

AN ANALYTICAL STUDY OF IMPORTANT EVIDENCE OF THE RIGHT TO MAINTENANCE OF WIFE UNDER BNSS SECTION 144

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ABSTRACT-

Indian laws have made adequate provisions for maintenance. But many women remain deprived of this right because sufficient evidence cannot be produced in court to prove it. This paper discusses the types of evidence that may be necessary to claim maintenance. Through this evidence, the requirements of Section 144 regarding the right to maintenance of wife can be properly established.

Key words – evidence, maintenance, wife, right.

INTRODUCTION-

The Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS") Section 144 talks about making sure that a wife, children, and parents are taken care of if someone who can afford to does not support them. The term "wife" in this section includes a woman who has been divorced by her husband or has divorced her husband and has not married again. Section 144 of BNSS gives power to a Judicial Magistrate of the First Class to ask a person who can afford to support their family members like a wife, child, or parent who cannot support themselves financially to provide maintenance. This law is important because it helps prevent people from falling into poverty and facing unfair treatment in society.

Research methodology

researcher used doctrinal research methodology in this research paper.

Objectives

The objective of this research paper is to focus on various evidence to obtain maintenance for a wife under Section 144 of BNSS. So that the wife can easily obtain the right to maintenance based on this type of evidence and does not remain deprived of justice.

RIGHT TO MAINTENANCE UNDER VARIOUS LAWS IN INDIA

In India, wives can claim maintenance under various laws, including:

1. Bharatiya Nagarik Suraksha Sanhita, 2023, Section 144: Gives money help to wives, including those who are divorced and have not gotten married again.
2. Hindu Marriage Act, 1955 (Sections 24 and 25): Gives temporary or permanent money support during legal cases and after a divorce.
3. Hindu Adoptions and Maintenance Act, 1956: Lets a Hindu wife get money support if she is treated badly, like through cruelty or being left behind.
4. Protection of Women from Domestic Violence Act, 2005: Offers money help, including support, to wives who are victims of violence at home.
5. Muslim Personal Law: A Muslim woman can get money support during the iddat time and after, if she cannot take care of herself.
6. Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
7. Maintenance Under Christian Law
8. Maintenance Under Parsi Law

These laws help wives get financial support when they are separated or divorced, showing that husbands are legally responsible for taking care of their wives and children.

RIGHT TO MAINTENANCE UNDER SECTION 144 OF BHARATIYA NAGARIK SURAKSHA SANHITA

Under Section 144 BNSS, the following persons are entitled to claim maintenance:

1. Wife – A wife who is unable to maintain herself can claim maintenance from her husband. The term “wife” includes a divorced woman who has not remarried.
2. Minor Children – Legitimate or illegitimate minor children, whether married or not, can claim maintenance if they are unable to maintain themselves.

3. Children with Disabilities – Adult children, legitimate or illegitimate, who are unable to maintain themselves due to physical or mental abnormality or injury are also covered. However, this does not include married daughters.
4. Parents – A father or mother who is unable to maintain themselves can also seek maintenance from their children.

CONDITIONS OF MAINTENANCE –

- **Inability to Maintain:** A person who wants to receive maintenance must show that they cannot support themselves because they have no income or resources.

- **Female Child (whether unmarried or married):** An unmarried female child can get maintenance until she becomes an adult. If she is married, she can still claim maintenance if her husband is not able to provide for her properly.

- **Divorced Wife:** A divorced woman can ask for maintenance only if she does not remarry.

- **Proof of Neglect or Refusal:** The court needs to be sure that the person who is supposed to give the monthly allowance has intentionally ignored or refused to provide financial support, even though they were able to.

- **Sufficient Means:**

the court will check the person who is supposed to give maintenance has enough money or resources to support the claimant. "Sufficient means" includes income from work, business, property, or any other financial assets.

CRITERIA FOR DETERMINING THE MAINTENANCE AMOUNT

1. **Financial Capacity:** The court looks at how much money the person who has to pay

maintenance is earning, their assets, and their overall financial situation. If they have other dependents, the court may adjust the maintenance amount based on that.

