

# **DELHI HIGH COURT**

Nanak Chand

Vs.

Chander Kishore. (Delhi)

Criminal Revn. Nos. 185-D of 1966 and 339-D of 1965.

(I. D. Dua, C.J. and Hardayal Hardy, J.)

2.5.1968

## **ORDER**

### **I. D. Dua, C.J. and Hardayal Hardy, J.**

1. These two criminal revisions viz, Criminal Revision No. 339-D of 1965 and Criminal Revision No. 185-D of 1966 have arisen out of a reference made by an Addl. Sessions Judge recommending that the monthly maintenance under Section 488 of Criminal Procedure Code allowed by the trial Magistrate to Chander Kishore and other who are petitioners in Criminal Revision No. 339-D of 1965 be enhanced while the revision petition filed by their father Nanak Chand who is petitioner in Criminal Revision No. 185-D of 1966 and respondent in Criminal Revision No. 339-D of 1965, be dismissed. Both the petitions were heard together and were disposed of by a common judgment.

2. The case originally came before J. S. Bedi J. of the Punjab High Court at Delhi but considering the importance of the questions of law involved in it and a marked divergence of judicial opinion on the question whether the word "child" in Section 488 (1) Criminal Procedure Code means a person of tender years or a person who has not attained the age of majority or is only intended to express the relationship of a person as the immediate off-spring or progeny of the person from whom maintenance is claimed without relevance to age, the case was referred to a larger Bench and has after the constitution of this Court come up before us.

3. The broad facts are not in dispute. Petitioners Chandra Kishore, Ravindra Kishore and Rakesh Kumar are the sons of Nanak Chand and Shashi Prabha is his daughter. In September, 1963 they applied under Section 488 Criminal Procedure Code to a

Magistrate for grant of a monthly maintenance of Rs. 500/- against their father alleging that he was possessed of considerable property which brought him an income of Rs. 1200/- per mensem and that he had refused or neglected to maintain them without any sufficient cause. They alleged that after the death of their mother in 1952 their father was living with one Smt. Bimla Devi who was not his legally wedded wife and had at her instigation, been ill-treating and neglecting to maintain them. The application was resisted by Nanak Chand who felt greatly hurt by the accusation implicit in his relationship with his wife Smt. Bimla Devi being described by the petitioners as adulterous.

He also denied that he had neglected or refused to maintain the petitioners and contended that it was his wife Smt. Bimla Devi who had brought up all of them with great affection and care till in the month of May, 1963 they started living with their two elder sisters who being well educated were according to him economically independent and had refused to marry boys of his choice. He asserted that all the four petitioners and their elder sister were still living in the same house with him. He admitted that he was displeased with the behavior of his eldest son Chandra Kishore who was maintaining pen friendship with a girl in a foreign country and stated that he was also unhappy with one of his elder daughters who had started taking lessons in dancing. He, however, asserted that he was willing to maintain his minor children and therefore, denied the jurisdiction of the Magistrate to make an order under Section 488 Criminal Procedure Code and contended that in any case there was no such jurisdiction to award maintenance under that Section to Chander Kishore and Ravinder Kishore who were aged 23 and 22 years respectively and were able to maintain themselves.

4. The trial Magistrate strongly condemned the unfilial conduct of the petitioners in accusing their father of living in adultery with Smt. Bimla Devi who according to the learned Magistrate had brought them up for over 10 years after the death of their mother and was their father's wife. Allegations of cruelty and neglect were also found to be false.

5. Learned Magistrate found that on the date of the order petitioner Chander Kishore was 23 years of age and was studying in the final year for a Master's Degree in Commerce at Delhi while Ravinder Kishore aged 22 years was a student in the Second year for Bachelor's Degree in Medicine and Surgery in the Medical College at Aligarh. Shashi Prabha aged 18 years was studying in the Higher Secondary Class while Rakesh Kumar was a student in 10th Class.

6. Without expressing any definite opinion on the question whether the use of the word "child" in Section 488 Criminal Procedure Code precluded a Magistrate from awarding maintenance to a person who was not a minor, the learned Magistrate held that although there was no qualification of age in the section it was presumed that every child above the age of 18 years should be capable of earning his or her livelihood and, therefore, felt disinclined to make for food etc. in favour of Chander Kishore and Ravinder Kishore. She, however, ordered that in spite of their misbehavior the interest of the family demanded that they should be enabled to complete their education and the respondent be made to pay a sum of Rs. 35/- p. m. to each of them as educational expenses. The order was restricted to a period of 4 months in the case of Chander Kishore and to a period of 3 years in the case of Ravinder Kishore provided they continued their studies. Their request for a larger amount was declined on the ground that both of them were able-bodied persons and could take up part-time jobs somewhere.

7. As regards the other two petitioners, namely Shashi Prabha and Rakesh Kumar, the learned Magistrate held that they were still minors and were as such entitled to grant of maintenance including educational expenses at the rate of Rs. 45/- per mensem each.

8. Both the sides were dissatisfied with the order made by the Magistrate and moved the Court of Session in revision. The petitioners asked for enhancement of maintenance and prayed that the order be made effective from the date of their application while the respondent moved for rejection of the petitioner's application for maintenance outright.

