



LAW COMMISSION OF INDIA

SEVENTY-THIRD REPORT

ON

**Criminal liability for failure by
husband to pay maintenance
or permanent alimony granted
to the wife by the court under
certain enactments or rules of
law**

15th May, 1978

D.O. No. F. 2(3)/78-L.C.

CHAIRMAN
LAW COMMISSION
GOVERNMENT OF INDIA

May 15, 1978

My dear Minister,

I forward herewith the Seventy-third Report of the Law Commission of India concerning criminal liability for failure by husband to pay maintenance or permanent alimony granted to the wife by the court under certain enactments or rules of law.

As mentioned in the first paragraph of the Report, the subject was taken up for consideration by the Law Commission at the instance of the Government. The Report, while not favouring the proposal to make such failure punishable as a contempt of court, suggests the amendments to be made in the substantive law of crimes and the procedural law.

I place on record my appreciation of the valuable assistance received from Shri P. M. Bakshi, Member-Secretary of the Commission in the preparation of the Report.

With kind regards,

Yours sincerely,

Sd/-

(H. R. KHANNA)

Hon'ble Shri Shanti Bhushan
Minister of Law, Justice and Company Affairs
New Delhi-110001.

79-L/J(N)65MofLJ&CA-2

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CHAPTER 1

THE SUBSTANTIVE LAW AND AMENDMENTS RECOMMENDED THEREIN

1.1. **Genesis of the Report**—The following suggestion from the President of the League for Social Justice, Pune, sent to the Minister of Law, Justice and Company Affairs has been referred¹ to the Law Commission for the expression of its views:

“Maintenance and Guardianship Act, 1956.

“In various matrimonial disputes where the court sanctions payment of alimony or maintenance to the wife, it is found in practice that the husband unilaterally stops such payments after sometime and to seek redress the wife has to go through various legal actions to remedy such stoppage of payments. It is recommended that the existing law should be so amended that the husband cannot stop the payment of alimony or maintenance to the wife without prior permission of the competent court. *Failure to obtain prior permission of the court before stoppage of “payment of maintenance/alimony* should be treated as contempt of court punishable with imprisonment. Such amendment of law, as suggested above, will grant relief to the suffering women who are deprived of getting maintenance from their husbands.”

1.2. **Disobedience to decree or order for maintenance or alimony to be made punishable**—The Commission has given consideration to the above suggestion and is not in favour of treating failure to obtain prior permission of the court before stoppage of payment of maintenance or alimony as contempt of court punishable with imprisonment. At the same time, the Commission is not unaware of the tendency on the part of the husbands to stop payment of alimony or maintenance even though a decree or an order for this purpose has been made in favour of their wives². To prevent such a course, the Commission would recommend that if a decree or order for the payment of maintenance or permanent alimony is made against the husband in favour of his wife by a court of justice and the husband, having sufficient means to comply with such decree or order, contumaciously disobeys such order, he shall, except in the cases hereafter mentioned, ³be liable to undergo rigorous imprisonment for a period which may extend to six months and shall also be liable to pay fine up to twice the amount of arrears of maintenance or permanent alimony, and in no case less than the amount of arrears of maintenance or permanent alimony.

The punishment for such an offence ought to be rigorous imprisonment, so that the added provision may act as a deterrent. In addition, the offence should be compulsorily punishable with fine. Out of the fine, the

¹ Ministry of Law, Justice and Company Affairs, Legislative Department, Leg. 11 Section Diary No. 2692/77-Leg. 12-12-1977.

² As to the expression “alimony”, see marginal note to section 25, Hindu Marriage Act, 1955.

