

BNSS 2023 – LECTURE 15

Notes - Maintenance of wives, children and parents - I

Chapter X - Order for maintenance of wives, children and parents (Section 144 - 147), [corresponding to Chapter IX (Section 125 - 128) of Cr.P.C.]

Section 144 to 147 of the BNSS provides for a speedy and effective remedy against persons who neglect or refuse to maintain their dependent wives, children, and parents. This simple and limited but quick relief ensures that the neglected dependents are not left destitute and driven to a life of vagrancy and crime.

Constitutional Reason

In the case of *Ramesh Chandra Kaushal v Veena Kaushal (1978)*, Justice V.R. Krishna Iyer remarked that ‘this provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) and reinforced by Article 39.’

When obligation arises

In Section 144(1), we see that the obligation for maintenance arises when a person has sufficient means and even after having such means, refuses to maintain or neglects to maintain his

- I. wife,
- II. legitimate or illegitimate child unable to maintain itself,
- III. a legitimate or illegitimate major child who cannot maintain itself due to physical or mental abnormality, and
- IV. father or mother, unable to maintain himself or herself.

Wife

As we can see that the provision makes an arrangement for a wife to claim maintenance when her husband is having means to support her and still neglects or refuses to maintain her.

Does it include a wife living with husband?

On reading the explanation attached to Section 144(1), the term used is ‘wife includes a woman who has been divorced and not remarried’; thus indicating that ‘wife’ means more than just a divorced wife. So even a wife who is married and living with her husband who is able to but still does not maintain her can ask for maintenance. Section 144 applies to both married and divorced women.

Where else can the wife ask for maintenance?

Under Hindu Marriage Act, 1955

Under Section 24, in any proceedings under HMA, 1955, like divorce, restitution of conjugal rights, judicial separation, etc., either party having no sufficient means to support themselves will get maintenance *pendente lite* during the proceedings to take care of expenses of proceedings. Under Section 25, either party may get permanent alimony or maintenance from the other party for their lifetime subject to certain conditions.

Under Hindu Adoptions and Maintenance Act, 1956

Under Section 18, a duty is created on the husband for maintaining his wife and she can seek maintenance while living with or separately from her husband. But this maintenance is only available to Hindu wives and subject to certain conditions.

Can the second wife be maintained under Section 144?

In the landmark case of *Savitaben Somabhai Bhatiya v State of Gujarat and Ors (2005)*, the Supreme Court remarked that the legislative intent is shown by including illegitimate and legitimate child both, but not including lawful and unlawful wife both. The Court refused to enlarge the scope of Section 125 by introducing any artificial definition to include the woman not legally wedded as 'wife'.

Thus this case limited the scope of wife to only a legally wedded wife, i.e. excluding the second or subsequent wives.

But in the case of *Badshah v. Sou. Urmila Badshah Godse and anr. (2013)*, the husband had hid his first marriage and married the respondent by making her believe that he was competent for marriage. The Court ruled that the husband cannot be allowed to take advantage of his own doing. The bar on wives not legally wedded stands only when the second wife marries with the knowledge of the fact of the first marriage.

In the present case, the second wife had married without knowledge of the first marriage and was living with her husband giving a cogent and strong evidence that they lived as a married couple. Apart from that the application of this act is to help the destitute dependents and other marginalised sections to achieve maintenance and the purpose of this section is to achieve social justice.

The SC said that this section will be dealt with by adopting a 'social justice adjudication' (giving benefit to marginalised and vulnerable sections) and harmonizing both the approaches of interpretation of definition of 'wife' are valid and will apply depending on the circumstances.

What does ‘unable to maintain themselves’ mean?

This is a question that arose for a long time as to what does ‘maintain themselves’ mean? Does it include only basic amenities necessary for survival and if not, how much of a living standard would be taken into account while considering the meaning of ‘maintenance’?

In *Chaturbhuj v Sita Bai (2007)*, the husband went for a revision to reduce the amount of maintenance as according to him, the wife (separated) had started to earn money. The Courts on analysing evidence presented concluded that earning some amount of money is not equal to a person being able to maintain themselves and that the wife still was ‘unable to maintain herself’.

The SC said that the object of this section is to prevent vagrancy and it is a social legislation. Apart from the condition that the husband neglected or refused to maintain his wife, the wife should be unable to maintain herself. It is not necessary that she should be living in abject poverty to claim maintenance. The fact that the wife is able to earn some money is not sufficient to deny maintenance. The test is that the wife should be in a position to maintain a standard of living that is consistent with the status of the family that she is in or the way she was used to in the place of her husband.

Similarly, in the case of *Sunita Kachwaha and ors. v. Anil Kachwaha (2014)*, the HC refused maintenance to the wife on the ground that she had left the matrimonial home. Also, in SC, the argument against the award of maintenance to the wife was that she was working as a teacher and held a post-graduate degree, was well qualified and did not need financial support from her husband.