9. Learned Additional Sessions Judge disagreed with the trial court that Chander Kishore and Ravinder Kishore were entitled to educational expenses only and held that they were entitled to full maintenance as their inability to maintain themselves was due to their pre-occupation with studies which they were not pursuing with the object of inflicting an unreasonable burden on their father.

10. He held that the word "Child" in Section 488(1) Criminal Procedure Code has been used to mean the son or the daughter without reference to the age and that the deciding consideration is whether the child is or is not able to maintain himself or herself. He also held that the two grown up petitioners were not undergoing the educational course with the object of inflicting avoidable burden of maintenance and were, therefore, entitled to maintenance.

11. He also disagreed with the trial Magistrate's finding that there was no neglect or refusal on the part of the respondent and held that the petitioners having sided with their elder sisters who had defied the authority of their father in regulating their life and conduct according to his own views the latter had refused to maintain them.

12. Relying upon a decision of the Lahore High Court in *Mt. Shanno Devi v. Daya Ram*,<sup>1</sup> he dissented from the view taken by the trial Magistrate that Chander Kishore and Ravinder Kishore were entitled to expenses of College education and instead held that they were entitled to Rs. 100/- p. m. each as maintenance commensurate with their status till they completed their education. The maintenance of the other two petitioners Rakesh Kumar and Shashi Prabha was also enhanced from Rs. 45/-p. m. to Rs. 50/- p. m. each. The allowance of each of these petitioners was to continue so long as he or she was unable to earn for him self or herself; in case of Shashi Prabha the payment of allowance was to end on her marriage.

13. The correctness of the orders made by both the Courts below has been assailed before us by the learned counsel for the respondent who is not satisfied even with the limited order made by the trial Magistrate.

14. It is urged that the learned Additional Sessions Judge has erred in holding that the respondent had refused or neglected to maintain the petitioners who according to the Magistrate had only to thank themselves for leaving his protection. It is further urged that in any event the word "Child" in Section 488(1) refers only to a minor and that the word was never meant by the legislature to denote simple progeny without reference to age, because had that been the intention, the words "son" or "daughter" might have been easily used.

15. It is lastly urged that Section 3(a) of the Hindu Adoptions and Maintenance Act, 1956 defines the word "maintenance" while the word "minor" is defined in Section 3(b) of the Act as a person who has not completed his or her age of eighteen years. Section 4(b) provides for the overriding effect of this Act and lays down that save as otherwise expressly provided in this Act any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far it is inconsistent with any of the provisions contained in this Act. Section 20 imposes an obligation on a Hindu to maintain his or her child, legitimate or illegitimate, only so long as the child is a minor. It is argued that the above mentioned provisions of this Act should be held to have pro tanto repealed the provisions of Section 488 of Criminal Procedure Code in their application to Hindus.

16. It is apparent that the last two contentions of the learned counsel are the only. Substantial contentions in the case and will, therefore, be examined in detail. As regards the first contention also we must say that while we share the view of the learned Additional Sessions Judge that merely because the petitioners had sided with their elder sisters who had chosen to disregard their father's wishes in the matter of choice of husbands for them the respondent had no right to refuse to maintain the petitioners, we cannot help expressing our strong disapproval of the conduct and behavior of the petitioners in maligning their own father and bringing a charge of adultery against him visa-vis Smt. Bimla Devi who has been held by the learned Magistrate to be his lawfully wedded wife and who admittedly brought them up for over ten years.

A father is no doubt responsible for maintaining his children who cannot earn for themselves; but there is also a corresponding obligation on children to show respect and obedience to their parents and to pay due heed to their mature and wise counsel. Parental love and filial devotion are indeed the two pillars on which rests the entire fabric of family life which in turn is the foundation of a stable society. The existence of conflict of views between age and youth is not a phenomenon of recent origin only; but the existence of this conflict is no excuse for absence of good manners.

17. In the present case, it pains us to have to observe that the petitioners have shown woeful lack of good manners in dealing with their father and step-mother. But the respondent's own conduct too is not quite what it should be. In dealing with his children he has maintained, not only in the courts below but even before us, an attitude of rigidity and inflexibility which is quite unusual in a father who really loves his children and is, therefore, prepared to overlook their youthful lapses as the outcome of an immature mind.

18. We may now notice the second contention of the learned counsel which indeed has led to such a sharp cleavage of opinion among various High Courts and sometimes even in the decisions of the same High Court.

19. The relevant provision of Section 488 (1) reads:-

"If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-Divisional Magistrate or 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, at such monthly rate, not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs."

20. The word "child" has not been defined in the Code. The absence of this definition has led to conflict of judicial opinion. While the view taken in some decisions is that the word "child" used in sub-section (1) of Section 488 means a boy or a girl below 18 years of age. Some other decisions have taken the view that the age of the boy or girl has no relevance at all and that the only requirement of the Section is that the applicant for maintenance should be the off-spring of the person from whom maintenance is claimed and that he or she should be unable to maintain himself or herself.