³ See paragraph 1—6, *infra*.

wife should be awarded the arrears of maintenance or permanent alimony. The reasons for such a change in the substantive law will be presently set out¹.²

1.3. Need for amendment of the law—In general, non-compliance with a decree or order of court is regarded as a matter that can be suitably dealt with in the appropriate procedural law. But it appears to the Commission that in regard to decrees and orders of the nature under consideration, it is legitimate to adopt a different approach, since non-compliance with such decrees and orders may seriously affect the well-being of married women. Contumacious failure to pay maintenance may have the effect of putting a number of women in a state of being without any means of subsistence. Apart from that, such failure is, in most cases, likely to lead ultimately either to a life of vagrancy or to a life of destitution. If social justice is to be given a practical content and is not merely to remain enshrined in pious phrases, attention ought to be devoted to the devising of all reasonably practicable measures that would help in checking mal-practices which impede the effective implementation of the law on this important subject.

The suggestion has been made with reference to legislation applicable only to Hindus. But having regard to the beneficial object of the amendment under consideration, we see every reason for covering members of all communities, and no justification for excluding, from the scope of the amendment, parties who are not Hindus.

1.4. Provisions relating to right of maintenance—There are several provisions or rules of law under which a right to maintenance or alimony may arise in favour of a wife—

(i) In the first place, the right may arise by substantive law, codified, or not codified. Section 18 of the Hindu Adoptions and Maintenance Act, 1956 is an example of codified law on the subject. Under sub-section (1) of that section, subject to the provisions of the section, a Hindu wife, whether married before or after the commencement of the Act, shall be entitled to be maintained by her husband during her lifetime. The rules of personal law applicable to persons who are not Hindus furnish examples of uncodified law recognising the wife's right to be maintained.

As regards Muslims, Mulla states the law on the subject thus:

“277. *Husband's duty to maintain his wife*—The husband is bound to maintain his wife (unless she is too young for matrimonial intercourse), so long as she is faithful “to him and obeys his reasonable orders. But he is not bound to maintain a wife who refuses herself to him, or is otherwise disobedient, unless the refusal or disobedience is justified by non-payment of prompt dower, or she leaves the husband's house on account of his cruelty.”

¹ Paragraph 1.4, *infra*.

² For procedural amendments, see Chapter 2-3, *infra*.

³ Mulla Principles of Mohamedan Law (1977), page 300, paragraphs 277, 278

"278. *Order for maintenance*—If the husband neglects or refuses to maintain his wife without any lawful cause, the wife may sue him for maintenance, but she is not entitled to a decree for past maintenance, unless the claim is based on a specified agreement. Or, she may apply for an order of maintenance under the provisions of the Code of Criminal Procedure, 1898 (sic), section 488 (sic) in which case the court may order the husband to make a monthly allowance in the whole for her maintenance not exceeding five hundred rupees".

A christian wife can also sue her husband for maintenance¹. The right is based on justice, equity and good conscience².

To quote from a Madras case³ on the subject—

"Section 16 of the Madras Civil Courts Act enacts that wherever a question regarding succession, inheritance, marriage etc., were to arise, the court will have to decide the question, in cases where no specific rule exists, according to justice, equity and good conscience. Therefore, the question whether a Christian husband would be liable to maintain his wife, and, if so, what form of procedure the latter should adopt for enforcing such a right, will have to be decided not so much on the technical notions or procedure followed by the English law, but on principles of equity and justice and by adopting the procedure obtaining in this country".

(ii) Apart from this substantive right enforceable by suit, maintenance or alimony may be ordered by the court as a relief ancillary to the grant of a decree for matrimonial relief on conclusion of proceedings for such relief. Section 25 of the Hindu Marriage Act, 1955 is an example⁴ of a provision conferring such a right; there are analogous provisions in other⁵ enactments dealing with the grant of matrimonial relief in cases not governed by the Hindu Marriage Act.

(iii) There are statutory provisions empowering the court to grant maintenance or alimony during the pendency of proceedings for matrimonial relief. Section 24 of the Hindu Marriage Act, 1955 is an example⁶ of such a provision; there are analogous provisions⁷ in other enactments dealing with the grant of matrimonial relief in cases not governed by the Hindu Marriage Act.

