



GUIDELINES
FOR
COURTS AND THE INCOME TAX DEPARTMENT

1. Background and Genesis

- 1.1. In the judgment delivered in Writ Petition No.34625 of 2019 (GM-RES) titled ***Income Tax Officer and CPIO v. Smt. Gulsanober Bano Zafar Ali Ansari and another***, this Court was called upon to consider whether the income tax returns and financial records of an assessee could be disclosed to his spouse under the Right to Information Act, 2005.
- 1.2. The Court held that while income tax returns constitute "personal information" under Section 8(1)(j) of the RTI Act and are exempt from disclosure under the said provision, the appropriate mechanism for a spouse to obtain such financial information is through the competent Court adjudicating maintenance proceedings, and not through the RTI Act.
- 1.3. During the course of the judgment, this Court observed that while the right of a wife to seek just and fair maintenance is a valuable legal



right, procedural inadequacies must not defeat substantive entitlements. It was further observed that the courts adjudicating maintenance claims have ample powers to summon documents and compel disclosure of financial information from the Income Tax Department, and that the procedural safeguards available in judicial proceedings are far more appropriate than the relatively blunt instrument of an RTI application.

1.4. In order to ensure uniformity, clarity and effective implementation of the principles laid down in the said judgment, and to prevent a situation where spouses are left without any effective remedy for obtaining financial information necessary for the just adjudication of maintenance claims, this Court considers it necessary to issue comprehensive guidelines for the courts and the Income Tax Department.

2. **Scope and Applicability:** These guidelines shall apply to:

2.1. All Magistrate Courts, Family Courts, Sessions Courts and Appellate Courts within the State of Karnataka adjudicating proceedings relating to



maintenance and or Alimony under any law, including but not limited to Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (earlier Section 125 of the Code of Criminal Procedure, 1973), Section 12 of the Protection of Women from Domestic Violence Act, 2005, Section 18 of the Hindu Adoptions and Maintenance Act, 1956, Section 24 and Section 25 of the Hindu Marriage Act, 1955, and corresponding provisions under other personal laws.

- 2.2. All officers and authorities of the Income Tax Department, including but not limited to the Central Processing Centre, Centralised Processing Centre, Assessing Officers, Income Tax Officers, Chief Public Information Officers, Commissioner(s) and Chief Commissioner(s) of Income Tax, within the jurisdiction of this Court.

- 2.3. All proceedings in which one spouse seeks production, discovery, disclosure or inspection of the income tax returns, assessment records, financial statements, bank details or any other financial records of the other spouse which are



in the custody or control of the Income Tax Department.

- 2.4. All proceedings where similar financial records are sought from other authorities or institutions holding financial information of a spouse, mutatis mutandis, to the extent applicable.

3. Object and Purpose: The object of these guidelines is four-fold:

- 3.1. **First**, to provide a clear, efficient and standardised procedural mechanism for spouses to obtain income tax returns and financial records of the other spouse through the competent Court, thereby ensuring that no spouse is left without an effective remedy;
- 3.2. **Second**, to ensure that the Income Tax Department and its officers comply promptly and effectively with judicial directions for production of such records, while maintaining appropriate confidentiality safeguards;
- 3.3. **Third**, to balance the competing interests of privacy of the assessee, the right of the spouse to seek just maintenance, and the need for effective judicial administration, and



3.4. **Fourth**, to eliminate procedural delays and impediments that often frustrate the just resolution of maintenance claims due to the non-availability of reliable financial information.

4. Definitions and Interpretation: In these guidelines, unless the context otherwise requires:

4.1. **"Applicant Spouse"** means the spouse who applies to the competent Court for production or disclosure of income tax returns and financial records of the other spouse;

4.2. **"Assessee Spouse"** means the spouse whose income tax returns and financial records are sought to be produced or disclosed;

4.3. **"Competent Court"** means the Court before which maintenance proceedings are pending, or the Court having jurisdiction to entertain a claim for maintenance;

4.4. **"Designated Officer"** means the officer of the Income Tax Department to whom the Court's direction for production of documents is addressed or who is designated by the Department to comply with such directions;



- 4.5. "**Financial Records**" includes income tax returns, assessment orders, Form 16/16A, Form 26AS/Annual Information Statement (AIS), Tax Deducted at Source (TDS) certificates, Profit and Loss accounts, Balance Sheets, capital gains statements, bank account details as reflected in the returns, and any other document or record forming part of the assessment file of the assessee maintained by the Income Tax Department;
- 4.6. "**Maintenance Proceedings**" means any proceedings in which one spouse claims maintenance, alimony, financial support, or interim or permanent settlement from the other spouse, under any law for the time being in force;
- 4.7. "**Production Order**" means the order or direction issued by the competent Court directing the Income Tax Department to produce the Financial Records of the Assessee Spouse;
- 4.8. "**RTI Act**" means the Right to Information Act, 2005;



4.9. "**Income-tax Act**" means the Income-tax Act, 1961.

