

Analysis of Husband's Maintenance Under Sec 144 BNSS, 2023

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Abstract

The law relating to wife maintenance is different in different religions. Among all communities, the question of maintenance to women has acquired great importance. Women, the partners of men in life, play a vital role in raising a family, especially in maintaining social order. The basic involvement of women gives them the right to maintenance from their husbands. But apart from the Hindu Marriage Act, of 1955 and the Parsi Marriage and Divorce Act, of 1936, no other law gives any right to a husband to claim such maintenance from his wife even on reasonable grounds.

Article 15(1) of the Constitution of India states, "The State shall not discriminate any citizen on ground only religion, race, caste, sex, place of birth or any of them". While Article 14 states that "The State shall not deny to any person equality before law or the equal protection of law within the territory of India". Apart from Hindu and Parsi husbands, a person of any other religion has no such right to claim maintenance on reasonable grounds which violates the constitutional right under Article 15(1) and Article 14. Under section 144 of **The Bharatiya Nagarika Suraksha Sanhita, 2023**, the husband should be entitled to equal maintenance rights from his wife on legitimate grounds, as women have gained financial empowerment in the current socioeconomic situations.

Keywords: Section 144 BNSS, Husbands Maintenance, Article 14-15 Constitution of India, Hindu Law, Parsi Law, Muslim Law, Special Marriage Act, Indian Divorce Act.

Introduction:

Maintenance is the financial support that a husband must pay to his wife if she is unable to maintain herself during or after separation or divorce. Several laws have been passed that provide a wife the right to seek maintenance from her husband. However, there is no particular rule that permits a husband to directly seek maintenance from his wife in circumstances when they require financial assistance during or after separation or divorce on justifiable grounds. In this study piece, we will look at the husband's entitlement to demand maintenance from his wife on justifiable reasons, specifically section 144 of the Bharatiya Nagarika Suraksha Sanhita, 2023. How section 144 of the Bharatiya Nagarika Suraksha Sanhita, 2023 is incompatible with the fundamental right of the husband.

Content:

1. ¹The Constitution of India:

Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Article 14: Equality before law

The State shall not deny to any person equality before law or the equal protection of law with in the territory of India.

2) ²The Bharatiya Nagarik Suraksha Sanhita, 2023

Section 144 – Order for maintenance of wives, children and parents—

1. If any person with sufficient means fails or refuses to provide for any of the following:
 - A. his wife, who is unable to support herself;
 - B. His legitimate or illegitimate child, who is unable to support themselves whether married or not;
 - C. His legitimate or illegitimate child, who is not a married daughter and has reached adulthood, if the child is unable to support themselves due to any physical or mental abnormality or injury; or
 - D. his father or mother, 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 of a 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 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:

With the additional proviso that any application for the monthly allowance for interim maintenance and the costs of proceeding under the second proviso must, to the greatest extent feasible, be resolved within sixty days of the date the application was served to the relevant individual.

2. Any such payment for maintenance, interim maintenance, and proceeding expenses will be made starting on the date of the order, or, if one is ordered, starting on the date of the application for maintenance, interim maintenance, and proceeding expenses, as applicable.
3. Should an individual subject to an order fail to comply with it without good reason, the relevant magistrate may, for each infraction, issue a warrant for the collection of the outstanding amount through the usual process for levying fines. In addition, the magistrate may sentence the offending party to imprisonment for a maximum of one month or until the outstanding amount for maintenance, interim maintenance, and proceeding expenses, as applicable, for the entire amount owed after the warrant is executed.

¹ The Constitution of India, Bare Act

² The Bharatiya Nagarik Suraksha Sanhita, 2023 , Bare Act

4. If a wife is living in adultery, refuses to live with her husband for any reason, or separates from him with their mutual consent, she will not be eligible to receive an allowance from her husband for maintenance, interim maintenance, or legal costs under this section.
5. The Magistrate shall annul the order upon proof that any wife in whose favour an order has been made under this section is living in adultery, refusing to reside with her husband without a good reason, or living apart by mutual accord.

3)³ The Hindu Marriage Act, 1955

Under Section 24: Maintenance pendente lite and expenses of proceedings—

In any proceeding under this Act, if the court determines that the wife or husband, as the case may be, does not have an independent source of income sufficient for both their support and the costs of the proceeding, it may, upon request from the wife or husband, order the respondent to pay the petitioner's expenses and, for the duration of the proceeding, a monthly sum that, in light of the petitioner's and respondent's respective incomes, may seem reasonable to the court.

With the caveat that the application for payment of the procedure's costs and the monthly amount during the proceeding must, to the greatest extent feasible, be resolved within sixty days of the husband or wife, as applicable, receiving notice of the matter.