(iv) Finally, the Code of Criminal Procedure, 1973, in section 125, provides for the grant of maintenance to wives and children by magistrates in certain cases.

1. *Stella Pakkiam V. Rajiah Ratnam* A. I. R. 1966 Mad. 225, 228, para 13.

2. *Stella Pakkiam V. Rajiah Ratnam*, A. I. R. 1966 Mad. 225.

3. *Stella Pakkiam V. Rajiah Ratnam* A. I. R. 1966 Madras 225, 228, para 13.

4. See Appendix I.

5. Section 37, Special Marriage Act, 1954, section 40, Parsi Marriage and Divorce Act, 1936 section 37, Indian Divorce Act, 1869.

6. Appendix I.

7. Section 36, Special Marriage Act, 1954. etc.

Section 125 is not confined to persons belonging to particular communities, and constitutes a self-contained scheme with its own set of provisions for the enforcement of magisterial orders passed thereunder. We quote below the material portion of section 125(3) of the Code:—

“(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month’s allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it becomes due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order “under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

*Explanation:—*If a husband has contracted marriage with another woman or keeps a mistress it shall be considered to be just ground for his wife’s refusal to live with him.”

1.5 Need for criminal sanctions—In contrast with the Code of Criminal Procedure, 1973, there are no criminal sanctions attached to disobedience by the husband to a decree or order for maintenance or alimony under the other enactments or rules to which he have referred¹. In our opinion, there is need to cover maintenance or permanent alimony granted under the other enactments or rules except in the cases to be hereafter mentioned.

1.6 Certain orders for maintenance to be excluded—From the scope of the proposed offence, we would exclude maintenance granted by the court under section 125 of the Code of Criminal Procedure, 1973 or its predecessor (section 488), since the Code contains adequate provisions, including criminal sanctions², for enforcement. We would also exclude orders for maintenance or alimony *pendente lite* from the scope of the proposed offence. Orders *pendente lite* are temporary orders, and their enforcement can be left to be dealt with under such powers as the courts already possess.

1.7. Scope of the proposed section summarised—To recapitulate, the proposed section should be so drawn that it will apply to—

- (a) maintenance granted by the Court to the wife
 - (i) under section 18 of the Hindu Adoptions and Maintenance Act, 1956, or
 - (ii) by virtue of a substantive right recognised by uncodified personal law³;

¹. Paragraph 1.4, *supra*.

². Section 125 (3) of the Code of Criminal Procedure, 1973 : see paragraph 1.4 (iv), *supra*.

³. Paragraph 1.4 (i), *supra*.

- (b) maintenance or permanent alimony granted by the Court to the wife under section 25 of the Hindu Marriage Act, 1955 on the conclusion of proceedings for matrimonial relief or under any other corresponding statutory provision¹.

The proposed section should not, however, apply to—

- (c) maintenance or alimony *pendente lite* granted under section 24 of the Hindu Marriage Act, 1955, or under any other corresponding statutory provision².
- (d) maintenance granted³ under section 125 of the Code of Criminal Procedure, 1973, or under section 488 of the Code of Criminal Procedure, 1898 (now repealed).

1.8. Amendment to extend to persons of all communities—Although the suggestion has been made with reference to legislation applicable to Hindus, any amendment that may be made in the law should, as already stated, 'cover persons of all communities.

1.9. Placing of the new provision—As to the placing of the new provision, it can be appropriately inserted in Chapter 20 of the Indian Penal Code (of offences relating to marriage), since, in substance, the proposed offence is constituted by an act amounting to violation of a marital obligation.

1.10. Comparative position—Although we have not been able to trace exactly parallel provisions in the legislation of other countries, certain sections from the California Penal Code which impose criminal liability for failure to pay maintenance would be of interest in this connection. These are reproduced in an Appendix to this Report⁴.