21. The earliest case to which our attention has been invited is *Bhagat Singh v. Emperor*,<sup>2</sup> where Chevis J. of the Punjab Chief Court held that under Section 488 Criminal Procedure Code any son or daughter, whatever his or her age may be, was entitled to claim maintenance so long as he or she was unable to maintain himself or herself. The person to whom maintenance was awarded in that case was a young Jat of 20 or 22 years and was lame. Learned Judge held that reference to age had been purposely omitted in the Section.

22. This judgment was followed by the Sessions Judge, Ferozepur in a case where he recommended to the High Court that the order of a Sub-Divisional Magistrate discharging an earlier order of maintenance under Section 488 on the ground that the boy had attained the age of 18 years be revised. Ram Lall J. who heard the reference, referred the case to a larger Bench.

23. The order of reference mentions several decisions of High Courts including a decision of the same High Court, AIR 1933 Lahore 1026 where Addison J. had allowed maintenance to a boy till he attained the age of 18 years. This decision, though not in so many words, seemed to the learned judge to indicate that the boy ceased to be a child within the meaning of the Section on attaining majority. The Division Bench (Young C. J. and Blacker J.) to whom the case, *Muhammad Yar v. Ali Muhammad*,<sup>3</sup> was referred for opinion, however, did not consider it necessary to define the word "child" as in "their opinion, the person for whom maintenance allowance was sought was aged 18 at the time of the proceedings and 20 at the hearing of the reference and was quite healthy and was not suffering from any illness. It was held that such a person must be presumed to be capable of maintaining himself.

24. In Calcutta High Court Nasim Ali J. in the case of *Hemanta Kumar Banarjee v. Manorama Debi*,<sup>4</sup> relying upon the decisions of Madras High Court in *Krishnan Swami Iyer v. Chandra Vadana*,<sup>5</sup> and Lahore High Court in AIR 1933 Lahore 1026 held that in the absence of any statutory definition or anything to the contrary in the Act he was inclined to the view that "child" is a person who is not competent to enter into any contract or to enforce any claim under the law. Under the Majority Act, a person who has not attained the age of 18 years is incompetent to contract and is, therefore, a child within the meaning of the section.

25. In *Sm. Puransashi Devi v. Nagendra Nath*,<sup>6</sup> the claimant for maintenance was a boy of 17 or 18 or 19 years of age. The case of Hemanta Kumar Banerjee, AIR 1935 Calcutta 488 was not brought to the notice of the learned Judges (Das Gupta and Lahiri JJ.) nor was that decision brought to the notice of the Bench hearing the subsequent case of *W. L. Faria v. Anita Merlene Faria*,<sup>7</sup> but the Division Benches in both these cases held that "the word 'child' has been deliberately used to leave the Courts free to order maintenance for such sons and daughters as are unable to earn livelihood for themselves, having due regard to the class of society to which they belong and other surrounding circumstances. The fact, therefore, that the son is 17, 18, 19 is no ground for refusing maintenance on his account."

26. It may be mentioned here that the girl Anita to whom maintenance had been awarded in the last mentioned case was above 18 years of age. The argument that she was major and, therefore, not a child was repelled by the learned Judges.

27. In Bombay, the view taken by Beaumont C. J. and Wassoodew J. in *Ahmed Shaikh v. Bai Fatma*,<sup>8</sup> was in direct conflict with the decision of Madras High Court in ILR 37 Madras 565 : (AIR 1914 Madras 594), and Calcutta High Court in AIR 1935 Calcutta 488. It was observed:-

"The word 'Child' according to its use in the English language has different meanings according to the context .... In certain contexts it may include descendants of more remote degree, and be equivalent to "issue." But at any rate, where the word 'child' is used in conjunction with parentage, it is not concerned with age. No one would suggest that a gift 'to all my children' or 'to all the children of A' should be confined to minor children. In Section 488 Cri P. C. the word is used with reference to his father. There is no qualification of age: his only qualification is that the child must be unable to maintain itself. In my opinion, there is no justification for saying that this section is confined to

children who are under the age of majority."

28. A contrary view was, however, taken by another Bench of the same High Court in *Ranchhoddas Narottamdas v. Emperor*,<sup>9</sup> where Sen and Jahagirdar JJ. following the decision of Nasim Ali J. in Hemanta Kumar Banerjee's case, AIR 1935 Calcutta 488 held that a person is a child till he attains the age of majority. It may be mentioned here that the girl to whom maintenance had been awarded in that case was 15 years of age and the argument advanced on behalf of the father was that the girl having since been married, had lost under the Hindu Law, her right of maintenance from the father. The argument was repelled and it was held that under Section 488 the real and only test was whether the child was unable to maintain itself and that the personal law of the parties had no bearing on the question. The case of AIR 1943 Bombay 48 does not seem to have been brought to the notice of the learned Judges as it was perhaps felt that it was not necessary for the purpose of deciding that case to define the word "child", the girl being admittedly below 18. The case cannot, therefore, be treated as an authority for the view contrary to the two Bench decisions of Calcutta High Court and the judgment of Beaumont C. J. and Wassoodew J. in Ahmed Shaikh's case, AIR 1943 Bombay 48.

29. In Nagpur and Madras High Courts the view has not been uniform. In *Gangaramsa v. Vishnusa*<sup>10</sup> the learned Additional Judicial Commissioner following the view of Madras High Court in ILR 37 Madras 565 : (AIR 1914 Madras 594) held that a boy who was of age and, therefore, capable of maintaining himself could not legally demand maintenance from his father under Section 488 Criminal Procedure Code.

