

MAINTENANCE ORDERS ENFORCEMENT ACT, 1921

18 of 1921

[5th October, 1921]

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STATEMENT OF OBJECTS AND REASONS "The Imperial Conference of 1911 passed a resolution that, in order to secure justice and protection for wives deserted by their husbands and children who had been deserted by their legal guardians either in the United Kingdom or in any part of the Dominions, reciprocal legal provisions should be adopted in the constituent parts of the Empire in the interest of such destitute and deserted persons. As a result, the English Act (10 and 11 Geo. V, Ch. 33) was recently passed to facilitate the enforcement in England and Ireland of maintenance orders made in other parts of His Majesty's Dominions and Protectorates and vice versa. Section 12 of the Act empowers His Majesty to extend it by Order in Council to those Dominions and

Protectorates which make reciprocal legal provisions. The object of the present Bill, which generally follows the lines of the English Act, is to make such reciprocal provisions by facilitating the enforcement in British India of maintenance orders made in other parts of His Majesty's Dominions and Protectorates and vice versa. That is, read with the English Act, the present Bill allows the enforcement of orders for the maintenance of wives and children deserted in England on persons liable under such orders who have come to British India, and vice versa for the enforcement of maintenance orders in favour of wives and children deserted in British India by those liable to support them if such persons have gone to England. The Bill makes provision for the following classes of cases: (1) Where after the making of a maintenance order the husband (or other person liable for maintenance) has gone from British India to another part of the Empire in which reciprocal legislation is in force; (2) Where the husband or other person liable has gone from British India to a reciprocating part of the Empire before the making of any maintenance order; (3) Where after the making of a maintenance order in a reciprocating part of the Empire the husband or other person liable has come to British India; and (4) Where before the making of a maintenance order in reciprocating part of the Empire the husband or other person liable has come to British India. As regards cases falling under head (1), clause 5 enables an order made by a Court in British India to be transmitted to the Courts in the other reciprocating part of the Empire to be registered and enforced there. Similarly, clause 4, read with clause 8, enables an order made by a Court in a reciprocating part of the Empire, in cases falling under head (3), to be registered and enforced in British India. In cases falling under head (2), clause 6 authorises the making of a provisional order in the absence of the husband or other person liable which will have no effect unless confirmed by a Court in the reciprocating country to which the husband has gone, and clause 7 deals with the opposite class of cases falling under head (4). Sub-clauses (6) and (7) of clauses 6 and 7 [Sub-clause (7) was omitted by the Select Committee] provide for the variation and revocation of orders and for appeals. Clause 3(2) enables reciprocity, similar to that for which the Bill provides in the case of parts of His Majesty's Dominions, to be established with such Indian States as may pass legislation for the enforcement in such States of orders made by British Indian Courts. The procedure for enforcing orders registered in a High Court will be the same as that for an order originally obtained in

the High Court, but for a Court of summary jurisdiction the method in which orders will be enforced has been left to be prescribed by rules."-Gazette of India, 1921, Part V, page 5.

1. Short title and extent :-

(1) This Act may be called The Maintenance Orders Enforcement Act, 1921.

¹[(2) It extends to the whole of India ² [except the State of Jammu and Kashmir].]

1. Substituted for former sub-section (2) by A.L.O., 1950.

2. Substituted for the words "except Part B States" by Part B States (Laws) Act, 1951 (3 of 1951), section 3 and Schedule (1-4-1951).

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context,- "Court of summary jurisdiction" means the Court of a Chief Presidency Magistrate or of a District Magistrate; "dependants" means such persons as a person against whom a maintenance order is made is liable to maintain according to the law in force in ¹[the reciprocating territory] in which the maintenance order is made; "The words 'other than legitimate children' have been omitted from the definition of dependants, and the corresponding words of the English Act, i.e. 'other than an order of affiliation' have been inserted in the definition of 'maintenance order' so as to follow the wording of the English Act."-S.C.R. ²["India" means the territory of India excluding the State of Jammu and Kashmir;] "maintenance order" means, a decree or order, other than an order of affiliation, made by a Court in the exercise of civil or criminal jurisdiction for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made; "The definition of 'maintenance order' has also been amplified to make it clear that such an order includes orders passed by Courts either in the exercise of civil or criminal jurisdiction."-S.C.R. "prescribed" means prescribed by rules made under this Act; "proper authority" means the authority appointed by, or under the law of, a reciprocating territory to receive and transmit documents to which this Act applies; and "Definition of 'proper authority' has been inserted, as it was considered to be incorrect to prescribe by rules the authority of the reciprocating territory, from which communications should be received. The laws passed, or to be

passed, in such territories will provide for the proper authority for the transmission of communications."-S.C.R. ³["reciprocating territory" means any country or territory outside India in respect of which this Act for the time being applies by virtue of a declaration under Section 3 .] ⁴ [* * * * *]