1.11. Recommendation for amending the Indian Penal Code—In the light of the above discussion, we recommend that a new section, to be numbered as section 498A, incorporating the points made above, should be added in the Indian Penal Code immediately after section 498, which appears at the end of the Chapter on offences relating to marriage (Chapter XX), as follows:—

"498A. Failure by husband to pay permanent alimony or maintenance to wife when ordered by court to do so—(1) Whoever, being a person against whom a decree or order for the payment of maintenance or permanent alimony to his wife has been made by a court of justice⁵, having sufficient means to comply "with such decree or order, contumaciously disobeys such decree or order, shall, except in the cases specified in sub-section (3), be punished with rigorous imprisonment for a term which may extend to six months and with fine which may extend to twice the amount of arrears of maintenance or permanent alimony, and which shall in no case be less than such amount.

¹ Paragraph 1.4 (ii), *supra*.

² Paragraph 1.4 (iii), *supra*.

³ Paragraph 1.4 (iv), *supra*.

⁴ Paragraph 1.3, *supra*.

⁵ Appendix 3 to this Report.

⁶ See definition of "court of justice" in section 20, Indian Penal Code

(2) When a person is convicted of an offence under this section, the court shall also direct payment to the wife, out of the fine so ordered to be paid, of the amount referred to in sub-section (1).

(3) Nothing in this section shall apply to disobedience to—

- (a) an order passed under section 125 of the Code of Criminal Procedure, 1973, or an order passed before the commencement of that Code under section 488 of the Code of Criminal Procedure, 1898, or
- (b) an order for the payment of maintenance or alimony *pendente lite*.”

Certain amendments will be required in the procedural law to deal with several matters arising out of the above amendment. We proceed to deal with them¹.

¹ Chapters 2-3 *infra*.

CHAPTER 2

AMENDMENTS RECOMMENDED IN THE CODE OF CRIMINAL PROCEDURE, 1973

2.1. Procedure—complaint by the wife to be a requisite—In regard to procedure, we shall first deal with the mode of initiation of proceedings. In our opinion, it would be appropriate if a complaint of the wife is required for taking cognizance of the offence which is proposed to be created, since the offence is to be regarded as one primarily affecting the interests of the wife, and pertains to her marital status. There is already a provision in section 198(1) of the Code of Criminal Procedure, 1973¹, imposing certain restrictions subject to which cognizance of the specified offences punishable under Chapter XX of the Indian Penal Code—offences relating to marriage—can be taken. Section 198 provides that no court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code except upon a complaint made by some person aggrieved by the offence.

2.2. We are of the view that the same rule should apply to the new offence; the court shall not take cognizance of the offence in question except upon complaint made by the wife².

2.3. Applicability of section 198 (1) of the Code—Once the new offence is included⁴ in Chapter XX of the Indian Penal Code, the main provision in section 198(1) of the Code of Criminal Procedure, 1973, will apply to it, without any textual amendment for that purpose. section 198(1) of the Code of Criminal Procedure, 1973—to quote only the portion creating a bar against taking cognizance—provides as follows:—

“198. (1) No court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code except upon a complaint made by some person aggrieved by the offence”.

2.4. Recommendation for amendment of section 198, Code of Criminal Procedure, 1973—It will, however be necessary to provide for cases where the wife cannot make a complaint because of certain unavoidable circumstances. In this context, reference may again be made to section 198 of the Code of Criminal Procedure, 1973. In that section, sub-section (1), proviso, clause (a), provides that in cases where the wife is under the age of 18 years or is an idiot or a lunatic or is suffering from sickness or infirmity and unable to make a complaint or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the court, make a complaint on her behalf.

The same should be the position in regard to a complaint for the proposed offence.

¹. Chapter 1, *supra*

². See Appendix 2

³. Chapter 1, *supra*.