30. In *State v. Ishwar Lal*,<sup>11</sup> Mudholkar J., however, expressed himself in favour of the decisions which gave a wider meaning to the word "child". The two reasons given by him in support of his view are first, that the section itself omits reference to the age of the child and, therefore, to hold that a child means only a minor person would be reading something into the Section which is not there and secondly, if the word "child" is to be restricted to a person who has not attained the age of majority, a cripple or an imbecile would be left without any remedy against his well-to-do parents.

31. The leading case from Madras High Court viz., ILR 37 Madras 565 : (AIR 1914 Madras 594) is in support of the view that the word "child" means a person who has not yet attained majority. A reference has already been made to this case which as stated above, was followed by Nasim Ali J. of Calcutta High Court in Hemanta Kumar Banerjee's case, AIR 1935 Calcutta 486 and by the Additional Judicial Commissioner

of Nagpur in Gangaramsa's case, AIR 1922 Nagpur 49 and was approvingly referred to by Sen and Jahagirdar JJ. of Bombay High Court in *Ranchhoddas Narottamdas v. Emperor*,<sup>12</sup>

32. The case came to court on the application of the putative father of an illegitimate girl for alteration of the maintenance allowance on the ground that the girl was more than 16 years old and could no longer be regarded as a child unable to maintain herself. Sankaran Nair, J. observed:-

"The word "child" has not been defined in the Criminal Procedure Code. In English it has got apparently various statutory definitions. But in the absence of any definition or anything to the contrary in an Act, I am of opinion that a 'child' is a person who has not reached full age. It is only then that she becomes competent to enter into any contract or enforce her claims; as this daughter has not attained the age of majority, i.e. 18, I think she is a 'child' within the section."

33. In *Subhama v. Venkata Reddi*,<sup>13</sup> Panchapakesa Ayyar J. while awarding maintenance to a son till he attained the age of 18 years, observed:

"I consider that 'child' entitled to maintenance under Section 488 Cri P. C. must be a minor .... That is, normally below 18 years, though, if he is a ward under the Court of Wards Act, or a person for whom a guardian has been appointed by Court, the age may perhaps be advanced to 21. I am unable to agree with the contention of the learned counsel for the petitioner that a 'child' for the purpose of Section 488 Cri. P. C. may be of any age and need only be unable to maintain itself. The petitioner's counsel urged that 'child' in Section 488 Criminal Procedure Code means only "progeny". If that were so, a man of 77, unable, owing to senility, to maintain himself, can sue his father aged 97 for maintenance as his 'child'. This is manifestly absurd. Though a child may mean 'a child in the womb' as well as this old man of 77, and a person below 14, for the purposes of Children's Act etc. the meaning of the word in Section 488 which contains no definition of it, must be taken to be 'minor' whether under the Indian Majority Act, or the Court of Wards Act, or the Guardians and Wards Act."

34. Anantanarayanan J. followed this case in *Ibrahim v. Saidani Bi*,<sup>14</sup> Strangely enough, the judgment refers to Ranchhoddas's case of the Bombay High Court and also to the judgment of Nasim Ali J. in Hemanta Kumar Banerjee's case and the Bench decision of Calcutta High Court in Puranasashi Devi's case, (AIR 1950

Calcutta 465) but there is no reference to the earlier Bench decision of Bombay High Court in AIR 1943 Bombay 48 which was directly in point. The learned judge also left open the question whether a person who was theoretically above 18 but still not capable of taking care of himself or herself and was also not sui juris because of any defect such as mental infirmity etc. would or would not be a child for the purpose of Section 488 Criminal Procedure Code.

35. A view contrary to that in Krishna Swami Iyer's case, ILR 37 Madras 565 : (AIR 1914 Madras 594) would, however, seem to have been taken in some other decisions of the same High Court (See *In re: P. V. Moideen*, <sup>15</sup> and *Kent v. Kent*, <sup>16</sup> *Kanniah Naidu v. Rajammal*), <sup>17</sup>

36. In *Amirthammal v. K. Marimuthu*, <sup>18</sup> which may be taken as representing the latest view of that Court, a Bench of Veeraswami and Natesan JJ. has on an exhaustive review of case-law expressed its dissent from the judgments of most of the other High Courts and has observed :-

"In the light of the above discussion we are inclined to agree with the view of Panchapakesa Ayyar J. in AIR 1950 Madras 394 that the meaning of the word 'child' in Section 488 must be taken to be a minor whether under the Indian Majority Act or the Court of Wards Act or the Guardians and Wards Act and, with respect differ from the decisions which have taken the view that any person who is unable to maintain himself or herself of whatever age, without limit would be a child under Section 488, because he is a child of his father. The result would be a son or daughter under 18 would be a child under the Act and where a guardian is appointed by Court, the childhood for the purpose of Section 488 would continue during the non-age or legal infancy, that is, till the completion of 21 years."

