hearing both the parties. However, if the affidavits have not been filed at the stage of fixing the permanent alimony, the Court shall direct the

parties to file the same before fixing the permanent alimony.

83. In *Bhandari Engineers II* (judgment dated 05th August, 2020) this Court has laid down comprehensive guidelines and has formulated affidavit of assets, income and expenditure to be filed by the judgment debtor in execution proceedings, which may be considered in execution cases of the maintenance order apart from following the specific statutory provisions such as Sections 125 to 127 Cr.P.C.

84. The affidavit of assets, income and expenditure is to be treated as guidelines to determine the true financial capacity/status of the parties. The Courts are at liberty to determine the nature and extent of information/documents necessary and to direct the parties to disclose relevant information and documents to determine their financial capacity/status. The Courts are at liberty to pass appropriate directions as may be considered necessary to do complete justice between the parties and in appropriate cases, such as, the cases belonging to the lowest strata of the society or case of a litigant who is a permanently disabled/paralytic, the Court may, for reasons to be recorded, dispense with the requirement of filing of the affidavit or modify the information required.

85. These modified directions/guidelines shall apply to all matrimonial cases including cases under Hindu Marriage Act, 1955; Protection of Women from Domestic Violence Act, 2005; Section 125 Cr.P.C; Hindu Adoption and Maintenance Act, 1956; Special Marriage Act, 1954; Indian Divorce Act, 1869; Guardians and Wards Act, 1890 and Hindu Minority and Guardianship Act, 1956.

86. Matrimonial jurisdiction deserves a special attention and the maintenance applications should be decided expeditiously.

87. The Courts below shall expedite the maintenance proceedings and shall make an endeavour to decide them within the prescribed time. The Family Courts shall send the list of all pending maintenance cases which are more than one year old, through the Principal Judge, Family Court. The list shall contain the name of the case; date of institution; number of hearings that have taken place; and the reasons for such delay. List be prepared according to the seniority i.e. the oldest case shall be mentioned first. The Principal Judge, Family Court shall compile the lists of all Family Courts and shall send them to the Registrar General of this Court by 31st December, 2020 for being placed before this Court.

88. Learned amici curiae submit that the matter be kept pending for seeking feedback/comments of the Family Courts after implementation of the modified directions/guidelines.

89. List on 18th December, 2020.

90. This Court appreciates the assistance rendered by Mr. Sunil Mittal, Senior Advocate and Ms. Anu Narula, Advocate as amici curiae. This Court also appreciates the extensive research on corresponding law in other countries by Mr. Akshay Chowdhary, Law Researcher, attached to this Court.

91. This Court is of the view that the mandatory filing of the affidavit of assets, income and expenditure by the parties in a detailed prescribed form should be incorporated in the statutes, as in the developed countries. Let this suggestion be considered by the Central Government. Copy of this judgment along with *Annexures A2* be sent to Mr. Chetan Sharma, learned ASG for taking up the matter with Ministry of Law and Justice.

92. The modified directions and format of affidavit of assets, income and

expenditure *Annexures A2* be uploaded on the website of the District Court (in .pdf format) to enable the lawyers/litigants to download the same.

93. Copy of this judgment and modified format of the affidavit of assets, income and expenditure *Annexures A2* be sent to the Registrar General of this Court who shall circulate it to the District Judge (Headquarters) and Principal Judge, Family Courts (Headquarters) for being circulated to all the concerned courts.

94. Copy of the judgment along with the modified format of the affidavit of assets, income and expenditure *Annexures A2* be sent to the Delhi Judicial Academy to sensitize the judges about the modified directions laid down by this Court.

95. National Judicial Academy is reporting the best practices of the High Courts on their website (www.nja.nic.in) under the head of Practices & Initiatives of various High Courts. Copy of this judgment along with *Annexures A2* be sent to National Judicial Academy.

J.R. MIDHA, J.

AUGUST 6, 2020
ds/

Declaration:

1. I solemnly declare and affirm that I have made true, accurate and complete disclosure of my income, expenditure, assets and liabilities from all sources. I further declare and affirm that I have no assets, income, expenditure and liabilities other than set out in this affidavit.
2. I undertake to inform this Court immediately upon any material change in my employment, assets, income, expenditure or any other information disclosed in this affidavit.
3. I hereby declare that the contents of this affidavit have been duly explained to me and have been understood by me.
4. The copies of the documents filed with the affidavit are the true copies of the originals and I have self attested the copies after comparing them with their originals.
5. I understand that any false statement made in this affidavit constitute an offence under Section 199 read with Sections 191 and 193 of the Indian Penal Code, 1860 punishable with imprisonment up to seven years and fine, and Section 209 of Indian Penal Code, 1860 punishable with imprisonment up to two years and fine. I have read and understood Sections 191, 193, 199 and 209 of the Indian Penal Code, 1860

DEPONENT

Signature Not Verified

Digitally Signed
By: RAJENDER SINGH
KARKI
Signing Date: 06/08/2020
14:45:50

Verification:

Verified at _____ on this ____ day of _____ that the contents of the above affidavit relating to my assets, income and expenditure are true to my knowledge, no part of it is false and nothing material has been concealed therefrom, whereas the contents of the above affidavit relating to the assets, income and expenditure of my spouse are based on information believed to be true. I further verify that the copies of the documents filed along with the affidavit are true copies of the originals.

DEPONENT

Signature Not Verified

Digitally Signed
By: RAJENDER SINGH
KARKI
Signing Date: 06/08/2020
14:45:50

FAO 369/1996 -Affidavit - Annexure A2