5. Relevant Statutory Provisions: The following statutory provisions form the foundation of these guidelines:

5.1. Powers of Courts to Summon Documents

5.1.1. **Section 94 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (formerly Section 91 of the Code of Criminal Procedure, 1973):** empowers any court or officer in charge of a police station to issue a summons to any person to produce a document or other thing in his possession which is considered necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under the Code.

5.1.2. **Order XVI Rule 6 of the Code of Civil Procedure, 1908:** provides for the issuance of summons to persons whose attendance is required to give evidence or to produce documents.



- 5.1.3. **Section 168 of the Bharatiya Sakshya Adhiniyam, 2023(Formerly Section 165 of the Indian Evidence Act, 1872):** confers upon the Judge the power to put questions to a witness or order the production of any document or thing in whatever form, at any stage of any suit, inquiry or proceeding.
- 5.1.4. **Section 24 of the Hindu Marriage Act, 1955:** empowers the Court to order either spouse to pay maintenance pendente lite and expenses of proceedings to the other spouse. The Court has an implied power to direct disclosure of financial particulars for the purpose of determining such maintenance.
- 5.1.5. **Section 20(1)(d) of the Protection of Women from Domestic Violence Act, 2005:** empowers the Magistrate to direct the respondent to pay monetary relief, including maintenance. The power to fix just maintenance necessarily



implies the power to ascertain the income and assets of the parties.

5.2. Provisions Governing Disclosure of Income Tax Information

- 5.2.1. **Section 138 of the Income-tax Act, 1961:** regulates disclosure of information respecting assesseees. It permits the Board or specified income-tax authority to furnish information to specified officers, authorities or bodies performing functions under any law, subject to the conditions laid down therein.
- 5.2.2. **Section 138(1)(b):** permits disclosure to such officer, authority or body performing functions under any other law as the Central Government may specify by notification in the Official Gazette, if in its opinion it is necessary so to do in the public interest.
- 5.2.3. **Section 8(1)(j) of the RTI Act:** exempts from disclosure information which relates to personal information, the disclosure of which has no relationship to



any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual, unless the competent authority is satisfied that the larger public interest justifies such disclosure.

6. Duty to Enquire into Financial Capacity

- 6.1. In every proceeding relating to alimony and/or maintenance, the competent Court shall, at the earliest opportunity and preferably at the first effective hearing, enquire into the financial capacity of both parties and specifically ascertain whether either party wishes to seek production of financial records from the Income Tax Department or any other authority.
- 6.2. The Court shall not determine maintenance based merely on oral assertions or unverified claims regarding income. Where the income of either party is disputed, the Court shall suo motu consider invoking its powers to summon documentary evidence, including income tax returns and related financial records.



7. Procedure upon Application by a Spouse: Where the Applicant Spouse files an application seeking production of income tax returns and financial records of the Assessee Spouse from the Income Tax Department, the Court shall adopt the following procedure:

7.1. On an application being filed, notice of the application shall be served on the Assessee Spouse, affording an opportunity to file objections within a period of seven days from the date of service.

7.2. The Court shall hear the application, consider any objections of the Assessee Spouse, and pass a reasoned order within a period of fourteen days from the date of filing of the application.

7.3. While considering the application, the Court shall satisfy itself on the following parameters:

7.3.1. That the information sought is relevant to the determination of the maintenance claim;

7.3.2. That the Applicant Spouse has been unable to obtain the information by other



reasonable means, including through voluntary disclosure by the Assessee Spouse;

- 7.3.3. That the scope of the information sought is proportionate to the needs of the case and is not unduly wide or oppressive;
- 7.3.4. That the period for which the records are sought is relevant to the maintenance proceedings; and
- 7.3.5. That appropriate safeguards are in place to protect the confidentiality of the information and prevent misuse.