⁴. Para 2.1 and 2.2, *supra*

⁵. See Appendix 2 for the text of relevant portion of section 198 of the Code

2.5. **Notice of intention to make complaints—section 198(1), proviso (d) to be inserted**—Certain other provisions in regard to procedure are also required. In our opinion, before the wife makes a complaint, the husband should be given an opportunity of complying with the decree or order. We recommend that no wife shall be entitled to make a complaint under the proposed new penal provision unless written notice of her intention to do so has been delivered, or sent by registered post, to the husband, and unless a period of at least one month, has elapsed. Such notice must state the amount of arrears in regard to which such complaint is to be made¹.

We have devoted some thought to the question whether, in a case where notice is given by registered post, the period of one month should be counted from the date on which the notice was *posted by the wife*, or whether it should be counted from the date on which the notice reached the husband or would, when correctly addressed, have reached him in the ordinary course of post. It seems to us that in this case it would be just and fair to compute the period from the latter date.

2.5A. **Time limit for prosecution**—We now turn to the question of the time limit within which a prosecution can be instituted under the proposed new penal provision². In order to avoid harassment to the husband, it is, in our view, desirable that criminal proceedings under the proposed section should not be taken after the expiry of one year from the date of the default.

By way of an analogous provision, we may refer to section 125(3), proviso, of the Code of Criminal Procedure, 1973, which enacts that a warrant cannot be issued for the recovery of any amount due under that section unless an application is made to the court to levy such amount within a period of one year from the date on which it became due.

It may be mentioned that as regards offences under the Penal Code, the matter seems to be covered by the provisions relating to limitation in the Code of Criminal Procedure.

Under section 468 of the Code of Criminal Procedure, 1973, there is a bar to taking cognizance of certain offences after lapse of the period of limitation. The section is quoted below:—

“468. (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

- (a) six months, if the offence is punishable with fine only;
- (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
- (c) three years, if the offence is punishable with imprisonment for “a term exceeding one year but not exceeding three years”

¹. To be put as section 198(1), proviso (d), Code of Criminal Procedure, 1973.

². Para 1.11 *supra*.

³. For the commencement of the period, see sections 469—472, Code of Criminal Procedure 1973.

Section 469 deals with the commencement of the period of limitation in these terms:—

“469. (1) The period of limitation, in relation to an offender, shall commence—

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

“(2) In computing the said period, the day from which such period is to be computed shall be excluded.”

We are of the view that for the purposes of the application of section 469 in relation to an offence under section 498A of the Indian Penal Code, the date of default in making the payment under the decree or order should be deemed to be the date of the offence.

2.5B. Recommendation to amend section 198, Code of Criminal Procedure—In the light of the above discussion, we recommend that in section 198(1) of the Code of Criminal Procedure, 1973, proviso (d) should be inserted as follows:—

“(d) no wife shall be entitled to make a complaint for an offence under section 498A of the Indian Penal Code against the husband unless a notice in writing stating the amount of arrears in regard to which she intends to make such complaint, and intimating her intention to do so, has been delivered to the husband or sent to him by registered post, and unless a period of at least one month has expired since the date on which the notice was “so delivered or the date on which, when correctly addressed, it would have reached the husband in the ordinary course of post, as the case may be.”

2.5C. Amendment of section 469, Code of Criminal Procedure, 1973—We also recommend that in section 469(1), Code of Criminal Procedure, 1973, an Explanation may be inserted as follows:—

“*Explanation*:—For the purposes of the application of this section in relation to an offence under section 498A of the Indian Penal Code, the date of default in making the payment under the decree or order shall be deemed to be the date of the offence.”