1. Substituted for the words "the part of His Majesty's Dominions" by Maintenance Orders Enforcement (Amendment) Act, 1952 (47 of 1952), section 3 (30-7-1952).
2. Inserted by Part B States (Laws) Act, 1951 (3 of 1951), section 3 and Schedule (1-4-1951).
3. Substituted for former definition by Maintenance Orders Enforcement (Amendment) Act, 1952 (47 of 1952), section 3 (30-7-1952).
4. Definition of "States" was omitted by Part B States (Laws) Act, 1951 (3 of 1951), section 3 and Schedule (1-4-1951).

3. Declaration of reciprocal arrangements :-

If the Central Government is satisfied that legal provision exists in any country or territory outside India for the enforcement within that country or territory of maintenance orders made by Courts in India, the ¹Central Government may, by notification in the Official Gazette, declare ¹ that this Act applies in respect of that country or territory and thereupon it shall apply accordingly.]

1. For such declarations, see General Statutory Rules and Orders, Vol. IV, pp. 463 to 468; and G.S.R. 1064 of 1961, Gaz. of India, 2-9-1961, Pt. II, section 3(i), p. 1315 and G.S.Rs.1005 and 1636, Gaz. of India, 1964, Pt. II, section 3(i), pp. 1082 and 1799; G.S.R. 1224, Gaz. of India, 28-8-1971, Pt. II, section 3(i), p. 3364.

4. Registration in India of maintenance orders made in the reciprocating territories :-

(1) Where a maintenance order has, whether before or after the passing of this Act, been made against any person by any Court in any reciprocating territory, and a certified copy of the order has been transmitted by the proper authority of that territory to the ¹[Central Government], the ¹[Central Government] shall send a copy of the order to the prescribed officer of a Court in ³[India] for registration, and, on receipt thereof, the order shall be registered in the prescribed manner.

(2) The Court in which an order is to be so registered as aforesaid shall, if the Court by which the order was made was, in the opinion of the ¹[Central Government], a Court of superior jurisdiction, be a

High Court, and, if the Court was not, in ⁵ [its] opinion, a Court of superior jurisdiction, be a Court of summary jurisdiction.

1. Substituted for the words "Governor-General" by A.O., 1937.
3. Substituted for the words "the States" by Part B States (Laws) Act, 1951 (3 of 1951), section 3 and Schedule (1-4-1951).
5. Substituted for the word "his" by A.O., 1937.

5. Transmission of maintenance orders made in India :-

Where a Court in ¹[India] has, whether before or after the commencement of this Act, made a maintenance order against any person, and it is proved to that Court that the person against whom the order was made is resident in a reciprocating territory, the Court shall send to the ² [Central Government], for transmission to the proper authority of that territory, a certified copy of the order.

1. Substituted for the words "the States", by Part B States (Laws) Act, 1951 (3 of 1951), section 3 and Sch. (1-4-1951).
2. Substituted for the words "Governor-General in Council" by A.O., 1937.

6. Power of summary Courts to make provisional maintenance orders against persons resident in reciprocating territories :-

(1) Where application is made to a Court of summary jurisdiction in ¹[India] for a maintenance order against any person, and it is proved that that person is resident in a reciprocating territory, the Court may, in the absence of that person, if after hearing the evidence it is satisfied of the justice of the application, make any such order as it might have made if that person had wilfully neglected to attend the Court; but in such case the order shall be provisional only and shall have no effect unless and until confirmed by a competent Court in such territory.

(2) The evidence of every witness who is examined on any such application shall be reduced to writing, and such deposition shall be read over to, and signed by him.

(3) Where such an order is made, the Court shall send to the ²[Central Government], for transmission to the proper authority to the reciprocating territory in Which the person against whom the order is made is alleged to reside, the depositions so taken and a certified copy of the order together with a statement of the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with

a summons and had appeared at the hearing and such information as the Court possesses for facilitating the identification of that person and ascertaining his whereabouts.

