

Justice V.C.Misra
Chairman

U.P. STATE LAW COMMISSION
Lucknow

Ra.Vi.Aa-1075/2010
Dated: 07 Feb, 2011

Dear Chief Minister/Law Minister,

I have great pleasure in forwarding herewith Eighth Report, 2011 of the U.P. State Law Commission proposing certain State Amendment in the Sections 125-127 and Sections 407 and 408 of the Code of the Criminal Procedure, 1973 (Act No. 2 of 1974), titled: “**NEED FOR AMENDMENT OF THE PROVISIONS OF CHAPTER IX AND CHAPTER XXXI OF THE CODE OF CRIMINAL PROCEDURE, 1973.**”

Since the comprehensive review of the Chapter IX of the code, which deals with the maintenance of wives, children and parents in distress, several factors leading to hardship have been visible in the operation of these provisions. Consequently, the State Law Commission undertook an exercise to review these provisions *suo muto* to identify the various problems faced in the operation of these provisions and to suggest remedial measures thereof.

The grand-parents are also facing the problems like parents for their maintenance but they could not find place in the aforesaid Chapter while parents has been included. Commission feels that grand-parents be also included under this chapter with other beneficiaries.

Regarding enhancement of amount of compensation in Section 407 (7) of the Code, the High Court vide its letter No. 19679/2010/Admin G-11 Section dated 09.12.2010 has referred the matter. As S. 408 (3) is also related to it, both have been reviewed.

The Commission is confident that if recommendations are accepted and acted upon vide proposed amendment the neglected women, children, parents and grand-parents will have a sigh of relief and will also help to deter persons to file frivolous or vexatious transfer applications.

With kind regards,

Yours Sincerely

(Justice V.C. Misra)

Sushri Mayawati,
Chief Minister/Law Minister
Uttar Pradesh

Encl: A Report with Proposed Draft Bill

UTTAR PRADESH STATE LAW COMMISSION

EIGHTH REPORT-2011

EIGHTH REPORT OF HON'BLE MR. JUSTICE

V.C.MISRA

ON

**NEED FOR AMENDMENT OF THE PROVISIONS OF
CHAPTER IX AND CHAPTER XXXI OF THE CODE OF
CRIMINAL PROCEDURE, 1973**

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CHAPTER-I

INTRODUCTORY

1.1 Sections 125-128 in Chapter IX of the Code of Criminal Procedure lay down a self contained speedy procedure for provision of maintenance to wife, including divorced wives, children and parents. The provisions are aimed at ensuring that the neglected wives, children and parents are not left destitute on the scrap-heap of society and consequently driven to a life of vagrancy, immorality and crime for their sustenance.

1.2 This provision is a menace of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfill. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternative which advance the cause-the cause of the derelicts.

1.3 Though S. 125 benefits a distressed father also, main thrust of the provision is to assist women and children in distress. That is fully consistent with Article 15(3) of the Constitution which states that the prohibition contained in the Article shall not prevent the State from making any special provision for women and children. We take note of

Art. 39 of the Constitution which states, inter alia, that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means to livelihood, that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

1.4 These provisions are applicable to all persons, irrespective of the religions they profess, and thus have no relationship with the personal law of the parties.

1.5 Since the comprehensive review of the Code in 1973, many problems have arisen in the working of these provisions. Though it is supposed to be a summary remedy to help wives, children and parents in distress, several factors leading to hardships and injustice have been visible in the operation of these provisions. As a consequence, the Uttar Pradesh State Law Commission undertook an exercise to review these provisions suo-motu to identify the various problems faced in the operation of these provisions and to suggest remedial measures thereof by submitting this report to the Government.

1.6 As far as Amendment in Ss. 407 (7) and 408 (3) of the Code of Criminal Procedure, regarding enhancement of the amount of compensation, are concerned, the matter is referred by the Hon'ble High Court Allahabad vide its letter No. 19679/2010/Admin G-11 Section Allahabad dated 09.12.2010 of Shri Saleem Ahmad Khan, H.J.S. Joint Registrar (Inspection), High Court of Judicature at Allahabad, to the U.P. State Law Commission.

1.7 The focus of this report is on identification and solution of the problems faced in recovering an appropriate monthly allowance for maintenance by the wronged wife (from the husband), the neglected children (from their father), and the helpless parents (from their children) under section 125-128 of the Code of Criminal Procedure, 1973 and to find out whether Ss. 407 (7) and 408 (3) of the Code of Criminal Procedure require any amendment regarding enhancement of the amount of compensation awarded by the High Court and Sessions Judge, respectively on frivolous or vexatious application.

1.8 As both matters are related to the amendment of certain provisions of the Code of Criminal Procedure, 1973, they have been taken up together by the Commissions in this report.

1.9 The main areas in which the working of the provision has revealed the need for re-conditioning are:-

- (1) The quantum of the monthly maintenance allowance;
- (2) Liability of married daughter to maintain her parents;
- (3) Whether grand-parents are also entitled for maintenance allowance under Chapter IX of the Cr.P.C.;
- (4) Jurisdiction of the Court to decide the application for maintenance allowance particularly of parents and grand-parent;
- (5) Time limit for disposal of an application for maintenance allowance;
- (6) The existence of certain provisions which result in serious hardship and injustice;
- (7) Whether Section 407(7) and Section 408(3) of the Cr.P.C. require any amendment in relation to amount of compensation awarded by the High Court and Sessions Judge respectively on frivolous or vexatious application.

1.10 The matter was discussed at various meetings of the Commission, held at its head-quarter as well as its Camp Office at Allahabad. As an outcome of the discussions at various meetings, a Draft Report with a Model Draft (amendment) Bill, prepared by Shri Ishwar Dayal, Full-time Member of the Commission, was finally circulated to all the Members of the Commission and their views were invited thereon. The views on the Draft Report and Model Draft (Amendment) Bill, was discussed at a meeting of the Commission held on 25 January, 2011. The report of the Commission which proposed certain amendments in the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) by the Legislature of the State titled “NEED FOR AMENDMENT OF THE PROVISIONS OF CHAPTER IX AND CHAPTER XXXI OF THE CODE OF CRIMINAL PROCEDURE, 1973 (Act No. 2 of 1974)”, to be submitted to the State Government, has been finally settled, approved and signed by the Chairperson and Members of the Commission at its meetings held on 02 Feb, 2011.