Under Section 25: Permanent alimony and maintenance

1. Any court exercising jurisdiction under this Act may, upon application from the wife or husband, as the case may be, at any time after the decree is passed, order that the respondent pay the applicant for maintenance and support in the amount of the applicant's gross income or monthly or periodic income for a period of time not to exceed the applicant's life, taking into account the applicant's income and other property, if any, and the respondent's own income and other property, if any. The court may find [the parties' actions and other case circumstances] to be reasonable, and any such payment may, if needed, be secured by a charge on the respondent's real estate.
2. At any point after issuing an order under sub-section (1), the court may, at the request of any party, vary, modify, or revoke that order in any way it thinks appropriate if it becomes clear that the circumstances of that party have changed.
3. The court may vary, modify, or rescind any such order at the request of the other party in any way the court may deem just. If the court is satisfied that the party in whose favour an order has been made under this section has remarried, that she has not remained chaste, or that he has had sexual relations with any woman outside of marriage.

CASE LAW: ⁴

In the case of **Rani Sethi v. Sunil Sethi**, the Delhi High Court upheld a Trial Court decision directing the wife to give her husband maintenance in the amount of Rs. 20,000 per month, plus an additional Rs. 10,000 for legal fees, as well as to provide Zen Car for his use. "Section 24 of the Hindu Marriage Act is designed to support a spouse who is unable to sustain themselves and has no independent source of income.

That the definition of "support" should not be restricted to meek sustenance. It indicates that maintenance

³ The Hindu Marriage Act, 1955 Bare Act

⁴ Rani Sethi v. Sunil Sethi,

is given to the other spouse, who does not have a separate source of income, in order for them to maintain the same standard of living as they did when they were living together. The Court noted, "The purpose of section 24 of The Hindu Marriage Act, 1955 is to provide such reasonable sum that strikes equity between the spouses to the wife or husband who has no sufficient source of income for her or his support or for the expenses of the proceedings."

4) ⁵The Hindu Adoptions and Maintenance Act, 1956

Under Section 18. Maintenance of wife—

1. A Hindu wife, whether married before or after the Act's effective date, is entitled to maintenance from her husband for the duration of her life, subject to the terms of this section.
2. A Hindu wife will be allowed to live apart from her husband without losing her right to maintenance if:
 - A. He abandons her without good reason, without her consent, against her will, or if she is willfully neglected;
 - B. He treats her cruelly enough to make her reasonably fear living with her husband will be harmful or injurious;
 - C. If he is still married to another woman;
 - D. If he regularly dwells with a concubine elsewhere or maintains a concubine in the same home as his wife;
 - E. If he has ceased to be a Hindu by conversion to another religion;
 - F. If there is any other cause justifying her living separately.
3. If a Hindu woman becomes unchaste or converts to another faith, she loses her right to live apart from her husband and get support.

5) ⁶The Special Marriage Act, 1954

Under Section 36: Alimony pendente lite”—

In any case involving Chapter V or VI, if the district court determines that the wife lacks the independent income necessary to support herself and cover the costs of the proceeding, it may, upon the wife's request, order the husband to pay the costs of the proceeding as well as any weekly or monthly amount that, given the husband's income, the court may deem reasonable.

[Saying that, to the extent feasible, the application for payment of the costs of the proceeding and any weekly or monthly amount during the proceeding under Chapter V or Chapter VI shall be resolved within sixty days of the husband's date of notice being served.]

Under Section 37: Permanent alimony and maintenance—

1. Any court exercising jurisdiction under Chapter V or Chapter VI may, upon application, order that the husband secure to the wife for her maintenance and support, if necessary, by charging his property with the gross amount or monthly or periodic payment of money for a term not to exceed her life, as the court may deem just in light of her own property, if any, her husband's property, and ability ⁵ [the conduct of the parties and other circumstances of the case].

⁵ The Hindu Adoptions and Maintenance Act, 1956 Bare Act

⁶ The Special Marriage Act, 1954 Bare Act

2. At any point after issuing an order under sub-section (1), the district court may, at the request of any party, revise, modify, or revoke that order in any way that the court deems appropriate if it becomes clear that the circumstances of that party have changed.
3. The district court may, at the husband's request, change, modify, or revoke any such order in any way the court may think appropriate if it is convinced that the wife in whose behalf an order has been made under this section has remarried or is not living a chaste life.

6) ⁷The Indian Divorce Act, 1869 (For Christian's)

VIII.—Damages and Costs

The Indian Divorce (Amendment) Act, 2001 (51 of 2001), s. 19 (effective from 3-10-2001), removed the following section from Section 34: [Husband may demand damages from adulterous].