(4) Where any such provisional order has come before a Court in a reciprocating territory for confirmation, and the order has by that Court been remitted to the Court of summary jurisdiction which made the order for the purpose of taking further evidence, that Court shall, after giving the prescribed notice, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application.

(5) If it appears to the Court hearing such evidence that the order ought not to have been made, the Court may rescind the order, but in any other case the depositions shall be sent to the ²[Central Government] and dealt with in like manner as the original depositions.

(6) The confirmation of an order made under this section shall not affect any power of a Court of summary jurisdiction to vary or rescind that order: Provided that, on the making of a varying or rescinding order, the Court shall send a certified copy thereof to the ² [Central Government] for transmission to the proper authority of the reciprocating territory in which the original order was confirmed, or to which it was sent for confirmation and that, in the case of an order varying the original order, the order shall not have any effect unless and until confirmed in like manner as the original order.

"Marginal heading.- The words 'of summary Courts' have been inserted in the marginal heading to make it clear that the making of provisional orders is confined to summary Courts. Sub-section (1).- The words 'if such person had wilfully neglected to attend the Court' have been substituted for the words 'if a summons had been duly served on the person and he had failed to appear at the hearing' to bring the wording of this sub-clause in conformity with the wording of S.488 of the Code of Criminal Procedure, 1898. Sub-section (6).- The words 'or to which it was sent for confirmation' have been inserted after the words 'was confirmed' in the proviso to this sub-clause, as it is proposed that a Court, which has made a provisional order, may vary or rescind that order after the taking of further evidence before the order has actually been confirmed in the reciprocating possession, and also that it may vary or rescind the order after it has been confirmed. Sub-clause (7) of clause 6 has been omitted following the provisions of the maintenance sections in the Code of Criminal Procedure, 1898. There is no

appeal from an order of maintenance under that Code, and this sub-clause would, therefore, be misleading. In the absence of any provision for such appeal, we do not consider it desirable that there should be an appeal in the cases dealt with under this clause, which are treated as analogous to maintenance cases dealt with under the Code of Criminal Procedure."-S.C.R.

1. Substituted for the words "the States", by Pan B States (Laws) Act, 1951 (3 of 1951), S.3 and Sch. (1-4-1951).

2. Substituted for the words "Governor-General in Council" by A.O., 1937.

7. Power of Court of summary jurisdiction to confirm maintenance order made out of India :-

(1) Where a maintenance order has been made by a Court in a reciprocating territory and the order is provisional only, and has no effect unless and until confirmed by a Court of summary jurisdiction in ¹[India], and a certified copy of the order, together with the depositions of the witnesses and a statement of the grounds on which the order might have been opposed has been transmitted to the ²[Central Government], and it appears to the ³[Central Government] that the person against whom the order has been made is resident in ¹[India], the ²[Central Government] may send the said documents to the prescribed officer of a Court of summary jurisdiction, with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed, and, upon receipt of such documents and requisition, the Court shall issue a summons and cause it to be served upon such person.

(2) A summons issued under sub-section (1) shall for all purposes be deemed to be a summons issued by the Court in the exercise of its original criminal jurisdiction.

(3) At the hearing it shall be open to the person to whom the summons was issued to raise any defence which he might have raised in the original proceedings had he been a party thereto, but no other defence, and the certificate from the Court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(4) If at the hearing the person served with the summons does not

appear or, on appearing, fails to satisfy the Court that the order ought not to be confirmed, the Court may, notwithstanding any pecuniary limit imposed on its power by any law for the time being in force in ¹[India], confirm the order either without modification or with such modifications as to the Court after hearing the evidence may seem just: Provided that no sum shall be awarded as maintenance under this section, or shall be recoverable as such, at a rate exceeding that proposed in the provisional order.

(5) If the person to whom the summons was issued appears at the hearing and satisfies the Court that for the purpose of any defence it is necessary to remit the case the Court which made the provisional order for the taking of any further evidence, the Court may for that purpose send a certified copy of the record to the ³[Central Government] for transmission to that Court through the proper authority of the reciprocating territory, and may adjourn the proceedings.

(6) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming Court, and where on an application for rescission or variation the Court is satisfied that it is necessary to remit the case to the Court which made the provisional order for the purpose of taking any further evidence, the Court may for that purpose send a certified copy of the record to the ³ [Central Government] for transmission to that Court through the proper authority of the reciprocating territory, and may adjourn the proceedings.