37. The only case from Patna High Court which has been brought to our notice and which deals with this question is a decision of Jwala Prasad J. in *Mt. Rajwarin v. Lagan Singh*, <sup>19</sup> where the question before the Court was whether the maintenance awarded to a girl should be limited to her attaining 14 years of age. After referring to the decisions in ILR 37 Madras 565 : (AIR 1914 Madras 594) and (1910) 6 Ind Cas 960 (Lah) the learned Judge observed :-

"In the absence of any definition of the word "child" in the Act, or to any limit of age placed upon it, I would accept the decision of the Punjab High Court that the maintenance allowed is to continue so long as the person is unable to

maintain himself. The omission to define the age was probably intentional so as to allow the maintenance to continue even throughout the life, if owing to some mental or corporeal defect, the person is unable to maintain himself."

38. The latest view of Allahabad High Court is reflected in the decision of Nigam J. in *Abdul Hai v. Azra Sikander*,<sup>20</sup> where the question was whether a daughter who had become major was entitled to be maintained thereafter under the provisions of Section 488 Criminal Procedure Code. Learned Judge rejected the contention that as soon as the person attained the age of 17 years it ceased to be entitled to maintenance. In the learned Judge's opinion the key to the provision is furnished in the case of the child, by the words "unable to maintain itself."

39. The Rangoon High Court was more or less consistently in favour of holding that the question of age was not of much relevance. In *Thambuswamy v. Ma Lone*<sup>21</sup> the Lower Burma Chief Court was hesitant to adopt the view of Madras High Court in ILR 37 Madras 565 : (AIR 1914 Madras 594).

40. In *U Ba Thaung v. Ma Aye*,<sup>22</sup> the learned judges were hesitant to lay down as a rigid rule that no order could be made in favor of a child if it had become major while Mackney J. in *Ma E Mya v. U Ko Ko Gyi*, AIR 1937 Rangoon 370 was definitely of the opinion that the word "child" merely expresses a relationship which may exist whether the child is under an age of majority or over the age of majority because even a child which has reached majority may for some reason be unable to maintain itself, in which case it would be the duty of the parent under Section 488 Criminal Procedure Code to maintain it.

41. In *Saraswati v. Madhavan*,<sup>23</sup> the claimant for maintenance was a daughter aged 22. After pointing out that the decisions on the point were not uniform, P. Govinda Menon J. preferred to follow the view of Madras High Court in ILR 37 Madras 565 : (AIR 1914 Madras 594) and AIR 1950 Madras 394. A perusal of the judgment shows that the learned judge was greatly influenced by the Illustration given by Panchapakesa Ayyar J. in AIR 1950 Madras 394 where the learned judge had observed that if the word "child" had to be taken to mean progeny only then a man of 77, unable, owing to senility to maintain himself might claim maintenance from his father aged 97. According to the learned Judge that could not have been the intention of the Legislature in using the word child.

42. We have given our close and careful consideration to the divergent views expressed by the learned judges in the case cited above. While we are not unmindful

of the force of some of the arguments advanced by the learned judges of Madras High Court in AIR 1967 Madras 77, with respect we are unable to agree with the view expressed by them that the meaning of the word "child" in Section 488 Criminal Procedure Code must be taken to be a minor under the Indian Majority Act or the Court of Wards Act or the Guardians and Wards Act, as in our opinion any person who is unable to maintain himself or herself of whatever age, would be a child under Section 488 Criminal Procedure Code because he or she is the immediate issue of his or her father. We find nothing startling in the fact that in a given case a person of 77 who on account of senility or any other physical or mental infirmity or disability is unable to maintain himself would be able to claim maintenance from his father aged 97 who in spite of sufficient means refuses or neglects to maintain his starving child. In our opinion, the question in each case is one of fact and the real and only test is the inability of the claimant to maintain himself or herself as the case may be.

43. In this connection, apart from the fact that the section itself omits reference to the age of the child we are also impressed by the fact that if the word is to be restricted to a person who has not yet attained the age of majority, a crippled or imbecile off-spring of well-to-do parents would be left without any legal remedy against his well-to-do parents and would be left to starve till he or she is able to attain relief through the tardy process of a civil suit.

44. Apart from authority, even as a matter of construction, we find no reason to limit the meaning of the word "child" to a person who has not yet attained the age of majority. We have already said that the word "child" is not defined in the Code nor has our attention been drawn to anything in the legislative history of Section 488 Criminal Procedure Code or to any legislative practice which may lead us to hold that the word "child" has acquired any definite meaning. Natesan J. has no doubt referred to some of the earlier statutes and regulations in the towns of Calcutta, Bombay and Madras which preceded the Code of Criminal Procedure and has also referred to the Poor Relief Act, 1600 and the National Assistance Act, 1948 in England as a background for examining the scope and content of the word "child" as used in Section 488 Criminal Procedure Code.

He has also referred to the meaning of the word "child" in Webster's New 20th Century Dictionary. Reference has also been made by the learned judge to the definition of the word "child" in the Factories Act 1948, The Women and Children's Institution Licensing Act, 1956, Tea Districts Emigrants Labour Act, 1951, Child Marriage Restraint Act 1929 and Orphanages and other Charitable Homes

(Supervision and Control) Act 1960 in each of which the definition of the word "child" is that of a person who is either 14 or 15 or 16 but in no case over 18 years of age.