1.11 The proposed amendments fined its place under Chapter-II-IV of the Report as recommendations and proposed **Model Draft, the Code of Criminal Procedure (Amendment) Bill, 2011** (Annexure-I).

1.12 We wish to express our appreciation for valuable services and assistance received from Shri Santosh Kumar Pandey, Secretary of the Commission.

1.13 We also acknowledge the valuable services and assistance rendered by the other staff and official of the Commission.

CHAPTER-II

ANALYSIS OF THE PROVISIONS FOR MAINTENANCE UNDER CHAPTER IX OF THE CODE OF CRIMINAL PROCEDURE

2.1 We may examine the following issues arising from the scope of Ss. 125-128 of the Code of Criminal Procedure, 1973.

2.2 After the Code of Criminal Procedure (Amendment) Act, 2001 (Act No. 50 of 2001) by Parliament (w.e.f. 24.09.2001) S. 125 Cr.P.C. runs as follows:-

S. 125 (1) If any person having sufficient means neglects or refuses to maintain-

- (a) his wife, unable to maintain herself, or
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
- (d) his father or mother, unable to maintain himself or herself,

A Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father or a minor female child referred to in Clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application of the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso, shall, as far as possible, be disposed of within sixty days from the date of the service of the notice of application to such person.

Explanation-For the purposes of this Chapter,-

- (a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;
- (b) “wife” includes a woman who has been divorced by, or has obtained a divorce from her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

- (3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, of 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 for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,) remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment is 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 became due:

Provided further that if such person offers to maintain his wife on condition of her living 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.

- (4) No wife shall be entitled to receive an (allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be) from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

- (5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

2.3 The State of Uttar Pradesh by Uttar Pradesh Act 36 of 2000 (w.e.f. 13.08.2001) prior to the enactment of the Code of Criminal Procedure (Amendment Act, 2001) (Central Act 50 of 2001) (w.e.f. 24.09.2001), has made the following amendment in S. 125:-

Uttar Pradesh- In its application to the State of Uttar Pradesh, in Section 125,-

- (a) In sub-section (1), for the words “five hundred rupees”, substitute “five thousand rupees”:
 (b) After sub-section (5), insert the following sub-section, namely:-

“(6) Where in a proceeding under this section it appears to the Magistrate that the person claiming maintenance is in need of immediate relief for his support and the necessary expenses of the proceeding, the Magistrate may on his application, order the person against whom the maintenance is claimed, to pay to the person claiming the maintenance, during the pendency of the proceeding such monthly allowance not exceeding five thousand rupees and such expenses of the proceeding as the Magistrate consider reasonable and such order shall be enforceable as an order of maintenance.”

2.4 We may examine the following issues arising from the scope of the section 125-128 creating hardship to awardees.

2.5 The quantum of the monthly maintenance allowance:-

2.5.1 The ceiling of Rs. 500 per month for maintenance allowance was prescribed in the year 1955 in section 488 of the Code of Criminal Procedure, 1908, this ceiling was retained in section 125 of the Code of Criminal Procedure, 1973, on the lines of section 488 of the Code of Criminal Procedure, 1908 which has since been repealed by the Code of Criminal Procedure (Amendment) Act, 2001 (Central Act No. 50 of 2001) w.e.f. 24.09.2001, wherein in sub-section (1) of section 125, the words “not exceeding five hundred rupees in the whole” was omitted. Thus, the upper limit of maintenance of Rs. 500/- per month in Chapter IX of the Code of Criminal Procedure has been abolished by Parliament. In view of the cost of living index centrally rising, retention of maximum ceiling is not justified. If a ceiling is prescribed and retained, it would require periodic revision taking into account the inflation and rise in the cost of living as well as amendment of provisions of the Act from time to time. This would necessarily be time consuming. Accordingly section 125 was amended and consequential changes in section 127 was also made by aforesaid amendment by Parliament.

2.5.2 In this regard brief history reveals that the **Law Commission of India in its 132nd Report** strongly felt that the ceiling on the quantum of maintenance be dropped altogether. The Commission observed:

“It cannot be overlooked that if a ceiling is retained, it would require to be revised from time to time taking into account the inflation and rise in cost of living. It would be extremely difficult to amend the

provision periodically, time and again, for it would result in investment of legislative time unnecessarily. The present experience reinforces this apprehension inasmuch as the ceiling of Rs. 500/ has remained unrevised for 30 years without anyone (including women's activist groups) even becoming aware of the resultant anomaly and injustice."

2.5.3 Accordingly, it recommended that "the ceiling limit in sub section (1) of section 125 and in the first proviso to sub-section (1) of section 127 be deleted."

2.5.4 The report contains several valuable recommendations to alleviate the hardship to wives, children and parents. However, the Code of Criminal Procedure (Amendment) Bill, 1994 has not incorporated any of these recommendations. The only amendment made in the Bill is the one relating to the quantum of maintenance an increase in statutory ceiling from Rs. 500/- to Rs. 1500/-

2.5.5 The **Law Commission of India, in its Report** on this subjects, observed:

"We are of the view that the increase in ceiling from Rs. 500/- to Rs. 1500/- suggested in 1994, Bill would not serve the purpose owing to spiraling inflationary conditions. We are also not in favour of dropping altogether the ceiling limit provided under the Code. We feel that justice would be done to awardees if the ceiling is raised to Rs. 5000/- This view has found unanimous support in the various Workshops conducted by the Law Commission."