"Sub-clause (4) of Clause 7.- We are of opinion that the clause, as it stood, would perhaps not permit of the confirmation of a provisional order, made for example in the United Kingdom, for a sum greater than Rs. 50 per mensem, which is the limit imposed by S.488 of the Code of Criminal Procedure, 1898. The limit for maintenance orders in the case of a wife in the United Kingdom is two pounds a week, and for a child one pound a week. It was considered desirable that it should be open to the Court to enforce provisional orders up to the full amount of provisional order, but not to increase the order beyond that amount. Amendments to impose a limit as aforesaid have been made in this clause. Provision has been made in sub-clauses (5) and (6) for the transmission of records in the manner as is provided in the proviso to sub-clause (6) of clause 6"-S.C.R.

1. Substituted for the words "the States", by Part B States (Laws) Act, 1951 (3 of 1951), S.3 and Sch. (1-4-1951).

2. Substituted for the words "Governor-General" by A.O., 1937.

3. Substituted for the words "Governor-General in Council,"A.O., 1937 .

8. Enforcement of maintenance orders :-

(1) Subject to the provisions of this Act, where an order has been registered under this Act in a High Court, the order shall, from the date of such registration, be of the same force and effect, and all proceedings may be taken thereon as if it had been an order originally obtained in the High Court in the exercise of its civil jurisdiction, or in such Civil Court subordinate to that High Court as may be named by the High Court in this behalf, and that Court shall have power to enforce the order accordingly.

(2) A Court of summary jurisdiction in which an order has been registered under this Act or by which an order has been confirmed under this Act, and the officers of such Court, shall have such powers and perform such duties, for the purpose of enforcing the order, as may be prescribed.

Sub-section (1).- "The words 'in the exercise of its civil jurisdiction' have been inserted after the words 'High Court' to make it clear that, except in the case of orders executed by Courts of summary jurisdiction which will be orders for the payment of comparatively small amounts, the procedure in execution will be in accordance with the Code of Civil Procedure. The difference in execution procedure in the various High Courts necessitates a double procedure in the Bill so as to cover registration in High Court possessing only appellate jurisdiction."-S.C.R,

9. Payment of charges for transmission of sums awarded as maintenance and other costs and charges :-

A Court in registering or confirming an order for maintenance in accordance with the provisions of this Act shall direct that the charges for the transmission to the Court, from which the order has been received or in which the provisional order has been made, as the case may be, of the sum awarded as maintenance shall be borne by the person against whom the order has been so made or confirmed, and shall be recovered from him in addition to the sum awarded as maintenance and in addition to, and in the same manner as, such other costs and charges as may be awarded or levied by the Court. "A new clause 9 has been inserted, as we think that it is just to a wife or other person, in favour of whom a maintenance order is made, that such person should receive the full amount awarded and not be debited with the costs of transmission, and other incidental charges. Such charges should be borne by the

person against whom the order is made."-S.C.R.

10. Proof of documents signed by officers of Court :-

For the purposes of this Act, any document purporting to be signed by a Judge or officer of a Court outside ¹ [India] shall, until the contrary is proved, be deemed to have been so signed without proof of the signature of judicial or official character of the person appearing to have signed it, and the officer of a Court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the Court to sign the document.

1. Substituted for the words "the States" by Part B States(Laws) Act, 1951 (3 of 1951), S. 3 and Sch. (1-4-1951).

11. Depositions to be evidence :-

Depositions taken in a Court in any reciprocating territory may, for the purposes of this Act, be received in evidence in proceedings before Courts of summary jurisdiction under this Act.

12. Rule-making power :-

¹[(1)] The ²[Central Government] ³[may, by notification in the Official Gazette, make rules ⁴] for the purpose of carrying into effect the purposes of this Act, and in particular may make rules for the levy of the costs or charges for anything done under this Act and for all matters which are directed or permitted to be prescribed.

¹ [(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

1. Section 12 re-numbered as sub-section (1), and sub-section (2) inserted by the Delegated Legislation Provisions (Amendment) Act, 1983 (20 of 1983), S. 2, Sch. (not yet in force).

2. Substituted for the words "Governor-General in Council" by A.O., 1937.

3. Substituted for the words "may make rules", the Delegated Legislation Provisions (Amendment) Act, 1983 (20 of 1983), S. 2, Sch. (not yet in force).
4. For Maintenance Orders Enforcement Rules, 1955, See Gaz. of India, Pt. II, S. 3, p. 1490.