45. But the fact that It became necessary for the Legislature to define the word "child" in all these statutes is itself a circumstance in favour of the view that the word has no fixed meaning and the legislative intent in Section 488 Criminal Procedure Code is not to give a limited meaning to the word child. In none of these statutes, the word child is used in conjunction with parentage.

46. It is true that when we speak of a person as a child in the ordinary use of that term in English language our mind conjures the vision of a person who has not yet entered into manhood. But it is equally true that when we speak of a person as a child in the context of matters like inheritance, succession, settlement, gifts and maintenance etc. we hardly ever think of age.

47. We may here give an illustration which Lord Greene M. R. used with such telling effect to re-enforce his argument in *In re Carlton*, 1945-1 Ch. 372 (377) a case under the Naturalization Act, 1870 which came before the Court of Appeal in England. The applicant R. G. Carlton was born in Roumania in 1887. He came with his parents to England in 1894 and continued to reside there with them until 1912. On April 18, 1910 his father was granted a certificate of naturalization. The applicant claimed that although he was then over 21 years of age, he became naturalized as the result of the grant to his father of a certificate of naturalization, under Section 10, sub-section (5) of the Naturalization Act, 1870. Cohen J. while construing the provisions of sub-section (5) of Section 10 said that the question depended on the meaning to be placed on the word "child". He held that the meaning of the word must in every case depend on the context in which it appeared and in that view of the matter he came to the conclusion that in Section 10 "children" or "child" meant infant children or infant child.

48. Lord Greene M. R. while agreeing with Cohen J. in holding that the meaning of the word in every case depended on the context in which it appeared, observed:

"I may myself add that, in a context such as "women and children", you would normally construe the word "children" as meaning, at any rate, something other than a fully-grown person. It must always, of course, depend on the context. As I pointed out in argument, if in a shipwreck the captain of a ship says, "Women and children first," he does not mean to include the child of a parent who has attained perhaps the age of forty years. Clearly he would be thinking of very much smaller children. The question how young a child must be in order to

come within such an expression is a different matter. Similarly, here, the question is: Does the word "child" in sub-section (5) include a child of any age or is it limited to some particular age? Mr. Carlton pointed out, and quite rightly, that in a number of statutes reference is made to children of a particular age, or children of not more than a particular age. But that really does not assist him.

What we are concerned with is the word child in this particular context."

49. It therefore follows that we have to find the meaning of the word child in Section 488, Criminal Procedure Code in the context in which it appears. It is well known that the object of the proceedings for maintenance is to ensure supply of food, clothing and shelter to deserted wives and children. As has been observed by K. Subba Rao J. in *Mst. Jagir Kuar v. Jaswant Singh*,<sup>24</sup>, the section is intended to serve a social purpose and provides a forum to enable a deserted wife or helpless child, legitimate or illegitimate, to get urgent relief. Some judges have also said that the purpose of the provision is to prevent vagrancy. Even so, vagrancy is not necessarily confined to persons of a particular age and may occur at all levels.

50. The provisions of this section are also independent of personal law or any custom governing the parties and right to maintenance under this section is a different statutory right which the legislature has recognized irrespective of the nationality or the creed of the parties. The condition precedent for the application of the section however is that the claimant for maintenance must have the requisite status and must also be unable to maintain itself. While in the case of a deserted wife the liability of the husband to maintain her is absolute and the wife's separate or independent means of support is not an element for consideration against her right of maintenance from the husband, in the case of a child, inability to support itself is a *sine qua non* for the applicability of the section.

51. It is therefore obvious that the key phrase in the section is "inability to maintain itself" and not the age of the child. It is no doubt true that normally a claim for maintenance will arise in cases of children of tender years because a strong and healthy person of grown up years is presumed to be able to maintain himself even though he may have a father who is possessed of sufficient means. But that does not furnish any ground for limiting the meaning of the word "child" to a person of tender years or of a particular age. A fully grown up person who is suffering from a crippling disease or some physical or mental affliction and is therefore unable to earn for himself, nor has he any independent means of his own, is as much a child entitled to speedy and immediate relief from his parent as a person of tender years or one who

has not yet attained majority.

52. The circumstances that the section fixes the maximum amount of maintenance which a magistrate can allow under the section and the fact that the proceedings which are otherwise proceedings of a civil nature are yet to be held before a Magistrate and are no substitute for civil remedies available to the claimants for relief through regular civil Courts, are further reasons for holding that the Legislature deliberately avoided to give a restricted meaning to the word "child" by imposing any age limit on the right of the recipient of maintenance.

53. We are therefore of the view that the word "child" in the context of section 488 Criminal Procedure Code means the immediate issue or off-spring of a parent and that age is not at all a relevant consideration.

54. Accordingly we express our respectful dissent from the view taken by the learned Judges of Madras High Court in AIR 1967 Madras 77 and the cases relied upon by them and prefer the view taken by the Bombay High Court in AIR 1943 Bombay 48 and the two Bench decisions of Calcutta High Court and by Mudholkar J. in AIR 1950 Nagpur 231.

55. The only other requirements of Section 488(1) Criminal Procedure Code are that the father should have neglected or refused to maintain his child although he has sufficient means to maintain him or her and the person claiming maintenance is unable to maintain himself or herself by his or her own exertions or resources.