2.5.6 After the aforesaid amendment by Parliament (Act 50 of 2001) wherein the upper limit has been omitted, the **U.P. State Law Commission in its 12th Report titled "Criminal Justice Reform"**

which was submitted to the State Government in December, 2001, also dealt with Ss. 125-128 of the Code of Criminal Procedure, under Chapter-IV of the Report. The Commission observed “It appears however that an Act (No. 50 of 2001) for total removal of ceiling has now been enacted for amendment of sections 125 and 127 accordingly. It has thus become necessary for this Commission to make any recommendation in that regard”, however in the proposed amendment Bill of the Code of Criminal Procedure (Appendix 3) of the report, Commission proposed to increase the ceiling limit of Rs. 500/- to Rs. 1500/- in sub-section (1) of section 125 (while the upper limit has already been omitted by Parliament w.e.f. 24.09.2001).

2.5.7 It appears that in the light of 154th Report of the Law Commission of India, the Legislature of Uttar Pradesh passed the Uttar Pradesh Act No. 36 of 2000 (w.e.f. 13.08.2001) by which under section 125 and in the proviso to sub-section (1) of S. 127 of the Code of Criminal Procedure, 1973 aforesaid Uttar Pradesh State Amendment was made which increases the ceiling limit from Rs. 500/- to Rs. 5000/-. As stated earlier upper ceiling limit of maintenance has been abolished by Parliament w.e.f. 24.09.2001. Now the question arises whether the aforesaid ceiling limit fixed by the Legislature of U.P. has any relevance in view of the inflation and rise in cost of living.

2.5.8 The salaries have been increased manifold, price index is rising rapidly and inflation and cost of living is also rising. When the Commission embarked on the examination of the issue, two options presented themselves before the Commission, namely, (1) to raise the ceiling taking into the inflation and the rise in cost of living, and (2) to do away with the ceiling altogether, leaving it to the court to determine the quantum of monthly allowance required to be awarded

from case to case depending upon the facts and circumstances of each case. Having accorded anxious to the relevant factors, the Commission is firmly of the opinion that the appropriate course would be to do away with the ceiling altogether. Under these circumstances Law Commission is of the view that upper limit of maintenance amount which was increased by the aforesaid state amendment from “five hundred rupees” to “five thousand rupees” has no relevance in the present day. If a ceiling is prescribed and retained, it would require periodic revision taking into account the inflation and rise in the cost of living as well as amendment of provisions of the Act from time to time. This would necessarily be time consuming, the words for which “five thousand rupees” was substituted by the Legislature of Uttar Pradesh, has been omitted by Parliament. It also create some confusion among the subordinate courts in the State of U.P. Hence we are of the considered view that the ceiling limit which was increased by the Legislature of U.P. from Rs. 500/- to Rs. 5000/- in sub-section (1) of section 125, should be omitted.

2.6 Liability of married daughter to maintain parents:-

2.6.1 There can be no doubt that it is the moral obligation of a son or a daughter to maintain his or her parents, it is not desirable that even though a son or a daughter has sufficient means, his or her parents would starve. Apart from any law, the Indian society casts a duty on the children of a person to maintain their parents if they are not in a position to maintain themselves. It is also their duty to look after their parents when they become old and infirm.

2.6.2 However, before ordering maintenance in favour of a father or a mother against their married daughter, the Court must be satisfied that the daughter has sufficient means of their own independently of the means or income of her husband and that the father or the mother, as the case may be, is unable to maintain himself or herself.

2.7 Joint Committee on the Criminal Procedure Code Bill, 1973 in their report made the following recommendations on this point (para 5):-

“The Committee considers that the right of the parents not possessed of sufficient means, to be maintained by their son should be recognized by making a provision that where the father or mother is unable to maintain himself or herself an order for payment of maintenance may be directed to a son who is possessed of sufficient means. If there are two or more children the parents may seek the remedy against any one or more of them.”

2.8 In this regard, Bombay High Court in 1986 CRI. L.J. 1399, Dr. Mrs. Vijaya Manohar Arbat vs. Kashirao Rajaram Sawai and another, observed;

“It is pertinent to note that this clause is newly added in S. 125 of the Code and such a provision was not there in the old S. 488. The Legislature in its wisdom has conferred a new right upon the indigent father and mother to claim maintenance, by enacting sub-clause (d) in S. 125 (1); hence by interpretative process what is granted by the legislature is to prevent vagrancy by compelling a person to support his wife or child or father or mother unable to support themselves. The provisions relating to obligation to maintain are not penal in nature, but

are intended for the enforcement of a social duty, a default of which may lead to destitution and vagrancy. It serves a social purpose. Therefore, it will not be fair to exclude a well-to-do married daughter, who has an independent source of income, from carrying out this social obligation. That will be against all the canons of justice, equity and good conscience. It will also be against the well-established principles of 'gender justice'. It will frustrate the very object of the legislation. Therefore, I do not find any substance in this Revision Application.”

2.9 Against the above judgment and order of the **Bombay High Court, Petitioner filed an appeal before the Hon'ble Supreme Court (AIR, 1987) SC 1100**, wherein in para 8 of the Judgment it is observed:

“It is true that Cl. (d) of S. 125(1), Cr.P.C. has used the expression “his father or mother” but the use of the word “his” does not exclude the parents claiming maintenance from their daughter. In view of the provisions of S. 2 (y) of Criminal P.C., read with S. 8 of the Penal Code and S. 13 (1) of the General Clauses Act, the pronoun “his” as used in Cl. (d) of S. 125 (1) Cr.P.C. includes both a male and female. In other words, the parents will be entitled to claim maintenance against their daughter provided, however, the other conditions as mentioned in the section are fulfilled. Before ordering maintenance in favour of a father or a mother against their married daughter, the Court must be satisfied that the daughter has sufficient means of her own independently of the means or income of her husband, and that the father or the mother, as the case may be, is unable to maintain himself or herself.”