2.6. Acquittal on deposit—section 257A to be inserted in the Code of Criminal Procedure, 1973—Having regard to the nature of the offence, some provision for stopping criminal proceedings on payment by the husband would appear to be appropriate. We recommend that if, at the first hearing or within such further time not exceeding one month as the court may allow, the husband pays to the wife in court, or deposits with the court, the amount, with interest at such rate, if any, as might have been fixed by the decree or order, or, in the absence thereof, at the rate of twelve per cent per annum since the date of default, and such costs, if any, as the

court may deem fit to allow, then the court shall stop all further proceedings in the matter and shall acquit¹ the accused. This concession, however, shall be available only subject to certain limitations²; the precise content of such limitations will be apparent from the draft section which we are recommending on the subject. Further, the procedure of payment to the wife in court under the proposed provision must be permissible only in cases where she is herself the complainant. In other cases the amount will have to be deposited in court, and should not be paid to any person who might have filed a complaint on her behalf under proviso (a) to section 198(1), Code of Criminal Procedure, 1973.

In order to implement the above proposition, we recommend that in the Code of Criminal Procedure, 1973, a new section, to be numbered as section 257A, should be inserted in the Chapter dealing with the trial of summons cases, in the following terms:—

“257A. If in any prosecution for an offence under section 498A of the Indian Penal Code, the accused, at the first hearing or within such further time not exceeding one month as the court may allow, pays to the wife in court, or deposits with the court,—

(a) the amount to which the criminal proceedings relate,

(b) interest at such rate, if any, as might have been fixed by the decree or order, or in the absence thereof, at the rate of twelve per cent per annum since the date of default, and

(c) such costs, if any, as the court may deem fit to allow,

then the court shall stop all further proceedings in the matter and shall acquit the accused:

Provided that the provisions of this section, in so far as they relate to payment to the wife in court, shall not apply where the complaint has been made by any other person on behalf of the wife under proviso (a) to sub-section (1) of section 198 of the Code of Criminal Procedure, 1973:

Provided further that where the decree or order is for the periodical payment of maintenance or permanent alimony, no accused shall be entitled to the benefit of this section if, having obtained such benefit once in respect of any amount due under a decree or order, he again makes a default in the payment of an amount falling due under that decree or order, for three months or three other periods, as the case may be, whether consecutive or not.”

2.7. Recommendation as to compounding section 320, Cr. P.C.—Having regard to the nature of the new offence, we recommend that it should be compoundable without the permission of the court.

¹ This can be conveniently put as section 257A, Code of Criminal Procedure, 1973.

² Compare sections 14 (2), 15 (3) and 15 (6), Delhi Rent Control Act, 1953.

The provision relating to compounding is to be found in section 320 of the Code of Criminal Procedure, 1973. The material portions read thus:—

“320. (1) The offences punishable under the sections of the Indian Penal Code specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table.

TABLE

Offence	Section of the I.P.C. applicable	Persons by whom offence may be compounded
Adultery	497	The husband of the woman
Enticing or taking away or detaining with criminal		
Intent a married woman	498	Ditto
Defamation	500	The person defamed

“(3) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4) (a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may, with the permission of the Court, compound such offence.

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908, of such person may, with the consent of the Court, compound such offence.

* * *

* * *

* * *

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded”.

In regard to compounding, the new offence should be dealt with by adding, in the Table below section 320(1) of the Code of Criminal Procedure, 1973, after the entry relating to the offence under section 498 of the Indian Penal Code, a suitable entry so as to provide that the proposed new offence shall be compoundable without the permission of the Court, at the instance of the wife.

After the proposed amendment, the material part of section 320 of the Code of Criminal Procedure, 1973, will read as under:—

“320. (1) The offences punishable under the sections of the Indian Penal Code specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table.

TABLE

Offence	Section of the I.P.C. applicable	Person by whom offence may be compounded
Adultery	497	The husband of the woman
enticing or taking away or detaining with criminal intent a married woman.	498	Do.
<i>Failure by husband to pay permanent alimony or maintenance to wife when ordered by court to do so.</i>	498A	<i>The wife.</i>
Defamation.	500	The person defamed.”