7.4. Upon being satisfied, the Court shall issue a Production Order in the prescribed format addressed to the Designated Officer of the Income Tax Department.

7.5. The Production Order shall clearly specify the assessment years for which records are sought, the specific documents required, the name and PAN of the Assessee Spouse, and the date by which compliance is required.



7.6. The Production Order shall contain a direction that the records be produced in a sealed cover, to be opened only by the Court.

7.7. A copy of the Production Order shall be served on the Assessee Spouse.

8. Conditions and Safeguards to be Imposed by Courts: While issuing a Production Order, the Court shall impose the following conditions.

8.1. **Sealed Cover:** The Income Tax Department shall produce photocopies of the records in a sealed cover addressed to the Court, certifying that they are the true copies of the originals maintained by the Income Tax Department. If printed from a database, the necessary certification under the relevant laws shall accompany such documents. The records shall not be directly furnished to the Applicant Spouse.

8.2. **Inspection by Parties:** Upon receipt, the Court shall open the sealed cover in the presence of both parties or their advocates and afford inspection. The Assessee Spouse shall be given an opportunity to identify any information



that is not relevant to the maintenance proceedings and which, in the opinion of the Assessee Spouse, ought not to be disclosed.

- 8.3. **Selective Disclosure:** The Court shall, after hearing both parties, determine which portions of the records are relevant to the maintenance proceedings and shall disclose only such relevant portions to the Applicant Spouse. Irrelevant information, particularly information relating to third parties whose financial details may appear in the returns, shall be redacted or withheld.
- 8.4. **Undertaking:** Before any disclosure is made, the Court shall obtain an undertaking from the Applicant Spouse (and his or her advocate) that the information obtained shall be used solely for the purpose of the pending maintenance proceedings and shall not be disclosed to any third party or used for any other purpose whatsoever.
- 8.5. **Prohibition on Copying:** The Court may, in its discretion, direct that the Applicant Spouse shall be entitled to inspect and take notes of the relevant financial records, but shall not be



permitted to retain copies, unless the Court considers it necessary for the fair conduct of the proceedings. Where copies are permitted, the Court shall impose appropriate conditions.

8.6. Return of Records: Upon conclusion of the proceedings, or upon the records ceasing to be required, the Court shall direct that all records furnished by the Income Tax Department be returned to the Department or destroyed (if photocopy has been produced).

9. Suo Motu Powers of the Court: The competent Court may, even in the absence of a formal application by the Applicant Spouse, exercise its suo motu powers to summon income tax returns and financial records from the Income Tax Department where the Court considers that the determination of a fair and just maintenance is not possible without such records. In such cases, the Court shall record reasons for exercising the suo motu power and shall afford an opportunity to the Assessee Spouse to be heard before issuing the Production Order.

10. Directions for Financial Disclosure by Both Spouses



10.1. As Directed by the Hon'ble Supreme Court in ***Rajneesh Vs Neha and Another***¹⁵ the competent Court may, at the earliest opportunity, direct both spouses to file affidavits of their respective assets, income, expenditure, liabilities, and standard of living, along with supporting documentary evidence including income tax returns, bank statements, salary certificates, audited accounts, and related financial records, as may be applicable.

10.2. Where the Assessee Spouse fails to comply with the aforesaid direction or furnishes incomplete or misleading information, the Court shall be entitled to draw an adverse inference against the Assessee Spouse and to proceed to summon the records directly from the Income Tax Department.

11. Obligation to Comply with Judicial Directions:

Upon receipt of a Production Order from a competent court, the Designated Officer of the Income Tax Department shall ensure prompt and complete compliance with the same. The judicial direction shall be treated as having been issued in the exercise of the Court's statutory power to summon documents,

¹⁵ (2021 (2) SCC 324)



and non-compliance shall be amenable for appropriate proceedings.

12. Designation of Nodal Officers: The Principal Chief Commissioner of Income Tax/Chief Commissioner of Income Tax having jurisdiction shall designate a Nodal Officer, not below the rank of Income Tax Officer, at each Principal Commissioner/Commissioner charge, to receive, process and comply with Production Orders issued by courts in maintenance proceedings. The name, designation, office address and contact details of the Nodal Officer shall be communicated to all courts within the jurisdiction and shall be updated annually.