2.10 Hon'ble Apex Court in Vijaya Manohar case supra overruled the view taken by the Punjab & Haryana High Court in Raj Kumari vs. Yashodha Devi, 1978 Cri. L. J. 600. In that case it has been held by a Hon'ble Single Judge of the Punjab & Haryana High Court that a daughter is not liable to maintain her parents who are unable to maintain themselves as it was based on the first part of the report of the Joint Committee and did not refer the later part of his judgment.

2.11 The Kerala High Court in M. Areefa Beevi vs. Dr. K.M. Saheb, 1983 Cri. J. 412 and the Andhra Pradesh High Court in Repalli Masthanamma vs. Thota Sriramulu, (1982) 1 Andh, WR 393, have taken the view that the parents who are unable to maintain themselves can claim maintenance also from their daughters under S. 125 (1)(d) Cr.P.C.

2.12 Clause (d) of sub-section (1) of S. 125 Cr.P.C. runs as follows:

“(d) his father or mother, unable to maintain himself or herself,”

2.13 In view of the above discussions Commission is of the opinion that married daughter, who has sufficient means of her own independently of the means or income of her husband, and that the father or mother, as the case may be, is unable to maintain himself or herself, is also liable to maintain her parents.

2.14 Though Hon'ble Apex Court and High Courts have an opportunity to examine this issue and have held as above that “pronoun “his” occurring in S. 125 (1)(d) denote also a female”. Therefore it is quite clear that there is no ambiguity in clause (d) for the word “his”, even then the pronoun “his” occurring in S. 125 (1)(d) is

raised before the Subordinate Courts generally and it has to be decided by the Court. Though result may not vary but apparently it is time consuming and creates some confusion. Therefore, Commission is of the view that to remove any doubt in clause (d) after the word “his” the words “or her” may be inserted.

2.15 Whether grand parents are also entitled for maintenance allowance under Chapter IX of the Cr.P.C.:

S. 125 of the Code of Criminal Procedure, 1973 which is a reincarnation of S. 488 of the old Code except of the fact that parents also are brought into the category of the persons eligible for maintenance. It means that main thrust of the provision is to assist women and children in distress, is also benefits a distressed father. But it does not cover the grand-parents who are old, infirm, issueless or their children have died and are unable to maintain themselves and consequently driven to a life of vagrancy, immorality and crime for their sentence. Under these circumstances, Commission has already submitted its Seventh Report titled “**The Uttar Pradesh Maintenance And Welfare of Parents, Senior Citizens and Dependents Act, 2010**” which also includes the grand-parents, but nothing is heard from the State Government for such enactment so far. Hence Commission feels that there is need to have simple, inexpensive and speedy provisions to claim maintenance by the grand-parents also in the Code of Criminal Procedure like parents. The State of Madhya Pradesh has already made such State amendment in S. 125 of 2004. Therefore, Commission is of the opinion that in S. 125 (1) after clause (d), clause (e), may be inserted with certain restriction under proviso to clause (c), and in

S. 127 (1), and other related provisions may also be amended accordingly.

2.16 Jurisdiction of the Court to decide the application for maintenance allowance particularly of parents and grand-parents:

2.16.1 S. 125 Cr.P.C. entitles not only the wife or legitimate or illegitimate children to claim maintenance but also father or mother unable to maintain himself or herself. Only the new Code has enabled the father or mother to claim maintenance. This issue has attained the importance because of lacuna in S. 126(1) Cr.P.C. which runs as under:

“S. 126(1) Proceedings under Section 125 may be taken against any person in any district-

- (a) where he is, or
- (b) where he or his wife resides, or
- (c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.

2.16.2 The Cls. (b) and (c) are confined to wife or mother of the illegitimate child. Although S. 125 enables father or mother to claim maintenance yet in Cls. (b) and (c) of S. 126 (1) father or mother is omitted. Taking advantage of this silence, it is argued that father or mother can institute proceedings under S. 125 Cr.P.C. only whether the son is.

2.16.3 In **Ananth Gopal Pai vs. Gopal Narayan Pai, 1985 Cri. L.J. 152 (Kant)**, it was held by the Karnataka High Court that a father seeking maintenance can file application at a place where he resides.

2.16.4 In Ganga Sharan Varshney vs. Smt. Shakuntala Devi and another, 1990 Cri. L.J. 128, Allahabad High Court observed:-

“14. Keeping in view the intention of the Parliament behind, Cl (b) of S. 126(1) of the new Code should be liberally construed and should mean to enable the claimant in general whether wife, or child, or illegitimate child or mother or father to claim maintenance at the place where she or he resides. Hence it is concluded that a mother can file application for maintenance under S. 125 of the New Cr.P.C. in the district where she resides.”

2.16.5 Hon'ble Court further observed as under:-

“When the Parliament intended to give facility to helpless person to claim maintenance at the place where he or she resides, omission of mother or father in the Cl. © of S. 126(1) is accidental or inadvertent. The intention of the Parliament is clear that the helpless person should be given facility of claiming maintenance at the place where he or she resides. A statute has to be construed in a manner to carry out the intention of the legislation and even a modification or contradiction of the language of the legislature is permissible in order to square with the intention. If the destitute or vagrant mother is compelled to institute proceedings only at the place where the son resides, she may not at all be in a position to pursue her case. On the other hand, the son having pecuniary resources can certainly contest the case against her at the place where the mother resides. The intention of the legislature behind S. 125 is to provide against vagrancy and destitution.”

2.17 The Hon'ble Supreme Court in AIR 2004 SC 2123, Vijay Kumar Prasad vs. State of Bihar and others without taking note of the above views of the High Courts, has taken the contrary view. Observations made by the Hon'ble Apex Court in paras 13, 14 and 15 of the judgment runs as under:-

“13. It is to be noted that Clauses (b) & (c) of sub Section (1) 126 relate to the wife and the children under Section 125 of the Code. The benefit given to the wife and the children to initiate proceeding at the place where they reside is not given to the parents. A bare reading of the Section makes it clear that the parents cannot be placed on the same pedestal as that of the wife or the children for the purpose of Section 126 of the Code.”