2.8. **Amendment to the First Schedule**—In the First Schedule to the Code of Criminal Procedure, 1973, a suitable entry relating to the proposed new offence¹ should be added. The offence should be non-cognizable, bailable and triable by any Magistrate. We recommend that the First Schedule should be amended accordingly.

¹. Section 498A, Indian Penal Code; see para 1.11 *supra*.

CHAPTER 3

AMENDMENTS RECOMMENDED IN THE CODE OF CIVIL PROCEDURE, 1908

3.1. Amendments in Code of Civil Procedure, 1908—Right to execute—

Certain amendments are also required in the Code of Civil Procedure, 1908 in view of the creation of the proposed new offence. We propose to provide that where a decree or order for maintenance or permanent alimony is disobeyed by the husband, the right of the wife to make a complaint for the proposed offence shall not, in any manner, affect her right to apply for execution of the decree or order. This is, however, subject to the following qualifications:—

(a) During the pendency of the criminal proceedings, the wife shall not be entitled to make any application for execution;

(b) If such an application is already pending, the execution proceedings shall remain suspended for the duration of the criminal proceedings, but not so as to affect any attachment of the property of the judgment debtor (husband) that might be subsisting immediately before the date on which the criminal proceedings were instituted;

(c) Any amount paid to the wife out of the fine recovered in the criminal proceedings shall amount to satisfaction of the decree or order in full or part, as the case may be.

3.2. **Time spent on pendency to be excluded**—In consequence of our recommendation¹ for the insertion of a prohibition against the making of an application for execution by the wife during the pendency of the criminal proceedings, it is necessary to provide that in computing the period of limitation for such application, the time spent on such pendency shall be excluded.

The period of limitation is prescribed by article 136 of the Limitation Act, 1963, which reads: ?

"136. For the execution of any decree (other than a decree granting a mandatory injunction or order of any Civil Court.

Twelve years.

When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made.

"at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place:

Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation."

3.3. **Existing provisions in the Limitation Act not enough**—As to excluding the time taken in the criminal proceedings in question, the existing provisions in the Limitation Act, 1963—sections 14 and 15(1) which are nearest to the matter under consideration²—do not appear to cover the situation under consideration. Section 14 provides for the exclusion of time taken in a proceeding prosecuted in good faith in a court which, from a defect of

¹. Para 3·1, Supra.

². Sections 14-15 Limitation Act, 1963.

jurisdiction or other cause of a like nature, is unable to entertain it. The present is not a case falling within that category. Then, section 15(1) provides as follows:—

“15(1) In computing the period of limitation for any suit or application for the “execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.”

This provision is confined to stay resulting from an “injunction or order”. View can be taken that the expression “injunction or order” does not cover legislative provisions or executive orders which bar the institution of suits or applications. The general view seems to be that contained in Rowland J’s. observations¹:—

“I do not think that it is necessary or that it would be good law to invoke a theory of suspension of limitation in any case in which suspension is not expressly provided for either in the Limitation Act or in some special Act.”

This view is supported by the principle which has found recognition in section 9 of the Limitation Act, 1963, namely, “where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it”.

Some doubt may also be expressed on the question whether section 15(1) of the Limitation Act, 1963 applies to the execution of orders (as distinguished from the execution of decrees).

In this position, an express provision for excluding the time spent on the criminal proceedings in question in the trial court, when computing the period of limitation for an application for execution by the wife, would appear to be needed.

3.4. Amendment in the Code of Civil Procedure, 1908—Insertion of O. 21, R. 29A—In the light of the preceding paragraphs², we recommend that in the Code of Civil Procedure, 1908, First Schedule, Order 21, a new rule, to be numbered as Rule 29A, should be inserted as follows:—

“29A. (1) Subject to the provisions of sub-rules (2) and (3), where a decree or order for maintenance or permanent alimony has been made against a husband in favour of the wife and the husband is guilty of disobedience to the decree or order, the right of the wife to make a complaint for an offence under section 498A of the Indian Penal Code shall not in any manner affect her right to apply for execution of the decree or order.

