

# Maintenance Act (No. 37 of 1999)

## Long Title

AN ACT TO PROVIDE FOR THE MAINTENANCE OF CHILDREN, ADULT OFFSPRING, DISABLED OFFSPRING AND SPOUSES UNABLE TO MAINTAIN THEMSELVES; TO ENSURE COMPLIANCE OF THE LAW RELATING TO MAINTENANCE WITH THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

### **1. Short title**

#### Sect 1

This Act may be cited as the Maintenance Act, No. 37 of 1999.

### **2. Order for Maintenance of a spouse or child or adult offspring or disabled offspring**

#### Sect 2

(1) Where any person having sufficient means, neglects or unreasonably refuses to maintain such person's spouse who is unable to maintain himself or herself, the Magistrate may, upon an application being made for maintenance, and upon proof of such neglect or unreasonable refusal order such person to make a monthly allowance for the maintenance of such spouse at such monthly rate as the Magistrate thinks fit having regard to the income of such person and the means and circumstances of such spouse:

(2) Where a parent having sufficient means neglects or refuses to maintain his or her child who is unable to maintain himself or herself, the Magistrate may upon an application being made for maintenance and upon proof of such neglect or refusal, order such parent to make a monthly allowance for the maintenance of such child at such monthly rate as the Magistrate thinks fit, having regard to the income of the parents and the means and circumstances of the child :

(3) Where a parent having sufficient means neglects or refuses to maintain his or her adult offspring who is unable to maintain himself or herself, the Magistrate may upon an application being made for maintenance and upon proof of such neglect or refusal, order such parent to make a monthly allowance for the maintenance of such adult offspring at such monthly rate as the Magistrate thinks fit, having regard to the income of the parents and the means and circumstances of the adult offspring :

(4) Where a parent having sufficient means neglects or refuses to maintain his or her disabled offspring who is unable to maintain himself or herself, the Magistrate may upon an application being made for maintenance and upon proof of such neglect or refusal, order such parent to make a monthly allowance for the maintenance of such disabled offspring at such monthly rate as the Magistrate thinks fit, having regard to the income of the parents and the means and circumstances of the disabled offspring :

(5) Where an order is made by a Magistrate for the payment of an allowance pursuant to an application made under subsection (1) or (2) or (3) or (4), such allowance shall be payable from the date on which the application for maintenance was made to such court, unless the Magistrate, for good reasons to be recorded, orders payment from any other date.

(6) Where an application is made for the maintenance of a child, adult offspring or disabled offspring, as the case may be, under subsection (2), (3) or (4), as the case may be. the court may, either on the application of the parties or of its own motion, add the other parent as a party to such application and make such order as is appropriate against one or both such parents.

### **3. Period of validity of Order**

#### Sect 3

No Order for an allowance for the maintenance of any child, adult offspring or disabled offspring made under this Act shall, except for the purpose of recovering money previously due under such Order, be of any force or validity after the person in respect of whom the Order is made ceases to be a child, adult offspring or disabled offspring, as the case may be, within the meaning of this Act.

### **4. Application for maintenance**

#### Sect 4

(1) An application for maintenance may be made -

(a) where such application is for the maintenance of a child or disabled offspring, by such child or disabled offspring or by any person who has custody of such child or disabled offspring ;

(b) where such application is for the maintenance of an adult offspring, by such adult offspring or where such adult offspring is incapable of making such application, by any person on his or her behalf ; and

(c) where such application is for the maintenance of a spouse, by such spouse or where such spouse is incapable of making such application, by any person on his or her behalf.

(2) An application for maintenance may be made to the Magistrates Court within whose jurisdiction the applicant or the person in respect of whom the application is made or the person against whom such application is made, resides.

### **5. Enforcement of Orders**

#### Sect 5

(1) Subject to the provisions contained in section 10, where any person against whom an order is made under section 2 or the proviso to section 11 (1) thereafter called the "respondent") neglects to comply with such order, the Magistrate may, for every breach of the order, sentence such respondent for the whole or any part of each months allowance in default, to simple or rigorous imprisonment for a term which may extend to one month.

(2) The Magistrate 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 on the respondent, issue a warrant directing the amount in default to be levied in the manner provided by law for levying fines imposed by Magistrates in the Magistrate Courts.

## **6. Attachment of salary of respondent**

### **Sect 6**

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

(2)

(a) Before an order is made under subsection (1) of this section, the Magistrate shall notice the person on whom he proposes to serve such order, so 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 respondent. Any order made under subsection (1) of this section may be the subject of an appeal to a High Court established by Article 154P of the Constitution by any person aggrieved by such order but notwithstanding such appeal, the Magistrate may decide to continue proceedings under this Act. The provisions of section 14 of this Act shall, mutatis mutandis, apply to, and in relation to, every such appeal.