Section 35:

[Authority to compel adulterer to pay expenses].—[Removed by Section 20, *ibid.* (effective 3-10-2001)].

IX.—Alimony

Under Section 36: Alimony pendente lite—

Regardless of who files the lawsuit under this Act—a husband or a wife—and whether or not she has an order of protection, the woman may file a petition for costs associated with the legal process as well as alimony while it is pending.

The husband will receive a copy of the petition. If the court determines that the assertions made in it are true, it may issue an order to the husband for alimony payments while the lawsuit is underway, as well as for the payment of court expenses to the wife.

[Furthermore, it is further provided that the petition for alimony and costs of the legal procedures should, to the greatest extent feasible, be resolved within sixty days of the husband receiving notice of it.]

Under Section 37: Power to order permanent alimony—

When a wife obtains a decree of judicial separation or dissolution of marriage, the District Court may order the husband to, to the satisfaction of the court, secure to the wife any gross amount of money, or any annual sum of money, for any term not to exceed her own life, as it deems reasonable, considering her fortune (if any), the husband's ability, and the conduct of the parties. In order to accomplish this, the District Court may also order the execution of a proper instrument by all necessary parties.

Authority to order monthly or weekly payments: In any such case, the Court may order the husband to pay the wife any monthly or weekly amounts for maintenance and support that the Court deems reasonable. The Court may also discharge or modify the order if the husband later becomes unable to make these payments, or temporarily suspend the order with regard to all or part of the money so ordered to be paid, and then revive the same order in whole or in part as the Court deems fit.

Under Section 38: Court may direct payment of alimony to wife or to her trustee.—

In any case where the court issues an alimony decree or order, it has the authority to specify how the money is to be paid—either to the wife directly or to a trustee chosen by the wife and approved by the court. It can also impose any terms or restrictions that the court deems necessary, and it can periodically designate a new trustee if it sees fit.

X.—Settlements

Under Section 39: [Authority to direct property settlement of wife for husband and children's benefit].—

⁷ The Indian Divorce Act, 1869 Bare Act

[Removed by the Indian Divorce (Amendment) Act, 2001 (51 of 2001), s. 23 (effective 3-10-2001)].

7) ⁸The Parsi Marriage and Divorce Act, 1936

Under Section 39: Alimony pendente lite —

In any lawsuit under this Act, if the Court determines that the spouse, if applicable, does not have an independent source of income that would allow them to support themselves and the suit's costs, it may, upon request from the spouse, order the defendant to reimburse the plaintiff for the costs of the lawsuit as well as any weekly or monthly amount that, given the plaintiff's and defendant's respective incomes, the Court may deem reasonable:

With the understanding that the application for payment of the suit's costs and any weekly or monthly amount throughout the suit will, to the greatest extent feasible, be resolved within sixty days of the husband or wife, as applicable, receiving notice of the suit.

Under Section 40: Permanent alimony and maintenance —

1. A court exercising jurisdiction under this Act may, upon application by either the husband or the wife, at any time after the decree is passed, order that the defendant pay the plaintiff for maintenance and support, either in full or in part, on a monthly or periodic basis, for a term not to exceed the plaintiff's life, while taking into account the defendant's own income and other property, if any, as well as the plaintiff's income and other property. The Court may find that the conduct of the parties and other case circumstances warrant it, and any payment may, if needed, be secured by a charge on the defendant's real estate, either moveable or immovable.
2. The Court may, at the request of any party, adjust, amend, or revoke any order under sub-section (1) in any way the Court may think just if it becomes convinced that the circumstances of either party have changed at any point after the order was issued.
3. The Court may, at the request of the other party, vary, modify, or rescind any such order in any way the Court may deem just if it is satisfied that the party in whose favour an order has been made under this section has remarried, that she has not remained chaste, or that he has had sexual relations with any woman outside of marriage.]

8)⁹The Muslim Women (Protection of Rights on Divorce) Act, 1986 —

Under Section 3: Mahr or other properties of Muslim woman to be given to her at the time of divorce—

1. A divorced woman shall, notwithstanding the provisions of any other law currently in effect, be entitled to: (a) a reasonable and fair provision and maintenance from her former husband within the iddat period; (b) if she is the parent of children born to her prior to or following her divorce, a reasonable and fair provision and maintenance from her former husband for a period of two years from the dates of such children's birth; (c) the full amount of mahr, or dower, agreed upon to be paid to her at the time of her marriage or at any time thereafter in accordance with Muslim law; and (d) all the properties given to her by her friends, family, husband, or any of his friends or relatives, either before or after her marriage.

