

CHAPTER XXXVI

OF THE MAINTENANCE OF WIVES AND CHILDREN

488.(1) If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, ¹[a Metropolitan Magistrate,] a Sub-Divisional Magistrate or 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, at such monthly rate, not exceeding four hundred taka in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

Order for maintenance of wives and children

(2) Such allowance shall be payable from the date of the order, or if so ordered from the date of the application for maintenance.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Enforcement of order

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing:

Provided, further, that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due.

¹ The letter, words and comma "a Metropolitan Magistrate," were inserted by the Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

(4) No wife shall be entitled to receive an allowance from her husband under this section 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 this section 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 Magistrate shall cancel the order.

(6) All evidence under this Chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases:

Provided that if the Magistrate is satisfied that he is wilfully avoiding service, or wilfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte*. Any orders so made may be set aside for good cause shown on application made within three months from the date thereof.

(7) The Court in dealing with applications under this section shall have power to make such order as to costs as may be just.

(8) Proceedings under this section may be taken against any person in any district where he resides or is, or where he last resided with his wife, or, as the case may be, the mother of the illegitimate child.

Alteration in allowance

489.(1) On proof of a change in the circumstance of any person receiving under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit: Provided that if he increases the allowance the monthly rate of four hundred taka in the whole be not exceeded.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 488 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

490. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.

Enforcement of order of maintenance

CHAPTER XXXVII

DIRECTIONS OF THE NATURE OF A *Habeas Corpus*

491.(1) The High Court Division may, whenever it thinks fit, direct:—

Power to issue directions of the nature of a *habeas corpus*

- (a) that a person within the limits of its appellate criminal jurisdiction be brought up before the Court to be dealt with according to law;
- (b) that a person illegally or improperly detained in public or private custody with such limits be set at liberty;
- (c) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;
- (d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively;
- (e) that a prisoner within such limits be removed from one custody to another for the purpose of trial ; and

¹[* * *]

(2) The ²[Supreme Court] may, from time to time, frame rules to regulate the procedure in cases under this section.

¹ Clause (f) was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² The words "Supreme Court" were substituted for the words "High Court" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).