

CHAPTER 100

MAINTENANCE

Ordinances AN ORDINANCE TO AMEND THE LAW RELATING TO THE MAINTENANCE OF WIVES AND CHILDREN.
 Nos.19 of 1889,
 13 of 1925,
Acts
 Nos.19 of 1972,
 2 of 1978.

[31st December. 1889.]

Short title. **1.** This Ordinance may be eked as the Maintenance Ordinance.

Order for maintenance of wife or of legitimate or illegitimate child.

2.* If any person having sufficient means neglects or refuses to maintain his wife, or his legitimate or illegitimate child unable to maintain itself, the Judge of the Family Court* 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, as the Judge of the Family Court* thinks fit, having regard to the income of the defendant and the means and circumstances of the applicant or such child, and to pay the same to such person as the Judge of the Family Court* may from time to time direct. Such allowance shall .be payable from the date on which the application for maintenance is made.

[§ 2,19 of 1972.]

[§ 2, 19 of 1972.]

Where wife refuses to live with her husband.

3. If such person offers to maintain his wife on condition of her living with him, the Judge of the Family Court* may consider any grounds of refusal stated by her, and may make an order under section 2, notwithstanding such offer, if the Judge of the Family Court* is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

Where wife is living in adultery or apart from her husband without sufficient reason or by mutual consent.

4. No wife shall be entitled to receive an allowance from her husband under section 2 if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

5. On proof that any wife in whose favour an order has been made under section 2 is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Judge of the Family Court* shall cancel the order.

Circumstances warranting cancellation of order under section 2.

6. In the case of an application for an order under section 2 in respect of an illegitimate child, such application shall not be entertained unless made within twelve months from the birth of such child, or unless it be proved that the man alleged to be the father of such child has at any time within twelve months next after the birth of such child maintained it or paid money for its maintenance, or unless such application is made within the twelve months next after the return to Sri Lanka of the man alleged to be the father of such child, and upon proof that he ceased to reside in Sri Lanka within the twelve months next after the birth of such child, and no order shall be made on any such application as aforesaid on the evidence of the mother of such child unless corroborated in some material particular by other evidence to the satisfaction of the Judge of the Family Court*.

Period within which application for maintenance of illegitimate child should be made.

Evidence of mother to be corroborated.

7. No order for an allowance for the maintenance of any child, legitimate or illegitimate, made in pursuance of this Ordinance shall, except for the purpose of recovering money previously due under such order, be of any force or validity after the child in respect of whom it was made has attained the age of twenty-one years, or after the death of such child.

Time of cessation of order.

[§ 3,19 of 1972-]

* The Jurisdiction of the Family Court in maintenance matters has since been removed from such court by the Judicature (Amendment) Act, No. 71 of 1981, and vested in the Magistrate's Court.

Enforcement of orders of maintenance. [§4, 19 of 1972.]

8. (1) Subject as otherwise provided in section 8A, where any person against whom an order is made under section 2 (hereinafter called the "defendant") neglects to comply with the order, the Judge of the Family Court* may for every breach of the order sentence such defendant for the whole or any part of each month's allowance in default, to simple or rigorous imprisonment for a term which may extend to one month.

(2) The Judge of the Family Court* may, if an application is made in that behalf by any person entitled to receive any payment under an order of maintenance, before passing a sentence of imprisonment, issue a warrant directing the amount in default to be levied in the manner by law provided for levying fines imposed by Magistrates in the Magistrates' Courts.

Attachment of salary of defendant. [§5, 19 of 1972.]

8A. (1) If, on the application of a person entitled to receive any payment under an order of maintenance, it appears to the Judge of the Family Court* that the defendant has defaulted in the payment of maintenance due for a period exceeding two months, the Judge of the Family Court* may, after due inquiry, by an order, hereinafter referred to as an "attachment of salary order", require the person to whom the order is directed, being a person appearing to the Judge of the Family Court* to be the defendant's employer, to deduct, for such period as may be specified in the order, such amount from the defendant's salary as may be specified in the order and forthwith to remit that amount to the court.