(b) The Magistrate may also by an order served on the respondent, 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 employers as the case may be. if he has more than one employer :

(ii) such particulars as to his salary, inclusive of deductions, as may be within his knowledge ; and

(iii) any other particulars as are required or necessary to enable his employer or employers to identify him.

(3) A statement furnished in compliance with an order made under paragraph (b) of subsection (2) of this section shall, in any proceedings any court, be received as evidence and be deemed to be prima facie proof of the particulars referred to in the said paragraph, unless the contrary is shown.

(4) The Magistrate shall not make an attachment of salary order, if it appears to him, that the failure of the respondent 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 from the respondent's salary in forms of subsection (1) of this section, the Magistrate shall have regard to the resources and needs of the respondent, and the needs of the person, the 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 respondent or the person entitled to receive payment under the order of maintenance, be discharged or varied.

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

(9) Where, on any occasion on which any deductions have to be made from the salary of a respondent in pursuance of an attachment of salary order, there are in force, two or more orders for attachment, of salary, relating to such salary, made under this Act or other written law, then, for the purposes of complying with this

section, the employer shall, notwithstanding anything to the contrary in any other written law, first give effect to an order of attachment made under this Act and deal with any other order in respect of the residue of the respondent's salary according to the respective dates on which they came into force.

(10) An employer who in pursuance of an attachment of salary order makes any payment shall forthwith give to the respondent a statement in writing specifying the amount deducted from his salary in pursuance of such order.

(11) 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 five 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 one thousand rupees :

(12) provisions of this section shall, notwithstanding anything to the contrary in any other written law, have effect in relation to an attachment of salary that may be made by a Magistrate under this Act

(13) For the purposes of this section -

(a) where the respondent is a public officer or an officer of a provincial public service, the head of the department to which he is for the time being attached shall be deemed to be his employer;

(b) where the respondent 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 Pradeshiya Sabha, as the case may be, shall be deemed to be his employer ;

(c) where the respondent is a person employed in any Corporation, Statutory Board or Company, the principal officer of such Corporation. Statutory Board or Company, as the case may be, shall be deemed to be his employer;

(d) where the respondent is a person employed in any partnership, the Managing partner or the Manager of such partnership shall be deemed to be his employer; and

(e) where the respondent is a member of the armed forces, the commander of the unit to which he is attached shall be deemed to be his employer.

## **7. Payment of maintenance through Post office or Bank**

### **Sect 7**

(1) Where an order for maintenance is made under the provisions of this Act, the Magistrate may direct the respondent, that the amount of the payment due under such order shall be deposited each month on or behalf such date as may be specified in such order in favour of the person entitled to such payment, at such post office or a bank as may be specified in such order, and the amount so deposited may be drawn by such person from such post office or bank. It shall be the duty of such officer for the time being in charge of such post office or bank to pay that amount to the person entitled thereto upon application made in that behalf.

(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 person entitled to receive payment may report such default to the Court, and the Magistrate may in such event, notice the respondent 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 for by this Act for such default.

## **8. Application for cancellation of order or alteration in amount of allowance**

### **Sect 8**

On the application of any person receiving or ordered to pay a monthly allowance under the provisions of this Act 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 this Act, the Magistrate may either cancel such order or make such alteration in the allowance ordered as he deems fit: Provided that such cancellation or alteration shall take effect from the date on which the application for cancellation or alteration was made to such Court, unless the Magistrate for good reasons to be recorded, orders otherwise.

## **9. Copy of order to be given to party, and where order enforceable**

### **Sect 9**

A copy of the order of maintenance certified under the hand of the Magistrate shall be given without payment to the person in whose favour it is made, or to his or her guardian or a person having actual custody of such person, if any, or to the person to whom the allowance is to be paid, and the Court making such order or any Magistrate having jurisdiction over the place where any such person or the respondent may be, shall, 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 5 or section 6.

## **10. Application to be in writing and process to be free of stamp duty**

### **Sect 10**

Every application for an order of maintenance or to enforce such an order, shall be in writing and shall be signed by the applicant or the person making the application on his behalf and shall be free of any stamp duty. Every summons to a respondent or a witness shall also be free of stamp duty.