13. Procedure for Compliance: Upon receipt of a Production Order, the Designated Officer/Nodal Officer shall follow the procedure set out below:

13.1. Acknowledge receipt of the Production Order within three working days from the date of receipt.

13.2. Retrieve the income tax returns and financial records of the Assessee Spouse for the specified assessment years from the records maintained by the Department, including



electronic records available on the Central Processing Centre system, the Income Tax Business Application (ITBA), the Integrated Taxpayer Data Management System (ITDMS), or any other system as may be in use.

- 13.3. Prepare certified copies of the relevant documents, duly authenticated by the officer under his seal and signature.
- 13.4. Place the certified copies in a sealed cover addressed to the Court, clearly marking the cover with the case number, the name of the Assessee Spouse, and the words "CONFIDENTIAL — TO BE OPENED ONLY BY THE COURT."
- 13.5. Dispatch the sealed cover to the Court through a responsible officer or through registered post / speed post / special messenger, ensuring proof of delivery.
- 13.6. File a compliance report with the Court confirming the furnishing of the records, along with a covering letter listing the documents enclosed.



14. **Timeline for Compliance:** The Income Tax Department shall comply with the Production Order within the following timelines:

Action	Timeline
Acknowledgement of Production Order	3 working days
Retrieval and certification of records	14 working days
Dispatch in a sealed cover to the Court	3 working days after certification
Filing of compliance report	Within 3 working days of dispatch
Total maximum time from receipt to compliance	21 working days (approximately 30 calendar days)



- 15. Records Not Available or Not Maintained:** Where the records sought are not available, either because no return was filed for the specified assessment year, or because the records have been destroyed in accordance with the record retention policy of the Department, or for any other bona fide reason, the Designated Officer shall file an affidavit before the Court, clearly stating which records are not available and the reasons therefor. The Court shall then decide the matter on the basis of the material available and may draw appropriate inferences.
- 16. Objections by the Income Tax Department:** If the Income Tax Department has any objection to complying with the Production Order, whether on the ground of jurisdiction, scope, or any statutory restriction, such objection shall be raised before the Court which issued the Production Order within seven working days of receipt. The Department shall not unilaterally decline to comply. The objection shall be supported by a reasoned application filed by an officer not below the rank of Commissioner of Income Tax. The Court shall hear the objection and pass orders expeditiously.



17. **Handling of RTI Applications by Spouses:** Where a spouse files an application under the RTI Act seeking income tax returns or financial records of the other spouse in connection with maintenance proceedings, the Public Information Officer (CPIO/PIO) of the Income Tax Department shall:
- 17.1. Process the application in accordance with the provisions of the RTI Act, including Sections 8(1)(e), 8(1)(j) and 11 thereof;
 - 17.2. Inform the applicant, in the order disposing of the RTI application, that the appropriate mechanism for obtaining income tax returns in the context of maintenance proceedings is through the competent Court, and not through the RTI Act;
 - 17.3. Provide the applicant with the name, designation and address of the Nodal Officer designated to receive and comply with judicial directions; and
 - 17.4. Where the application discloses that the applicant is a spouse seeking information in connection with maintenance proceedings, specifically advise the applicant to file an



appropriate application before the competent Court.

18. **Powers of Appellate Courts:** Where the competent Court of first instance has declined to issue a Production Order, or where the competent Court has issued a Production Order but the same has not been complied with, the Appellate Court (Sessions Court / District Court as the case may be) shall exercise its revisional or appellate jurisdiction to:

18.1. Examine whether the Court of first instance properly exercised its discretion in declining the Production Order, having regard to the parameters set out above;

18.2. Direct the Court of first instance to issue a Production Order where the refusal was not justified;

18.3. Directly issue a Production Order in the exercise of its appellate or revisional powers where the interests of justice so require; and

18.4. Take appropriate action against the Income Tax Department for non-compliance with a Production Order, including initiation of contempt proceedings.



19. **Enhancement of Maintenance Pending Appellate Determination:** Where the appellate Court is satisfied that the maintenance awarded by the Court of first instance was inadequate due to the non-availability of financial records of the Assessee Spouse, and where such records are subsequently produced pursuant to a Production Order, the appellate Court shall re-assess the maintenance quantum in light of the additional material and pass appropriate orders, including retrospective enhancement where warranted.
20. **SAFEGUARDS AND CONDITIONS FOR DISCLOSURE:** The following safeguards shall be mandatory in every case where income tax returns or financial records are produced pursuant to a Production Order:
- 20.1. **Sealed Cover Procedure:** All records shall be transmitted in sealed covers. The seal shall not be broken except by the Court.
- 20.2. **Confidentiality Undertaking:** The Applicant Spouse and his/her advocate shall execute a written undertaking, on affidavit, that the information shall be used solely for the purpose of the maintenance proceedings and shall not



be disclosed, published, shared, or disseminated to any third party.