(2) (a) Before an order is made under subsection (1) of this section, the Judge of the Family Court* shall notice the person on whom he proposes to serve an order under that subsection to show cause, if any, why an order should not be made under that subsection and to require him to furnish to the court, within such period as may be specified in such order, the salary particulars of the defendant. Any order made under subsection (1) of this section may be the subject of an appeal to the Court of Appeal by any person aggrieved by such

order but notwithstanding such appeal, the Judge of the Family Court* may decide to continue proceedings under this Ordinance. The provisions of section 17 of this Ordinance shall apply to or in relation to every such appeal.

(b) The Judge of the Family Court* may also by an order served on the defendant require him to furnish to the Court, within such period as may be specified in such order, a statement specifying—

- (i) the name and address of his employer, or of his employers, if he has more than one employer;
- (ii) such particulars as to his salary as may be within his knowledge;
- (iu) and such other particulars as are required or necessary to enable his employer or employers to identify him.

(3) A document purporting to be such a statement as is mentioned in subsection (2) (b) of this section shall, in any proceedings in any court, be received in evidence and be deemed to be such a statement without further proof unless the contrary is shown.

(4) The Judge of the Family Court* shall not make an attachment of salary order if it appears to him that the failure of the defendant to make any payment in accordance with the order of maintenance in question was not due to his wilful refusal or culpable neglect.

(5) In determining the amount to be deducted in terms of subsection (1) of this section, the Judge of the Family Court* shall have regard to the resources and needs of the defendant and the needs of the person, payment of whose maintenance is in default.

(6) An attachment of salary order shall not come into force until the expiration of fourteen days from the date on which a copy of the order is served on the person to Whom the order is directed.

(7) An attachment of salary order may, on the application of the defendant or the person entitled to receive payments under the order of maintenance, be discharged or varied.

* See footnote to section 2.

(8) A person to whom an attachment of salary order is directed shall, subject to the provisions of this Ordinance, comply with the order or, if the order is subsequently varied under subsection (7) of this section, with the order as so varied.

(9) For the purposes of this section,—

(a) where the defendant is a public servant, the head of the department to which he is for the time being attached shall be deemed to be his employer; and

(b) where the defendant is a member of the Local Government Service and employed in any local authority, the Commissioner, if it be a Municipal Council, or the Chairman, if it be an Urban Council or a Town Council or a Village Council, as the case may be, shall be deemed to be his employer.

(10) Where on any occasion on which any deductions have to be made from the salary of a defendant in pursuance of an attachment of salary order, there are in force two or more attachment of salary orders relating to such salary, then, for the purposes of complying with this section, the employer shall—

(a) deal with such orders according to the respective dates on which they came into force, disregarding any subsequent order until any earlier order has been dealt with; and

(b) deal with any subsequent order as if the salary to which such order relates was the residue of the defendant's salary after making any payments in pursuance of an earlier order.

(11) An employer who, in pursuance of an attachment of salary order, makes any payment to court under this section shall forthwith give to the defendant a statement in writing specifying the amount deducted from his salary in pursuance of such order.

(12) Where any payment is made by an employer in pursuance of an attachment of salary order, the court shall forthwith pay that amount to the person who is entitled to receive the same.

(13) Any employer who fails or neglects to comply with an attachment of salary order shall be liable on conviction by a Magistrate's Court to a fine not exceeding two hundred rupees and in the case of a second or subsequent conviction in respect of the same attachment of salary order, to a fine not exceeding five hundred rupees :

Provided that it shall be a defence for an employer charged with failing or neglecting to comply with an attachment of salary order to prove that he took all reasonable steps to comply with such order.

(14) The provisions of this section shall have effect notwithstanding anything in any other written law.

(15) For the purposes of this section, the expression " salary " includes all allowances and wages.