2. Needs of the Claimant: The court considers the reasonable needs of the person asking for maintenance. This includes things like food, clothing, shelter, education, and medical care, so they can live with dignity.

3. Standard of Living: The court also considers the social and economic status of both the person asking for maintenance and the person who has to pay it.

4. Earning Capacity of the Wife: The court looks at the wife's ability to earn money and her needs to make sure she isn't unfairly burdened.

5. Other Factors: The court may also take into account the age and job of both people, how long they were married, and if either spouse or child has a serious disability or illness.

6. Financial Obligations of the Respondent: The court also checks the financial responsibilities of the person paying maintenance, including any other dependents they support.

The court makes sure the amount given is enough for the claimant's basic needs, but it also ensures it doesn't put an unfair financial burden on the person who has to pay maintenance.

TYPES OF EVIDENCE UNDER BHARTIYA SAKSHYA ADHINIYAM, 2023

The Act divides evidence into these main types:

1. Oral Evidence
2. Documentary Evidence
3. Real Evidence
4. Electronic and Digital Evidence

5.Hearsay Evidence

6.Circumstantial Evidence

7.Primary and Secondary Evidence

- Oral Evidence:

This is when witnesses speak during a trial.

Their statements must be given directly and are tested in court.

- Documentary Evidence:

This includes written records or documents that are used to show something is true.

IMPORTANT EVIDENCE TO OBTAIN MAINTENANCE

1. Proof of Marriage- marriage certificate, photos of marriage ceremony, witness etc.
2. evidence about wife is living separately due to husband's cruelty, desertion, leprosy, bigamy or religious conversation.
3. Medical certificates- If a husband physically abuses his wife, any medical treatment taken for it can be used as evidence through Medical certificate. Which proves that due to the physical abuse from her husband, the wife is unable to go to her husband's house.
4. Salary slip - A salary slip is an important document to prove a person's income.
5. I T Return - The income of the person who files the income tax return can be proven from that I T return.
6. Bank statement- The bank statement is also an important proof of his income and financial condition.

7. Passport - From the passport, it can be known how many times a person has travelled abroad and for what purpose they went abroad. which proves that the husband's financial situation is so good that he can go abroad.
8. House and property documents - It can be known from home and property documents how much wealth a person has. The property documents can be obtained from the sub registrar office through an RTI . By filing an RTI from the RTO office, proof of vehicle ownership can be obtained.
9. If the husband has other sources of income, evidence regarding that can be presented.
10. Any evidence to show that a family members are not dependent on her husband's salary.
11. Witness - The head of the department where a person works can be called as a witness , who can provide information about the person's salary.
12. Witness - A doctor can be a witness to a person's physical abuse or illness.
13. Witness - Neighbours and relatives can be called as witnesses. any person who proves that the husband's behavior towards the wife has been cruel and violent. Therefore, it can be proven that the wife has moved out of the husband's house or that the husband has evicted the wife from the house.
14. Social media account - Based on the information and photos posted on social media, it is possible to estimate the kind of lifestyle they are leading/// , and by questioning them as a witness, it can be proven. By asking which company's mobile a person uses and what car they have, and how much it costs, we can understand the person's standard of living.

15. Adultery - If the husband commits adultery, evidence of it can be presented. such as call recordings, photos, videos, or any witness.
16. Educational documents - If the wife is studying, then the evidence of it. Therefore, it can be proven that the wife is unable to earn because of this.
17. Other evidence- Any evidence showing that the wife is unable to maintain herself. such as a wife's education is ongoing. Or the wife may have the responsibility of taking care of a small child or elderly parents.
18. Evidence regarding all the needs of the person seeking maintenance, including medical, educational, rent, bills, etc.
19. If the husband has been cruel to the wife or has physically or mentally harassed her, then details of any case filed in this regard can also be provided as supporting evidence.
20. Copies of the supporting judgments of the Supreme Court and High Court can be submitted. This makes the case stronger.

****COMMENCEMENT OF MAINTENANCE****

Maintenance or temporary maintenance can be paid starting from the date the order is given, or if the Magistrate says so, from the date the application was made. This allows for some flexibility, which is fair and helps cover the time between when the case is filed and when a final decision is made.