On looking at the facts of the case, the SC said that merely the wife is qualified and is earning something would not be a ground to reject maintenance. Apart from the two conditions in Section 144(1), i.e. ability to care and neglect of such caring, if a person entitled to maintenance is facing an undue hardship to maintain themselves, and they are able to aver it to the court, they fulfil the pre-condition of inability to maintain herself. The inability to maintain themselves forms the third pre-condition to be fulfilled in every situation coming under Section 144 (corresponding to Section 125 Cr.P.C.).

Thus we can conclude that maintenance does not merely include enough money to fulfil the basic means of life, but it means the maintenance of the lifestyle she should enjoy as being the wife of her husband. To calculate it, the court will go into the evidence of both the parties assets, incomes, jobs and other material facts regarding lifestyle.

Muslim women

In the landmark case of *Md. Ahmed Khan v Shah Bano Begum (1985)*, the question was raised whether a muslim husband is liable for maintenance even after he has paid the dower and after the iddat period?

The SC said that section 125 (now section 144 BNSS) was made as a secular provision providing a quick and summary remedy to the class of persons unable to maintain themselves. It does not come under civil law and the personal laws can only affect it as much as is allowed by the constitution. The liability arising here is of an individual's obligation to prevent vagrancy and destitution.

Thus the word wife includes a muslim wife even beyond the period of *iddat* in this case and any divorced muslim woman can file for maintenance under Section 125 (now section 144 BNSS) till she remarries.

Consequent to the above decision, **Muslim Women (Protection of rights on divorce) Act, 1986** was brought which brought divorced muslim women entitled to maintenance, but only for 3 months after the divorce. This was contained in Section 3(1) which said that a husband has to maintain his wife 'during the *iddat* period or make arrangements for her lifetime'. Some courts saw it as maintenance only during the *iddat* period after which she ceases being his wife, whereas some High Courts interpreted it as payment of maintenance for her lifetime.

This confusion was finally resolved in the case of *Daniel Latifi v Union of India (2001)* where the constitutionality of this amendment came into question. SC said that a muslim husband is liable to make fair and reasonable provision for the future of his divorced wife which obviously includes her maintenance as well and these arrangements are to be made within the *iddat* period. The constitutionality of the amendment remained as it was not found to offend Articles 14, 15 or 21 of the Constitution.

In the case of another landmark case, *Shabana Bano v. Imran Khan (2009)*, the question arose whether a muslim divorced wife would be entitled to file for maintenance after divorce under Section 125 of the Cr.P.C. and through which forum. The SC said that even after divorce, a muslim woman is entitled to claim maintenance from her husband under Section 125 of the Cr.P.C. even after the expiry of the *iddat* period, as long as she does not remarry.

Legitimate or illegitimate child

Here child means a person who has not attained majority and it can be a male or a female child. It can also be a married or unmarried child. This section also applies equally over all religions. In case of a married female child, if her husband does not possess enough means to support her, then according to the first proviso of Section 144, the father of the married female child has to maintain her.

Even though the illegitimate child has an interest in the property of the mother, they still can go for biological father for maintenance if they satisfy the pre-conditions detailed earlier.

Legitimate or illegitimate child who has attained majority but is unable to take care of themselves due some physical or mental abnormality

In this case, a married major daughter is to be maintained by her husband, and not her father.

His father or mother, unable to maintain themselves

Does ‘his’ include daughters

In the case of *Dr. (Mrs.) Vijaya Manohar Arbat v. Kashi Rao Raja Rao Sawai (1987)*, the court said that a married daughter does have a legal as well as social obligation to maintain her old and infirm parents given that she has the means to do that. If she has sufficient means, her parents should not starve. Also, the court said that looking at the IPC (now BNS) and General Clauses Act, it is clear that the term ‘his’ in the phrase ‘his father or mother’ includes both son and daughter and not just son.

Can step-mother claim maintenance?

In the case of *Kirtikant D. Vadodaria v. State of Gujarat and Anr. (1996)*, the question that arose for consideration was whether the expression ‘mother’ includes ‘step mother’. In this case, the Court examined the meaning of step-mother and mother from different sources as step-mother has not been exclusively defined in Indian law.

The court reached the conclusion that while mother can include natural or adoptive mother (through law), step-mother of a person means the woman subsequently married by that person’s father who is not his natural mother. Both are distinct and step mother cannot claim maintenance from her step-son except in certain circumstances. Trying to balance the objectives of Section 125, which is to not let dependents be left destitute and vagrant, the court also made certain exceptions where the step-mother could be entitled to maintenance from the step son. If the step-mother is childless and her husband is unable to maintain her, only then can she ask the step-son. Otherwise, the liability to maintain would lie on her natural-born sons or her husband.