⁸ The Parsi Marriage and Divorce Act, 1936 Bare Act

⁹ The Muslim Women (Protection of Rights on Divorce) Act, 1986 Bare Act

2. A divorced woman or anyone duly authorised by her may, on her behalf, apply to a magistrate for an order for payment of such provision and maintenance, mahr or dower, or the delivery of properties, as
 3. the case may be, if a reasonable and fair provision and maintenance, the amount of mahr or dower due, or the properties mentioned in clause (d) of sub-section (1) have not been delivered to the woman upon her divorce.
 4. Where an application has been made under sub-section (2) by a divorced woman, the Magistrate may, if he is satisfied that—
 - (a) Despite having the resources, her spouse has not made or neglected to provide her and the kids with reasonable and fair support during the iddat period; or
 - (b) either the properties mentioned in clause (d) of sub-section (1) have not been delivered to her, or the sum of mahr or dower has not been paid,within one month of the application's filing date, issue an order directing her former husband to provide the divorced woman with reasonable and fair maintenance, taking into account her needs, her marital standard of living, and her former husband's resources. Alternatively, the order may be for the payment of mahr or dower, or the delivery of the properties mentioned in clause (d) of sub-section (1) by the divorced woman.
- With the understanding that the Magistrate may, for reasons to be documented by him, dispose of the application after the specified period if he determines that it is impractical to do so within the allotted time.
5. In the event that an individual designated by sub-section (3) fails to comply with an order under said subsection, the magistrate may issue a warrant for the collection of unpaid maintenance, mahr, or dower, following the guidelines for levying fines under the Code of Criminal Procedure, 1973 (2 of 1974). Additionally, the magistrate may sentence the offending party to imprisonment for a maximum of one year, or until payment is made sooner, provided that the offending party is given the opportunity to present a defence and that the sentence is imposed in accordance with the provisions of the aforementioned Code.

Under Section 4: Order for payment of maintenance—

1. If a magistrate is satisfied that a divorced woman has not remarried and is unable to support herself after the iddat period, he may issue an order directing the relatives who would be entitled to inherit her property upon her death in accordance with Muslim law, regardless of anything contained in the aforementioned provisions of this Act or in any other law currently in effect. to provide her with reasonable and fair maintenance, as he sees fit and proper, taking into account the woman's needs, the standard of living she enjoyed during her marriage, and the means of her relatives. If he orders maintenance, the relatives will pay it in the proportions that they would inherit the property and at the times he specifies in his order: Given that the divorced lady has children, the magistrate will only order the children to pay maintenance to her; if the children are unable to do so, the magistrate will compel the divorced woman's parents to pay maintenance to her: With the additional caveat that if any parent is unable to pay their portion of the maintenance that the magistrate has ordered because they lack the means to do so, the magistrate may, upon receipt of proof of this inability, order that the relative's share of the maintenance be paid by the other relatives who appear to the magistrate to be able to do so in the amounts the magistrate deems appropriate.
2. In the event that a divorced woman is unable to support herself, has no relatives as defined by sub-section (1), or either of these relatives or any one of them lacks the resources to pay the maintenance that the magistrate orders, or the other relatives lack the resources to pay the relatives' shares that the

magistrate has ordered to be paid by such other relatives in accordance with the second proviso to sub-section(1) The State Wakf Board, established under section 9 of the Wakf Act, 1954 (29 of 1954), or under any other law currently in effect in a State, functioning in the woman's area, may be ordered by the Magistrate to pay maintenance as determined by him under sub-section (1), or in the case of non-paying relatives, to pay their shares at such periods as he may specify in his order.

4. Conclusion:

In view of the above-mentioned provisions, we can conclude that the statutes have provided various remedies to women of all religion to claim maintenance from their husband during or after separation or divorce. Nonetheless, even in cases where there are valid reasons, a husband is not allowed to demand maintenance from his wife, with the exception of the Hindu and Parsi religions. As per the Section 144 of The Baharatiya Nagarika Suraksha Sanhita, 2023, wherein a wife, the children and parents of a man are entitled to claim maintenance, whereas, the husband is not bestowed upon by any legal right to claim any sort of maintenance even on reasonable grounds. Thus, it can be clearly interpreted that the Section 144 of The Baharatiya Nagarika Suraksha Sanhita, 2023, is biased on the ground of equality and justice. The said Section 144 of The Baharatiya Nagarika Suraksha Sanhita, 2023, should provide uniform right to claim maintenance for both husband and wife, on the reasonable ground.