56. This takes us to the other argument of the learned counsel for the respondent which relates to the meaning of the word "maintenance". It was held in *Abdul Rahim v. Ma Shwe May*,<sup>25</sup> that although the father is bound to maintain the child if he is not able to maintain himself yet if the child wants to better his prospects by staying on in school, he has no right to force his father to comply with his wishes.

57. Addison J. in AIR 1933 Lahore 1026, while dealing with the case of a boy who was being educated by his mother in a school referred to the above class and observed that the ruling was a very brief one and did not throw light on the position of the parties and the suitability of the education to the position in life of the parent. The learned judge therefore held:-

"A boy can ask for maintenance from his parent so long as he is unable to earn his own living even though that inability results from his taking an educational course, provided the said educational course is not being undergone with the

object of inflicting upon the parent the burden of maintenance."

58. Although the view of Addison J. was to some extent, an advance on the view of Maung Kin, J. in the Rangoon case, even this view was considered to be too narrow because the maintenance according to that authority should include education of some sort or kind and not college education. The idea underlying this judgment was that under the section a father could be compelled to maintain his child, at least till the child attained the age of majority and thereafter the child could presumably maintain itself. It was therefore obvious that the sum paid for the maintenance of the child was held to cover the cost of education till the child was old enough to earn his living and thus relieve the father of the burden of his maintenance.

59. In *Tekchand Partabrai v. Sh. Kalavantibai Tekchand*,<sup>26</sup> a Division Bench of the Chief Court of Sind consisting of Davis C. J. and Weston J. relied upon the decision of Addison J. and held that if maintenance was to serve the purpose of the section it must be something more than starvation maintenance i.e. maintenance sufficient only to keep body and soul together. It must include board and lodging and that too on such a scale as to enable a frugal and thrifty mother to save sufficient for a simple and necessary education of her children. The children in that case being children of tender years the question of college education obviously did not arise for consideration.

60. Relying upon these authorities the learned counsel for the respondent urges that even if Chander Kishore and Ravinder Kishore who were above 18 years of age, are held to be children, the only allowance that could be awarded to them was to provide them with board and lodging. As regards lodging, the learned counsel submits that they were already residing in the house owned by the respondent and therefore the only amount needed was for food. He further urges that the trial Magistrate had held that they were not entitled to any maintenance for board and lodging although they were entitled to payment of their college expenses while the learned Addl. Sessions Judge had held that they were not entitled to payment of college expenses and were only entitled to maintenance till they were able to complete their education. The argument of the learned counsel is that whatever view one may take about the liability of the father to maintain his children these two petitioners who were admittedly 22 and 23 years of age, had no right to inflict on their father the burden of maintaining them because they were unable to maintain themselves on account of their pre-occupation with studies in college. As regards Shashi Prabha also the argument of the learned counsel is that she is now 18 years of age and can therefore very well maintain herself by her own exertions. Merely because she wants to continue her studies is no reason

that the father should be made liable for her maintenance so as to enable her to gratify her wishes in that direction.

61. The argument in our view, completely loses sight of the advance that has taken place in our ideas of social needs. It also omits to take into consideration the status of the family, the early upbringing of the children before the parties fell out and father's own educational standards. It is established on the record that the two elder sisters of the petitioners are M. A., and B. A., respectively. Chander Kishore was at the time the proceedings were started by the petitioners, already a student in Commerce College while Ravinder Kishore was a student in Ist Year in the M. B. B. S. class in a college at Aligarh. It is apparent that the two boys were enabled to reach that stage in their educational career with the consent of their father who obviously wanted his eldest son to acquire the Master's Degree in Commerce, and the younger son to acquire the M. B. B. S. Degree. The other two children Shashi Prabha and Rakesh Kumar were both students in the 10th class and 9th class respectively at that time.

In spite of their father's indifference and neglect Chander Kishore was on the date of the order in the final year for a Master's Degree in Commerce while Ravinder Kishore had entered the 2nd Year in the Medical College at Aligarh. Shashi Prabha had also been promoted from 10th class to the Higher Secondary Class while her brother Rakesh Kumar had also been promoted to the next higher class. The respondent himself is an LL.B., It is therefore reasonable to assume that but for this unfortunate rift between him and his children he wanted the petitioners to have the benefit of at least that higher education which he himself had the privilege of receiving, even if one might not credit him with the normal ambition of a father who wants to see his children excel him and accomplish what he himself had not been able to do.

62. We therefore see no reason, on the facts of this case, to restrict the meaning of the word maintenance to include board and lodging and some sort of education as some of the English Judges to whose decisions reference has been made above, have held.

63. It now remains to consider the last contention of the learned counsel for the respondent. The contention is based on Section 20 of the Hindu Adoptions and Maintenance Act, 1956 which came into force on 21st December, 1956. The Section reads:-

"(1) Subject to the provisions of this section a Hindu is bound during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property."

64. According to that section a Hindu is under a legal obligation to maintain his legitimate or illegitimate children or his aged or infirm parents whether he possesses any property or not. The obligation to maintain these relations is personal and legal in character and arises from the very existence of the relationship between the parties. The liability of a Hindu to maintain his legitimate or illegitimate child extends only so long as the child is a minor. It will be noticed that the liability extends not only to the father but also to the mother.