8B. (1) Where an order for maintenance is made under the provisions of this Ordinance, the Judge of the Family Court* may direct the defendant that the amount of the payment due under such order shall be deposited each month on or before such date as may be specified in such order in favour of the person entitled to such payment, at such post office, bank or divisional Assistant Government Agent's office as may be specified in such order, and the amount so deposited may be drawn by such person from such post office, bank or divisional Assistant Government Agent's office, and it shall be the duty of the officer for the time being in charge of such post office, bank or divisional Assistant Government Agent's office to pay that amount to the person entitled thereto upon application made in that behalf.

Payment of maintenance through post office, bank or divisional Assistant Government Agent. [§ 5, 19 of 1972.]

(2) Where a direction has been made under subsection (1) of this section and there has been default in the deposit of payments as specified in such direction, the

* See footnote to section 2.

officer for the time being in charge of such post office, bank or divisional Assistant Government Agent's office shall report such default to the court within seven days of such default and the Judge of the Family Court* may in such event, notice the defendant to show cause why he should not be dealt with for such default, and if satisfied after due inquiry that there has been any default, impose such punishment as is provided by this Ordinance.

on the production of such order and on being satisfied as to the identity of the parties and the non-payment of the allowance due, proceed under section 8 or section 8A.

[§ 7,19 of 1972]

12. The person applying for an order of maintenance or for a warrant to enforce such order (hereinafter called the applicant), and the person against whom such order or warrant is applied for (hereinafter called the defendant), may either appear personally or by pleader:

Procedure. Attendance of parties at inquiry.

Provided that it shall be competent to the Judge of the Family Court* to require the personal attendance of either the applicant or the defendant at any stage of the inquiry.

13. Every application for an order of maintenance or to enforce such an order shall be in writing and shall be signed by the applicant and shall be free of any stamp duty. Every summons to a defendant or witness shall also be free of stamp duty.

Inquiry how applied for. Applications and process to be free of stamp duty. [§ 8, 19 of 1972.]

14. (1) Every application for an order of maintenance or to enforce an order of maintenance shall be supported by an affidavit stating the facts in support of the application and the Judge of the Family Court* shall, if satisfied that the facts set out in the affidavit are sufficient, issue a summons on the defendant to appear and to show cause why the application should not be granted.

Commencement of inquiry. [§ 9, 19 of 1972.]

(2) The Judge of the Family Court* shall, after such inquiry as he may consider necessary, make order allowing or refusing the application and, if necessary, an order under section 8 or section 8A.

15. The Judge of the Family Court* may proceed in manner provided in Chapters V and VI of the Code of Criminal Procedure Act, to compel the attendance of the defendant and of any person required by the applicant or defendant or by the Judge of the Family Court* to give evidence, and the production of any document necessary for the purposes of the inquiry.

Attendance of defendant and witnesses how enforced.

16. All evidence taken by the Judge of the Family Court* under this Ordinance

Form of proceedings.

Order as to costs, and enforcement thereof.

9. When disposing of any application or appeal under this Ordinance, the Family Court* or the Court of Appeal may order either party to pay all or any part of the costs of such application or of the costs of application and appeal, as the case may be, and such order shall be subject to the provisions and conditions laid down in the Civil Procedure Code, relating to costs so far as they may be applicable, and the amount due under the order shall be recoverable as if it were a fine, and in default of payment imprisonment of either description may be imposed for a period not exceeding one month:

Provided that bills of costs shall be taxed in the manner provided by section 65 of the Primary Courts' Procedure Act, or, in the case of an appeal, in the manner prescribed for costs in an appeal from an order of the Primary Court.

Application for cancellation of order or alteration in amount of allowance.

10. On the application of any person receiving or ordered to pay a monthly allowance under the provisions of this Ordinance, and on proof of a change in the circumstances of any person for whose benefit or against whom an order for maintenance has been made under section 2, the Judge of the Family Court* may either cancel such order or make such alteration in the allowance ordered as he deems fit.