“14. The basic distinction between Section 488 of the old Code and Section 126 of the Code is that Section 126 has essentially enlarged the venue of proceedings for maintenance so as to move the place where the wife may be residing at the date of application. The change was thought necessary because of certain observations by the Law Commission, taking note of the fact that often deserted wives are compelled to live with their relatives far away from the place where the husband and wife last resided. An application by the father or the mother claiming maintenance has to be filed where the person from whom maintenance is claimed lives.”

“15.....the expression “is” cannot be given the same meaning as the word “resided.” It connotes in the context the presence or the existence of the persons in the district where the proceedings are taken. It is wider in its concept than the word “resides” and what matters is his physical presence at the particular point

of time. No finding has been recorded by the High Court on this particular aspect which needs a factual adjudication. The stand of the appellant is that the practices in Patna and was not present in Siwan physically when the application was filed for maintenance. Respondent No. 2 father has indicated about the son practicing in the Patna High Court. Obviously if his son was practicing at the time of presentation of petition in the Patna High Court, he could not have been physically present at Siwan, whatever extended meaning may be given to the expression “is” in view of this the position is clear that the Court at Siwan has no jurisdiction to deal with the petition.....”

2.17.1 Therefore, in view of the Hon’ble Apex Court an application by the father or the mother claiming maintenance has to be filed where the person from whom maintenance is claimed lives.

2.17.2 With great respect to the Hon’ble Supreme Court, State Law Commission is of the opinion that a statute has to be construed in a manner to carry out the intention of the legislation and even a modification or contradiction of the language of Legislature is permissible in order to square with the intention if the destitute or vagrant father or mother or grand-father or grand-mother is compelled to institute proceeding only at the place where the person from whom maintenance claimed lives, he or she may not at all be in a position to pursue his or her case, while the person from whom maintenance claimed having pecuniary resources can certainly contest the case at the place where parents or grand-parents reside. Keeping in view the intention of the Parliament behind Section 125 of the new Code should be liberally construed and should mean to enable the claimant in general whether wife, or child, or illegitimate child or parents or grand-parents to claim maintenance at the place where he or she resides.

2.18 The Hon'ble Supreme Court in AIR 1986 SC 984, Smt. Savitri vs. Gopal Sing Rawat, observed:-

“It is the duty of the Court to interpret the provisions in Chap. IX of the Code in such a way that the construction placed on them would not defeat the very object of the legislation. In the absence of any express prohibition, it is appropriate to construe the provisions in Chapter IX as conferring an implied power on the Magistrate.....”

2.18.1 Hence Commission is of the view that to meet such situation and to ease and remove such hardship to the parents and grand-parents sub-clauses (b) and (c) of sub-section (1), of S. 126 of the Code of Criminal Procedure, 1973 be amended accordingly by the Legislature of State. Consequently in the existing clauses (b) and (c) of sub-section (1) of S. 126 of the code of Criminal Procedure, 1973 his father or mother, grand-father or grand-mother may be inserted.

2.19 Time limit for disposal of an application for maintenance allowance:

By the Code of Criminal Procedure (Amendment) Act, 2001 (Central Act 50 of 2001) in the third proviso to S. 125 (1) sixty days time limit for disposal of an application of the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso to S. 125(1) has been fixed but no time limit is fixed for disposal of an application for maintenance allowance. State Law Commission is of the opinion that time limit for disposal of an application for maintenance allowance may also be fixed so as to avoid unnecessary delay in disposal of such maintenance application. We think that six months time from the date of the service of the notice of application will be sufficient time for disposal of such application.

Hence. S. 125 of the Code of Criminal Procedure be amended accordingly.

2.20 The existence of certain provisions which result in serious hardship and injustice:

2.10.1 As stated earlier Parliament has abolished the upper ceiling limit of the maintenance allowance while in the State of U.P. ceiling limit of rupees five thousand is still there. We are of the view that it has no relevance in the present scenario. Hence, existing para in sub-section (1) in S. 125 as amended by U.P. Act No. 36 of 2000, requires amendment.

2.20.2 As we are going to add grand-parents also for the benefit of maintenance allowance likes parents it also requires amendment in the existing para and second proviso to sub-section (1), of S. 125, sub-clause (b) and (C), of sub-section (1) of S. 126 and sub section (1) of S. 127.

2.20.3 Prior to Central Act No. 50 of 2001 the provision for payment of interim maintenance and expenses for proceeding during the pendency of the proceeding regarding monthly allowance for the maintenance was not there in S. 125-128. Therefore, to provide such facilities to the claimant after sub-section (5) of S. 125, following sub-section (6) was inserted by U.P. Act No. 36 of 2000, namely:-

“(6) Where in a proceeding under this section it appears to the Magistrate that the person claiming maintenance in need of immediate relief for his support and the necessary expenses of the proceeding, the Magistrate may, on his application, order the person against whom the maintenance is claimed, to pay to the person claiming the maintenance, during the

pendency of the proceeding such monthly allowance not exceeding five thousand rupees and such expenses of the proceeding as the Magistrate consider reasonable and such order shall be enforceable as an order of maintenance.”

2.20.4 By this state amendment provision for payment of monthly allowance not exceeding five thousand rupees and expenses of the proceedings, during the pending of the proceeding regarding monthly allowance for the maintenance was made.

2.20.5 As stated earlier there is no relevancy for fixing of upper limit of ceiling. Secondly by Central Act No. 50 of 2001, provision for payment of interim maintenance and expenses of proceeding has been made by Parliament and at appropriate places in Ss. 125, 127 and 128 of the Code of Criminal Procedure, 1973 amendment has been made accordingly. Therefore when such provision has been made in the Principal Act, there is no need to retain aforesaid sub-section (6). Hence we are of the opinion that this provision may be omitted and may be substituted by the provision regarding time limit for disposal of an application of the monthly allowance for the maintenance under sub-section (1) of S. 125.