65. The term "maintenance" is defined in Section 2(b) and includes in all cases, provision for food, clothing, residence, education, medical attendance and treatment. In the case of an unmarried daughter, it also includes the reasonable expenses of and incidental to her marriage. Sub-section (c) of Section 2 defines minor as a person who has not completed his or her age of 18 years.

66. Section 4 provides for the overriding effect of the Act. The section reads:-

"Save as otherwise expressly provided in this Act -

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act."

67. The respondent's counsel contends that Section 488 Criminal Procedure Code is "other law in force immediately before the commencement of this Act" within the meaning of clause (b) of Section 4 and must therefore be held to have been impliedly repealed in so far as it is inconsistent with the provisions of section 20 of the Act. It is argued that if the word "child" in section 488 is to be interpreted as meaning a person other than a minor then in the case of Hindus that part of the section must be held to have been pro tanto repealed in view of the overriding effect of section 4 of the Act because there is a clear inconsistency between the two provisions.

68. We have already said that the provisions of Section 488 Cr. Procedure Code are independent of personal law or any custom governing the parties. A right to maintenance, dependent on the personal law of the individual, is a right capable of being enforced in and properly forms the subject-matter of a civil suit. But that right is altogether different from the statutory right to maintenance conferred by Section 488 which is available in every case in which a person having sufficient means neglects or refuses to maintain his wife or child.

69. It will also be seen that while in a suit for maintenance the civil court can pass a decree for food, clothing, residence, education and medical attendance and treatment, the criminal Court under Section 488 Criminal Procedure Code can only award maintenance in terms of money. As observed by D. N. Das Gupta J. in *Mahabir Agarwalla v. Gita Roy*,<sup>27</sup> the reason for this is that the civil court has, while the criminal court has not, the machinery for inquiring into the value of maintenance in kind. The Code of Criminal Procedure prescribes a maximum limit while the Hindu Adoptions and Maintenance Act does not prescribe any such limit. The difference between the right of an unmarried daughter to receive maintenance from her father and the right of a son which exists under the Act, is also not to be found in Section 488 of the Code.

70. It is thus obvious that the two statutes provide alternative remedies in situations which are not identical nor is the relief under both the statutes the same. It cannot therefore be held that because there are some differences between the two statutes which are evidently intended to serve disparate though similar objects, there is such inconsistency between the two provisions that the two cannot stand together and that therefore section 488 must be held to have been impliedly repealed by Section 20 of the Act.

71. In the result, the objections raised on behalf of the respondent are repelled and we hold that the petitioners Chander Kishore and Ravinder Kishore are entitled to the enhanced maintenance of Rs. 100/- per mensem as recommended by the learned Addl. Sessions Judge with the modification that the maintenance allowance awarded to Chander Kishore will take effect from the date of the order made by the learned Magistrate and will cease to operate on the expiry of two months after the date of his passing the M. Com., examination within which time it is expected that he will be able to maintain himself.

72. Likewise the maintenance allowed for Ravinder Kishore will take effect at the

same rate from the date of the Magistrate's order and will cease to have effect on the expiry of two months from the date he passes the M. B. B. S. Examination.

73. The petitioners Shashi Prabha and Rakesh Kumar will also receive the enhanced allowance of Rs. 50/- each as ordered by the learned Addl. Sessions Judge, so long as they are pursuing their educational career with liberty to apply for enhancement of the allowance if and when necessary, consistently with the provisions of the Code of Criminal Procedure.

74. The result of our decision is that the reference made by the learned Addl. Sessions Judge recommending enhancement of maintenance in Criminal Revision No. 339-D of 1965 is accepted with the modification indicated above while Criminal Revision No. 185-D of 1966 filed by the respondent is dismissed.

Order accordingly.

Cases Referred.

1. AIR 1933 Lahore 1026,
2. (1910) 6 Ind Cas 960 (Punj)
3. AIR 1941 Lahore 92,
4. AIR 1935 Calcutta 488
5. ILR 37 Madras 565 : (AIR 1914 Madras 594)
6. AIR 1950 Calcutta 465
7. AIR 1951 Calcutta 66,
8. AIR 1943 Bombay 48
9. AIR 1949 Bombay 36
10. AIR 1922 Nagpur 249(1)
11. AIR 1950 Nagpur 231
12. AIR 1949 Bombay 36.
13. AIR 1950 Madras 394
14. 1964-2 Mad LJ 70.

15. (1913) 25 Mad LJ 355 at p. 356
16. AIR 1926 Madras 59,
17. AIR 1941 Madras 685
18. AIR 1967 Madras 77
19. AIR 1921 Patna 379
20. AIR 1965 Allahabad 125
21. 37 Ind Cas 311 : (AIR 1917 Low Bur 84)
22. AIR 1932 Rangoon 94
23. AIR 1961 Kerala 297
24. AIR 1963 Supreme Court 1521
25. AIR 1923 Rangoon 45(1)
26. AIR 1941 Sind 214
27. 1962 (2) Cr. LJ 528 (Cal)