¹. *Mahavir Prasad v. Bhupal Ram*, A.I.R. 1929 Pat. 694, 700 (F.B.).

². Section 9, Limitation Act, 1963.

³. Para 3.1 to 3.3 *supra*.

(2) During the pendency in the trial court of criminal proceedings instituted in respect of any such complaint,—

“(a) the wife shall not be entitled to make any application for execution of the decree or order;

(b) if, on any application for execution of the decree or order made by the wife prior to the institution of such criminal proceedings, proceedings are pending in any court, those proceedings shall remain suspended for the duration of the criminal proceedings, but not so as to affect any attachment of the property of the judgment-debtor that might be subsisting immediately before the date on which the criminal proceedings were instituted.

(3) Where any amount is paid to the wife out of the fine recovered in such criminal proceedings, such payment shall amount to satisfaction of the decree or order in full or in part, as the case may be.

(4) In computing the period of limitation for any application for the execution of a decree or order, the making of which is barred by the provisions of clause (a) of sub-rule (2), the time during which the criminal “proceedings referred to in that sub-rule were pending in the trial court shall be excluded.

Explanation—For the purposes of this rule, in computing the time during which a criminal proceeding was pending in the trial court, the day on which that proceeding was instituted and the day on which it ended in the trial court shall both be counted.”

Sd/-

(H. R. KHANNA)
Chairman

Sd/-

(S. N. SHANKAR)
Member

Sd/-

(P. M. BAKSHI)
Member-Secretary

Dated, NEW DELHI,
the 15th May, 1978.

APPENDIX 1

EXTRACTS OF SECTIONS 24-25, HINDU MARRIAGE ACT, 1955

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

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

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

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

APPENDIX 2

EXTRACTS FROM SECTION 198, CODE OF CRIMINAL PROCEDURE, 1973

198. **Prosecution for offences against marriage**—(1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code except upon a complaint made by some person aggrieved by the offence:

Provided that—

(a) where such person is under the age of eighteen years, or is an idiot or a lunatic, or suffering from sickness or infirmity and unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf;

* * * * *

(c) where the person aggrieved by an offence punishable under section 494 of the Indian Penal Code is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's brother or sister.

* * * * *

(3) When in any case falling under clause (a) of the proviso to subsection (1), the complaint is sought to be made on behalf of a person under the age of eighteen years or of a lunatic by a person who has not been appointed or declared by a competent authority to be the guardian of the person of the minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, the Court shall, before granting the application for leave, cause notice to be given to such guardian and give him a reasonable opportunity of being heard.

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(7) The provisions of this section apply to the abetment of, or attempt to commit, an offence as they apply to the offence.

APPENDIX 3

EXTRACTS FROM THE CALIFORNIA PENAL CODE¹

"270. *Omitting to provide child with necessities Misdemeanor*—A father of either legitimate or illegitimate minor child who wilfully omits without lawful excuse to furnish necessary clothing, food, shelter or medical attendance or other remedial care for his child is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars (£1,000) or by imprisonment in a county jail not exceeding one year or by both such fine and imprisonment. If the father, during such violation, remains out of the state for 30 days or if he fails or refuses to comply with the order of a court of competent jurisdiction requiring him to make any provision for the maintenance, support, medical treatment or other remedial care of such minor child and remains out of the state for 10 days without doing so, he is guilty of a felony." (Rest of the section is not material).

"270a. *Non support of wife*—Every husband who has sufficient ability to provide for his wife's support, or who is able to earn the means of such wife's support, who wilfully abandons and leaves his wife in a destitute condition, or who refuses or neglects to provide such wife with necessary food, clothing, shelter or medical attendance, unless by her misconduct he was justified in abandoning her, is guilty of a misdemeanor.—Stats. 1957, Chap. 1855".

¹. Sections 270 and 270a California Penal Code.