2.20.6 Prior to Central Act 50 of 2001, the Legislature of Uttar Pradesh has made the following amendment in the proviso to sub-section (1) of S. 127 by Uttar Pradesh Act, 36 of 2000;

“In its application to the State of Uttar Pradesh, in S. 127 of the Principal Act, in sub-section (1) in the proviso, for the words “five hundred rupees”, substitute “five thousand rupees”.

2.20.7 Before amendment by the Central Act No. 50 of 2001 the proviso to S. 127 (1) of the Principal Act, in which the said U.P. State Amendment (U. P. Act No. 36 of 2000) was applicable, is reproduced as under:-

“Provided that he increases the allowance, the monthly rate of five hundred rupees in the whole shall not be exceeded.”

2.20.8 After amendment of S. 127 by Parliament sub-section (1) of S. 127 runs as follows:-

“S.127.On proof of a change in these circumstances of any person, receiving under Section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance, for the maintenance or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance as the case may be.”

2.20.9 Thus above proviso has been omitted by Parliament. It means that the ceiling limit which was increased in the proviso to sub-section (1) of S. 127 in the Principal Act, is not in existence. Secondly as stated earlier Commission is also of the view that upper ceiling limit be abolished altogether. Hence the existing proviso to sub-section (1) of S.127 which was substituted by U.P. No. 36 of 2000, has no relevance and has become redundant. Therefore this proviso be omitted.

CHAPTER-III

**ANALYSIS OF SECTIONS 407 (7) AND 408 (3) OF THE
CODE OF CRIMINAL PROCEDURE**

3.1 Whether Section 407 (7) and Section 408 (3) of the Cr.P.C. require any amendment in relation to compensation amount awarded by the Court on frivolous application:-

3.2 This matter has been referred by the High Court Allahabad. We like to refer the relevant letter No. 19679/2010/Admn G-11 Section Allahabad dated 09.12.2010 of Sri Saleem Ahmad Khan, H.J.S. Joint Registrar (Inspection) High Court of Judicature at Allahabad addressed to the Chairman, U.P. State Law Commission, Lucknow, for ready reference, which runs as under;

“I have been directed to inform you that a workshop of the District Judges of the State to deliberate and make suggestions for ‘Strengthening Justice Dispensation, Challenges before District Judiciary’ was organized on 12th % 13th December, 2009 at IJTR Lucknow in which a proposal has been made as under- “Amendment in S. 407 (7) Cr.P.C. by enhancing the amount of compensation to Rs. 20,000/-.”

I am, therefore, to request you to kindly take appropriate action in this regard.”

3.3 Chapter XXXI deals with transfer of criminal cases. S. 406 deals with the powers of Supreme Court to transfer cases or appeals from one state to another at the instance of the Attorney General of India or a party interested. S. 407 covers any inquiry or trial of a case or appeal or class of cases or appeals of which transfer may be made by the High Court from one court to another court of equal or superior jurisdiction, including the High Court itself. Ss. 408 and 409 permits a

Sessions Judge to transfer cases or appeals from one criminal court to another in his session division and also recall any case or appeal made over by him to an Additional Sessions Judge or Chief Judicial Magistrate subordinate to him. S. 410 allows (a) a Chief Judicial Magistrate to withdraw or recall any case which he has made over to, any magistrate subordinate to him and (b) allows any Judicial Magistrate to recall a case made over by him under sub section (2) of S. 192 of the Code to any other Magistrate and S. 411 empowers a District or Sub-Divisional Magistrate to transfer or withdraw any case from a Magistrate subordinate to him and either try the same himself or refer it for disposal to any other Magistrate.

3.4 We are concerned here to S. 407 (7) and S. 408 (3) of the Code of Criminal Procedure.

3.5 Sub-section (7) of S. 407 of the Code of Criminal Procedure runs as follows:

“(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding **one thousand rupees** as it may consider proper in the circumstances of the case.”

3.6 Sub-section (3) of S. 408 of the Code of Criminal Procedure runs as follows:

“(3) The provisions of sub-section (3), (4) (5), (6), (7) and (9) of Section 407 shall apply in relation to an application to the Sessions Judge for an order under sub-section (1) as they apply in relation to an application to the High Court for an order under sub-section (1) of Section 407, except that sub-section (7) of that section shall so apply as

if for the words “**one thousand rupees**” occurring therein, the words “**two hundred and fifty rupees**” were substituted.”

3.7 Therefore, where any application for transfer is dismissed by the High Court or the Sessions Judge, and if it is of opinion, that the application was frivolous or vexatious the High Court or the Sessions Judge, as the case may be, may award compensation to any person who has opposed the application under the aforesaid provisions.

3.8 In AIR 1954 Madras 143, **R.M. Ramachari vs. M.B. Ramachari and another**, AIR (38) 1951 Kutch 82, **Karshandas Naranji vs. Ramji Dosa and another**, AIR 1931 Bombay 206, it is observed:-

“The High Court is empowered to order the applicant to pay cost when it is of the opinion that the application is frivolous or vexatious.”

3.9 In AIR 1933 Sind 361, **Abdullah Umar & other vs. Chandoomal Somimal** it is observed.

“Where an application for transfer suppressed the fact of dismissal of a prior application and was based on unfounded allegations, the High Court ordered the applicant to pay costs under this section.”

3.10 In AIR 1935 page 120, **Salig Ram vs. Baijnath Singh, Hon’ble Patna High Court** while awarding the maximum compensation, observed.

“Where the application contained allegations attributing to the trying magistrate remarks, which, if true, would render him unfit to exercise judicial functions and also contained statement regarding the conduct of proceedings which, if believed would cast serious reflection

on the Magistrate's ability to preside over a criminal trial, and the Magistrate in his examination categorically denied all the allegations and the counsel expressed his inability to support the application."