20.3. **Prohibition on Misuse:** Any misuse of the information obtained, including use for purposes other than the maintenance proceedings, defamation, harassment, or initiation of collateral proceedings based on the financial information, shall be viewed as contempt of Court and/or abuse of process.

20.4. **Protection of Third-Party Information:** Where the income tax returns or financial records contain information relating to third parties (such as business partners, associates, banks, or other individuals), the Court shall ensure that such third-party information is redacted or protected from disclosure to the extent it is not relevant to the maintenance proceedings.

20.5. **Limited Retention:** Copies of the records, if provided to the Applicant Spouse, shall be returned to the Court upon conclusion of the proceedings or upon the Court so directing.



20.6. **Judicial Record:** The records produced by the Income Tax Department shall form part of the judicial record and shall be subject to the same rules of confidentiality and access as other court records.

21. **Breach of Safeguards:** Any breach of the safeguards set out above by the Applicant Spouse or his/her advocate shall entitle the Court to:

21.1. Initiate contempt proceedings against the defaulting party;

21.2. Revoke the permission to inspect or retain copies of the financial records;

21.3. Draw adverse inference against the Applicant Spouse in the maintenance proceedings;

21.4. Award costs to the Assessee Spouse; and

21.5. Pass such other orders as may be deemed just and appropriate.

22. **Non-Compliance by the Assessee Spouse:** Where the Assessee Spouse fails to comply with the direction of the Court to disclose income and assets, the Court shall be entitled to:



22.1. Draw an adverse inference that the income of the Assessee Spouse is at least as stated by the Applicant Spouse;

22.2. Issue a Production Order to the Income Tax Department suo motu;

22.3. Award costs against the Assessee Spouse;

22.4. Impose such other penalty as may be permissible under law.

23. **Non-Compliance by the Income Tax Department:** Where the Income Tax Department fails to comply with a Production Order within the stipulated time without justifiable reasons, the Court shall be entitled to:

23.1. Issue a peremptory direction with a further timeline;

23.2. Summon the Designated Officer / Nodal Officer to appear in person and explain the non-compliance;

23.3. Initiate proceedings for contempt of Court;

23.4. Report the non-compliance to the Principal Chief Commissioner of Income Tax;



23.5. Award costs against the Department.

24. Applicability to Other Financial Authorities:

These guidelines shall apply, mutatis mutandis, to applications seeking financial records of a spouse from other authorities and institutions, including but not limited to:

24.1. The Goods and Services Tax (GST) Department, for GST returns and assessment records;

24.2. The Employees' Provident Fund Organisation (EPFO), for provident fund balance and contribution statements;

24.3. Banks and financial institutions, for bank account statements and loan records;

24.4. The Registrar of Companies / Ministry of Corporate Affairs, for company filings and directorship details;

24.5. Any other public authority or institution holding financial information of the Assessee Spouse.

25. **Savings Clause:** Nothing in these guidelines shall be construed as:



- 25.1. Limiting or curtailing the inherent powers of any court;
 - 25.2. Restricting the right of any party to seek production of documents through any other lawful mechanism;
 - 25.3. Overriding any specific statutory provision governing the production or disclosure of documents; or
 - 25.4. Creating any right to disclosure of financial information outside the judicial process or for purposes other than maintenance proceedings.
26. **Gender Neutrality:** These guidelines are gender-neutral. They apply equally to applications filed by a wife seeking financial information of the husband, and to applications filed by a husband seeking financial information of the wife. The pronouns used in these guidelines are for convenience only and shall be construed to include all genders.
27. **Communication and Dissemination:** A copy of these guidelines shall be:



27.1. Circulated to all Magistrate Courts, Family Courts, Sessions Courts and District Courts in the State of Karnataka;

27.2. Forwarded to the Principal Chief Commissioner of Income Tax, Karnataka and Goa Region, for circulation to all offices of the Income Tax Department within the jurisdiction.

Sd/-
(SURAJ GOVINDARAJ)
JUDGE

KTY, List No.: 2 SI No.: 38