[§ 6, 19 of 1972.]

Copy of order given to party.

11. A copy of the order of maintenance certified under the hand of the Judge of the Family Court* shall be given without payment to the person in whose favour it is made, or to his or her guardian, if any, or to the person to whom the allowance is to be paid; and any Judge of the Family Court* having jurisdiction over the place where any such person or the defendant may be, shall,

Where order enforceable. [§ 7, 19 of 1972.]

* See footnote to section 2.

shall be taken in the presence of the defendant, or, when his personal attendance is not required by the Judge of the Family Court*, in the presence of his pleader, and shall be recorded in the manner prescribed for trials in the Magistrate's Court:

Provided that it shall not be necessary to frame a charge or to record the statement of the defendant in the manner prescribed in the Code of Criminal Procedure Act:

Provided also that in any proceedings under this Ordinance it shall be competent to the defendant to give evidence upon oath or affirmation as an ordinary witness, and that a wife shall be a competent witness against her husband.

17. Any person who shall be dissatisfied with any order made by a Judge of the Family Court* under section 2 or section 14 may prefer an appeal to the Court of Appeal in like manner as if the order was a final order pronounced by a Magistrate's Court in a criminal case or matter, and sections 320 to 330 (inclusive) of the Code of Criminal Procedure Act shall apply to such appeal.

18. The forms set forth in the Schedule, with such variations as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

The parties competent witnesses.

[Section 18.]

SCHEDULE

No. 1

SUMMONS TO A DEFENDANT

In the Family Court* of..... To..... of.....

Whereas your attendance is necessary to answer to a charge of not maintaining your wife (name) (or legitimate or illegitimate child) (name, or say child by..... giving mother's name):

Or:

Whereas your attendance is necessary to answer to a charge of having committed a breach of an order of maintenance made against you under the Maintenance Ordinance by non-payment of the allowance due to your wife (or child)..... (give name or describe as above) for..... (state period):

You are hereby required to appear in person (or by pleader, as the case may be) before the Family Court* of..... on the..... day of..... 19..... Herein fail not.

Dated this.....day of.....19.....

Signed XY

Judge of the Family Court*/Authorised Officer.

No. 2

WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE

In the Family Court* of.....to the Superintendent of the Prison at.....

Whereas (name, description, and address) has been proved to be possessed of sufficient means to maintain his wife (name) (or his child) (name, or describe as in summons), who is unable to maintain herself (or himself), and to have neglected (or refused) to do so, and an order has been duly made requiring the said (name) to allow to his said wife (or child) for maintenance the monthly sum of.....rupees; and whereas it has been further proved that the said (name), in wilful disregard of the said order, has failed to pay..... rupees, being the amount of the allowance for the month (or months) of..... and thereupon an order was made adjudging him to undergo simple (or rigorous) imprisonment for the period of.....:

* See footnote to section 2.

This is to authorize and require you, an officer of the Department of Prisons to take the said *(name)* and him safely deliver to the Superintendent referred to above, together with this warrant, and I do hereby command you the said Superintendent of the said Prison to receive the said.....into your custody in the said Prison, and there carry the said order into execution, according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand this.....day of..... 19.....

Signature.....

No. 3

WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY DISTRESS AND SALE

In the Family Court* of.....

To the Fiscal of the Family Court* of.....

Whereas an order has been duly made requiring *(name)* to allow to his wife *(or child)* for maintenance the monthly sum of.....-rupees ; and whereas the said *(name)*, in wilful disregard of the said order, has failed to pay.....rupees, being the amount of the allowance for the month *(or months)* of.....:

This is to authorize and require you to make distress by seizure of any movable property belonging to the said *(name)* which may be found within the district of..... and if within *(state the number of days or hours allowed)* next after such distress the said sum shall not be paid *(or forthwith)*, to sell the movable property distrained, or so much thereof as shall be sufficient to satisfy the said sum; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand this.....day of.....,19..

Signature.....

* See footnote to section 2.