3.11 Where the application for transfer of the case rejected as being frivolous, the government opposing the application is entitled to recover costs from the applicant. **AIR 1930 All 206.**

3.12 Compensation amount for which the court is empowered to order the applicant to pay under S. 407 (7) or S. 408 (3) is very petty in nature because under the aforesaid provision High Court may order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees while Session Judge may order the applicant to pay such sum not exceeding two hundred and fifty rupees. Though High Court has referred the matter to propose the amendment in S. 407 (7) of Cr.P.C. which is related to the High Court, Commission is of the view that S. 408 (3) of Cr.P.C. which is related to the Sessions Judge, should also be considered for amendment as it is somewhat analogous to S. 407 (7), the only difference is of amount of compensation.

3.13 In the letter of the High Court enhancement of amount of compensation in S. 407 (7) is proposed to Rs. 20,000/- while there is no proposal for enhancement of amount of compensation in S. 408 (3), which is also to be amended as both are related to each other. The Law Commission is of the considered opinion that in Ss. 407 (7) & 408 (3) the existing amount of compensation of Rs. 1000/- and Rs. 250/- be enhanced. In our view, it will help to deter such person whose transfer application is frivolous or vexatious and based on unfounded, baseless and wild allegations just to delay the proceedings and harass the

Presiding Officer. Therefore, we are of the opinion that under Sections 407 (7) & 408 (3) for existing Rs. 1000/-, Rs. 25,000/- and under Section 408 (3) for existing Rs. 250/-, Rs. 10,000/- will be appropriate amount of compensation. Hence Ss. 407 (7) & 408 (3) may be amended accordingly.

CHAPTER-III

CONCLUSIONS AND RECOMMENDATIONS

4.1 In the light of discussion made in the earlier part of the report, the Commission is of the opinion that the law pertaining to maintenance of wives, parents and children embodied in Chapter IX and law relating transfer of criminal cases by the High Court and Sessions Judge on Chapter XXXI of the Code of Criminal Procedure, 1973 requires to be revised by incorporating suitable amendments with a view to update the law. And in order to make it more just, more relevant, more purposeful and more effective, so as to subserve the purpose of the legislation. Modification is called for to the extent and in the manner indicated here below:-

- (1) The Statutory ceiling of Rs. 500 in section 125(1) and in section 127 (1) has been omitted in the Principal Act by Parliament by the Code of Criminal Procedure (Amendment) Act, 2001 (w.e.f. 24.09.2001), while in the State of Uttar Pradesh the ceiling which was enhanced to Rs. 5,000/- by Uttar Pradesh Act No. 36 of 2000 (w.e.f. 13.08.2001) is still in force. Commission is of the opinion that it deserves to be removed. Because, it has become irrelevant by reason of inflation and rise in the cost of living. Besides, incorporating a statutory ceiling which cannot be updated without amending the law from time to time is impracticable and unnecessary. Therefore, ceiling Rs. 5,000/- which was substituted by the U.P. Act No. 36 of 2000 in sub-section (1) and sub-section (6), of Section 125 and sub-section (1) of section 127, require amendment.

- (2) In Section 488 of the Code of the Criminal Procedure, 1908 only wives and children were eligible for maintenance while in Section 125 of the Code of Criminal Procedure, 1973 parents were also brought under cover of maintenance. But it does not cover the grand-parents who are old, infirm, issueless or their children have died and are unable to maintain themselves and consequently driven to a life of vagrancy, immorality and crime for their sustenance. Therefore, Commission is of the opinion that grand-parents should also be inserted in the marginal heading of sub section (1), of Section 125 and Clause (e) be inserted after clause (d) to sub-section (1) of Section 125. In this regard, some restriction may be imposed by inserting a proviso to clause (e) and consequential amendment in Sections 125, 126 and 127 will also have to be made.
- (3) There can be no doubt that it is the moral obligation of a son or a daughter to maintain to his or her parent. Apart from any law, the Indian society casts a duty on the children of a person to maintain their parents if they are not in a position to maintain themselves. It is also their duty to look after their parents when they become old and infirm. However, before ordering maintenance in favour of parents against their married daughter, **the Court must be satisfied that the daughter has sufficient means of their own independently of the means or income of her husband** and that the father or the mother, as the case may be, is unable to maintain himself or herself. In this regard pronoun “his” occurring in Clause (d) of sub-section (1) of S. 125 of the Cr.P.C. irrespective of the specific law of the High Court

and Apex Court on this point, creates some confusion and it is generally raised before the subordinate courts that the parents are not entitled any maintenance from married daughter. Therefore, to remove such ambiguity or confusion or doubt the Commission is of the opinion that in Clause (d), of sub-section (1) of S. 125 after the word "his" the words " or her" be inserted and after Clause (d) a proviso as underlined above may be inserted to safeguard the interest of the married daughter also.

- (4) Parliament has inserted the third proviso to sub-section (1) of S. 125 and has fixed sixty days time limit for disposal of application for the interim maintenance and expenses for proceeding but no such time limit is fixed for disposal of an application for maintenance allowance. We are of opinion that to avoid unnecessary delay in disposal of such application six months time from the date of the service of the notice of application be fixed for the disposal of an application for maintenance allowance. Hence S. 125 of the Code be amended accordingly.
- (5) By the Central Act No. 50 of 2001 (w.e.f. 24.09.2001) the provision for payment of interim maintenance and expenses for proceeding during the pending of the proceeding regarding monthly allowance for the maintenance has been inserted and consequential amendment in Ss. 127, 127 and 128 has also been made. Prior to said amendment by Parliament there was no such provision under chapter IX of the Code. Therefore, to meet such situation after sub-section (5), of S. 125, sub-section (6), was inserted by U.P. Act No. 36 of 2000 (w.e.f. 13.08.2001). We

are of the view that when such provision has been made in the Principal Act by Parliament and consequential amendment has also been made, there is no need to retain sub-section (6) which was inserted by the State Amendment. Hence this sub-section (6) may be omitted and amendment be made accordingly.