****DISQUALIFICATIONS FOR CLAIMING MAINTENANCE****

There are certain situations where a wife cannot claim maintenance.

A wife is not allowed to get maintenance if:

- She is living with someone else in a relationship that is not married.

- She refuses to live with her husband without a good reason.
- The couple is living apart by mutual agreement.

****CASE: - R.P.(FC) No.100/2023 (Revision Petition, Family Court)****

- The Kerala High Court said that adultery can be proven using indirect evidence. This means a husband does not need to show direct proof to stop a wife from getting maintenance. The court explained that it is enough to show that the chances of adultery are higher than not. This can be done using things like statements from others, behavior, and witness accounts that show a pattern of being unfaithful. The court also noted that since these relationships often happen secretly, direct proof is hard to find. The court emphasized looking at all the facts together to decide if adultery has happened. The court said that indirect evidence is enough to prove adultery, which can affect whether a wife is allowed to get maintenance. If it is later found that any of these conditions are true after a maintenance order has been given, the Magistrate must cancel that order.

LANDMARK JUDGEMENTS

1. Rajiv Verghese v. Rose Chakkrammankkil Francis case, appeal - SLP(C) No.19922/2023.

Key Legal Principles and Analysis

- Amount of Maintenance

The court said that maintenance should allow the spouse to continue living as they did during the marriage . it decided to give rs. 1,75,000 per month , because Dr. Verghese earns a lot from different sources.

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- Income Evaluation

The Family Court looked at several income sources, including rental income and money from a school that Dr. Verghese runs.

The Supreme Court said that the High Court made a mistake by only looking at a few income sources.

- Standard of Living

If one spouse stops working to take care of the family, they should get support that matches the lifestyle they had while married.

The court noted that Rose gave up her career for the marriage and made sure she could keep her usual standard of living.

- Fair Maintenance Orders

The Supreme Court reminded that maintenance should be fair and take into account all the financial situations of both parties.

2. Smt. S.R. Ashwini vs. G. Harish [NC: 2024: KHC: 14466]: The Karnataka High Court said that a restitution decree does not stop someone from getting maintenance under Section 125 of the CrPC.

3. The Supreme Court's decision in the case of Rajnesh vs Neha highlighted the need to submit an Affidavit of Disclosure of Assets and Liabilities during maintenance cases. The court said both sides should file this document to properly understand each other's financial situation. This helps prevent the wife from making exaggerated claims and the husband from hiding his true financial status. The court's instruction aims to simplify the maintenance process and ensure that the amount of maintenance is decided based on the real financial condition of both parties.

This ruling is an important move in dealing with maintenance issues and helps make sure the financial needs of both sides are properly considered.

It's likely to have a good effect on maintenance cases in India and can be a guide for other courts in different regions.

4. In the case of Subal Das vs. Mousumi Saha (Das) and another [2017 SCC OnLine Tri 175], the Tripura High Court ruled that a wife who refuses a restitution order cannot be denied maintenance.

5. In Amrita Singh vs. Ratan Singh and another [(2018) 17 SCC 737], the Supreme Court stated that a wife can choose not to live with her husband if she has faced cruelty or was subjected to constant pressure for dowry. This gives her the right to receive maintenance.

6. In the case of Smt. Nidhi v. Shri Nishant Dubey, the wife, who is a qualified physiotherapist, was given ₹10 lakh as alimony. This was because her husband earned much more than her.

CONCLUSION-

To get maintenance in India, a wife has to go through a lot of struggles. Indian laws provide sufficient provisions to obtain maintenance, but to enforce this right, a person has to go through legal complexities. The laws are simple, but to obtain the rights provided in them, it is necessary to fulfil their legal requirements. If the requirements of this law are fulfilled, the person becomes eligible to acquire that right. Therefore, a wife becomes entitled to receive maintenance only when she fulfills the requirements of this law. Thus, the wife needs to present proper evidence in court to obtain the right to maintenance. Technology is developing day by day, so it has become easier for a person to obtain any evidence and prove something. With proper evidence, a person can get a fair judgment in court. Such proper evidence is very useful for a wife to claim the right to maintenance.

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