## **11. Commencement of Inquiry**

### **Sect 11**

(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 Magistrate shall, if satisfied that the facts set out in the affidavit are sufficient, issue a summons together with a copy of such affidavit, on the person against whom the application is made to appear and to show cause why the application should not be granted :

(2) The Magistrate shall, after such inquiry as he may consider necessary, make order allowing or refusing the application, and if necessary, may make an order under section 5 or section 6 :

## **12. Attendance of respondent and witnesses**

### **Sect 12**

(1) The Magistrate may proceed in the manner provided in Chapter V and VI of the Code of Criminal Procedure Act, No. 15 of 1979 to compel the attendance of the person against whom the application is made and of any person required by the applicant or the person against whom the application is made or by the Magistrate to give evidence, and the production of any document necessary, for the purposes of the inquiry.

(2) When the person against whom the application is made is absent, the provisions of section 192 of the Code of Criminal Procedure Act, No, 15 of 1979 shall, mutatis mutandis, apply.

### **13. Form of proceedings**

Sect 13.

Subject to subsection(2) of section 12 all evidence taken by a Magistrate under this Act shall be taken in the presence of the person against whom the application is made or, when his personal attendance is not required by the Magistrate, in the presence of his attorney-at-law, if any, and shall be recorded in the manner prescribed for trial in the Magistrates Court: Provided however, it shall not be necessary to frame a charge or to record the statement of the person against whom the application is made in the manner prescribed in the Code of Criminal Procedure Act, No. 15 of 1979 : Provided further, that in any proceedings under this Act it shall be competent for the person against whom the application is made to give evidence upon oath or affirmation as an ordinary witness, and each spouse shall be a competent witness against the other spouse.

### **14. Right of Appeal**

Sect 14.

(1) Any person who shall be dissatisfied with any order made by a Magistrate under section 2 or section 11 may prefer an appeal to the relevant High Court established by Article 154P of the Constitution in like manner as if the order was a final order pronounced by Magistrate's Court in a criminal case or matter, and sections 320 to 330 (both inclusive) and sections 357 and 358 of the Code of Criminal Procedure Act, No. 15 of 1979 shall, mutatis mutandis, apply to such appeal :

(2) Any person dissatisfied with an order made by a High Court in the exercise of its appellate jurisdiction under this section, may prefer an appeal therefrom to the Supreme Court, on a question of law. with the leave of the High Court, and where such leave is refused, with the special leave of the Supreme Court, first had an obtained.

### **15. Forms**

Sect 15.

The forms specified in the Schedule to this Act, with such variations as the circumstances of any case may require. shall be used for the respective purposes therein mentioned.

### **16. Costs**

Sect 16.

When disposing of any application or appeal under this Act, a court may order either party to pay all or any part of the costs of such application or the costs of such application and appeal, as the case may be. and the amount due under any such order shall be recoverable as if it were a fine and in default of payment, simple imprisonment may be imposed for a period not exceeding one month.

## **17. Other actions not barred**

Sect 17.

Nothing in this Act shall be construed as depriving a person including a child, adult offspring, disabled offspring, spouse or parent of the right, if any, to maintain a civil action for maintenance.

## **18. Amendment of Chapter 56**

Sect 18.

The Married Women Property Ordinance is hereby amended by the repeal of section 26 and section 27 of that Ordinance.

## **19. Repeal of Chapter 91**

Sect 19.

The Maintenance Ordinance is hereby repealed.

## **20. Transitional provision**

Sect 20.

(1) Notwithstanding the repeal of the Maintenance Ordinance-

(a) all proceedings instituted under that Ordinance; and

(b) all appeals from orders made under that ordinance,

(2) Every order made under the Maintenance Ordinance and pending on the day preceding the date of commencement of this Act, shall be deemed to be an order made under this Act and may be enforced accordingly.

## **21. Sinhala text to prevail in case of inconsistency**

Sect 21.

In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail

## **22. Interpretation**

Sect 22.

In this Act, unless the context otherwise requires- "adopted" when used in relation to a child or offspring means a child or offspring adopted under the provisions of the Adoption of Children Ordinance or the Kandyan Law Declaration and Amendment Ordinance ; "adult offspring" means any marital or non-marital or adopted offspring, who is eighteen years of age or is over eighteen years of age and under twenty five years of age; "child" means any marital or non-marital or adopted offspring who has not reached eighteen years of age; "disabled offspring means any marital or non-marital or adopted offspring of whatever age, who is or becomes physically or mentally disabled so as to render such offspring incapable of earning a livelihood or of adequately supporting himself or herself; "marital" when used in relation to a child or offspring means a child or offspring born to parents who are married ; "non-marital" when used in relation to a child or offspring means a child or offspring born to parents who are not married; "parent" includes an adoptive parent; "salary" includes all allowances and wages.