- (6) Where an application for transfer is dismissed by the High Court, and if it is of opinion that the application was frivolous or vexatious, the High Court under Section 407 (7) may order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding Rs. 1000/- while in the same situation under S. 408 (3) Sessions Judge may award such sum not exceeding Rs. 250/- We feel that such amount of compensation is very petty in nature. District Judge of the State of U.P. in a seminar held at Judicial Training and Research Institute, Lucknow, Uttar Pradesh have the same view, therefore, High Court has referred the matter to the Commission. We are of the opinion that above amount of compensation be enhanced. Consequently under Ss. 407 (7) and 408(3) the amount of Rs. 1000 be enhanced to Rs. 25,000/- and under S. 408 (3) the amount of Rs. 250/- be increased to Rs. 10,000/-. Hence Ss. 407 (7) and 408 (3) be amended accordingly.

(7) Article 254 of the Constitution runs as follows:-

- “²⁵⁴ (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.
- (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State.”

Therefore the proposed State Amendment in the Code of Criminal Procedure, 1973 shall prevail only if it has received the Presidential assent. Hence after passing the proposed amendment by the Legislature of the State Presidential assent shall also be needed.

4.2 If the recommendations are accepted and acted upon by amending the said provisions in Chapter IX and Chapter-XXXI of the Code of Criminal Procedure, by the Legislature of the State the Commission is confident that the suffering and distress of the neglected women, children, parents and grandparents will be ameliorated in great measure and they will have a sigh of relief, and will deter such persons whose transfer applications are frivolous or vexatious.

43. We recommend accordingly.

(Justice V.C.Misra)
Chairman

(Prof. Balraj Chauhan)
Member (Part-time)

(Ishwar Dayal)
Member (Full-time)

ANNEXURE

MODEL BILL

THE CODE OF CRIMINAL PROCEDURE (UTTAR PRADESH
AMENDMENT) BILL, 2011

(WITH EIGHTH REPORT-2011)

ON

NEED FOR AMENDMENT OF THE PROVISIONS OF
CHAPTER IX AND CHAPTER XXXI OF THE CODE
OF CRIMINAL PROCEDURE, 1973

THE CODE OF CRIMINAL PROCEDURE (UTTAR
PRADESH AMENDMENT) BILL, 2011

(WITH EIGHTH REPORT-2011)

ON

NEED FOR AMENDMENT OF THE PROVISIONS OF
CHAPTER IX AND CHAPTER XXXI OF THE CODE
OF CRIMINAL PROCEDURE, 1973

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MODEL BILL

THE CODE OF CRIMINAL PROCEDURE (UTTAR PRADESH AMENDMENT) BILL, 2011

A

BILL

to amend the Code of Criminal Procedure, 1973 in its application to Uttar Pradesh.

IT IS HEREBY enacted in the Sixty-second Year of the Republic of India as follows:-

Short title and extent- **1.** (1) This Act may be called the Code of Criminal Procedure (Uttar Pradesh Amendment) Act, 2011.

(2) It shall extend to the whole of Uttar Pradesh.

Amendment of Section 125 of Act No. 2 of 1974 **2.** (1) In its application to the State of Uttar Pradesh, in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) hereinafter referred to as the Principal Act, in Section 125,

(a) in Sub-section (1),-

(i) for the existing marginal heading, the following marginal heading shall be substituted, namely:

“Order for maintenance of wives, children, parents and **grand-parents**”.

(ii) for existing clause (d), the following clause shall be substituted, namely:

“his or her father, mother, grand-father or grand-mother unable to maintain himself or herself”.

- (iii) after clause (d), the following proviso shall be inserted, namely:

“Provided that the court must be satisfied that the married daughter has sufficient means of her own independently of the means or income of her husband, and that the father or the mother as the case may be, is unable to maintain himself or herself.”

- (iv) after the proviso to clause (d), the following clause (e) shall be inserted, namely:

“(e) his or her grandfather or grandmother unable to maintain himself or herself:-

- (v) after clause (e), the following proviso shall be inserted, namely:

“Provided that the grand-parents shall only be entitled to monthly allowance for maintenance, if they are unable to maintain themselves and their sons or daughters are not alive or not able to maintain their parents.”

- (vi) In the existing para, for the words “a magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five thousand rupees in

the whole, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct”, the words” a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, grand-father or grand-mother at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct” shall be substituted;

(vii) for the existing second proviso, for the words “ Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct “the words” Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, grand-father or grand-mother and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct” shall be substituted.

(b) **For the existing sub-section (6),of the Principal Act, which was inserted vide the Uttar Pradesh Act No. 36 of 2000, the following sub-section shall be substituted, namely:-**

“An application of the monthly allowance for the maintenance under sub-section (1) shall, as far as possible, be disposed of within six months from the date of the service of the notice of application to the person from whom maintenance is claimed.”

Amendment of Section 126 **3.** (a) for the existing sub-clauses (b) and (c) of sub-section (1) of section 126, of the Principal Act, the following sub-clauses shall be substituted, namely:

(b) “where he or his wife, his father or mother, his grand-father or grand-mother resides, or

(c) Where he last resided with his wife, his father or mother, his grand-father or grand-mother, or as the case may be, with the mother of the illegitimate child.

Amendment of Section 127 **4.** In Section 127 of the Principal Act;

(a) in sub-section (1) for the words “father or mother” the words “father or mother, grand-father or grand-mother” shall be substituted.

(b) **the existing proviso to sub-section (1) which was substituted vide U.P. Act No. 36 of 2000 shall be omitted.**

Amendment of section 407 **5.** in sub-section (7) of Section 407, of the Principal Act for the words “one thousand rupees” the words “**twenty five thousand rupees**” shall be substituted.

Amendment of Section 408 **6.** In sub-section (3) of section 408, of the principal Act for the words “one thousand rupees” the words “**twenty five thousand rupees** and for the words “two hundred and fifty rupees” the words “**ten thousand rupees**” shall be substituted.