



LAW COMMISSION OF INDIA

NINETY-EIGHTH REPORT

ON

**SECTIONS 24 TO 26, HINDU MARRIAGE ACT, 1955 : ORDERS FOR INTERIM
MAINTENANCE AND ORDERS FOR THE MAINTENANCE OF CHILDREN IN
MATRIMONIAL PROCEEDINGS**

April, 1984

CONTENTS

	Page
CHAPTER 1 Introductory	1
CHAPTER 2 Sections 24 to 26, Hindu Marriage Act, 1955	2-3
CHAPTER 3 Maintenance for Children without a formal application	4-5
CHAPTER 4 Interim maintenance : The effective date	6
CHAPTER 5 Appeal, Revision and Enforcement	7
CHAPTER 6 Comments received on the working Paper	8-11
CHAPTER 7 Recommendations	12-13



CHAPTER 1

INTRODUCTORY

1.1. Certain questions concerned with orders for interim maintenance under the Hindu Marriage Act, 1955 and with orders for the maintenance of children under the Act are the subject matter of this Report. On several points arising out of the relevant statutory provisions,¹ a conflict of decisions has arisen and it seems appropriate that the conflict should be settled by legislative amendment. On some other points, a discussion has taken place in the writings on the Act or in case law. These discussions need to be taken note of. The Commission has had occasion to deal with the Hindu Marriage Act more than once in the past.² But the points that are the subject matter of the present study had not arisen at the time when the Commission undertook, in its earlier Reports, a survey of various provisions of the Act. Scope.

1.2. The questions that are proposed to be discussed in the succeeding Chapters are mainly of a procedural nature. But they occur almost daily in practice in most matrimonial proceedings under the Hindu Marriage Act. Further, relating as they do to the maintenance of spouses and children, they possess a practical importance of their own. It is therefore desirable that the law on the subject should be settled, made uniform throughout the country and incorporated in the Act. It is for these reasons that the Commission has considered it necessary to deal with the relevant sections of the Hindu Marriage Act in this Report. The questions to be considered—nature of.

1.3. It may be mentioned at this stage that on the subject of this Report, the Commission had prepared and circulated a Working Paper,³ setting out the issues arising out of the relevant statutory provisions and the possible solution. The comments that have been received will be dealt with in detail at the appropriate place, in this Report.⁴ At this stage, it is enough to state that almost all the comments received on the Working Paper agree with the need for amending the Act on the lines envisaged in this Report. The Commission is grateful to all those who have responded by sending their views on the Working Paper. Working Paper issued by the Commission.

¹ Sections 24 to 26, Hindu Marriage Act, 1955.

² Law Commission of India, 59th Report (Hindu Marriage Act 1955 and Special Marriage Act, 1954) and 71st Report (Hindu Marriage Act, 1955—Irretrievable breakdown of marriage as a ground of divorce).

³ Working Paper on Sections 24 to 26, Hindu Marriage Act, 1955; Orders for interim maintenance and orders for the maintenance of children in matrimonial proceedings; dated 16th November, 1983.

⁴ Chapter 6, *infra*.

CHAPTER 2

SECTIONS 24 TO 26, HINDU MARRIAGE ACT, 1955

Section 24, Hindu Marriage Act. 2.1. Before dealing with the questions proper, it would be desirable to set out the relevant provisions of the Hindu Marriage Act, 1955. Maintenance *pendente lite* and expenses of proceedings for the spouse are dealt with in section 24 of the Act, quoted below:—

“24. Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses on the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner’s own income and the income of the respondent, it may seem to the court to be reasonable”.

It may be noted that this section is confined to maintenance (*pendente lite*) of a spouse. It does not deal with children. It does require that there should be a formal application.

Section 25, Hindu Marriage Act. 2.2. Permanent alimony and maintenance for spouses are dealt with in section 25 of the Act, reading as under:—

“25. (1) Any court exercising jurisdiction under this Act, may at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall, while the applicant remains unmarried, pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum, for a term not exceeding the life of the applicant as, having regard to the respondent’s own income and other property, if any, the income and other property of the applicant and the conduct of the parties, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it shall rescind the order.”

This section is also confined to spouses and requires a formal application. It is confined to permanent maintenance, while section 24 is confined to interim maintenance.

Section 26, Hindu Marriage Act. 2.3. Regarding children *both interim* order and orders to be passed on conclusion of the proceeding are dealt with in section 26 of the Hindu Marriage Act, quoted below:—

“26. In any proceeding under this Act, the court may from time to time, pass such *interim* orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from

time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made.”

The first portion of this section, dealing with interim maintenance does not require an application. The second portion concerned with maintenance orders for children on conclusion of proceedings does require an application.

2.4. It will be noticed that—

- (i) interim maintenance of a spouse and interim maintenance of children ^{Separate sections for Spouses and Children.} are dealt with in two separate sections (sections 24 and 26, respectively) of the Act ;
- (ii) one of these two sections (section 24) envisages an “application”, but the other (section 26) does not (in the portion relating to interim orders) require an application.

This apparently minor matter is mentioned here, because it is relevant to one of the questions going to be discussed in the succeeding Chapter.

CHAPTER 3

MAINTENANCE FOR CHILDREN WITHOUT A FORMAL APPLICATION

Interim maintenance for children. 3.1. The first question that has arisen with reference to the provisions of the Hindu Marriage Act quoted above¹ is this—Can interim maintenance be granted for children under section 24 of that Act,² where there is no separate application under section 26 in respect thereof?³

Conflict of view⁸ as to sections 24 and 26. 3.2. There is a conflict of judicial decisions on the point. The following High Courts take the view that even where there is no separate application for the grant of maintenance to children under section 26, the court should, in a proceeding initiated by the wife under section 24, exercise its discretion and award maintenance to the children:—

- (i) Andhra Pradesh⁴;
- (ii) Delhi⁵;
- (iii) Karnataka⁶;
- (iv) Kerala⁷;
- (v) Punjab & Haryana⁸; and
- (vi) Rajasthan⁹.

3.3 The contrary view, denying the court such a power without a formal application under section 26 has been taken by the following High Courts:—

- (i) Jammu & Kashmir¹⁰;
- (ii) Orissa¹¹; and
- (iii) Patna¹².

Review of case law. 3.4. The extensive case law on the subject has been reviewed in some of the rulings, of which an Andhra Pradesh¹³ one is very useful. Incidentally, the Kerala judgement¹⁴ taking the wider view attracted a number of favourable as well as unfavourable comments in articles published in a Law Journal¹⁵.

Another question application under section 26 if necessary for permanent maintenance of children. 3.5. The above case law relates to orders for interim maintenance of children under the Hindu Marriage Act. A somewhat similar question, which also seems to have led to some judicial controversy, has arisen in connection with orders for permanent maintenance of children. The precise question is as follows:—

Can maintenance be granted to a child (section 26, Hindu Marriage Act) on an application by the wife under section 25, Hindu Marriage Act, even though no specific mention of section 26 is made in the application of the wife?

¹ Chapter 2, *supra*.

² Paragraph 2-2, *supra*.

³ Paragraph 2-3, *supra*.

⁴ *Narendra Kumar v. Suraj Mehta*, A.I.R. 1982 A.P. 100.

⁵ *Damodar v. Bimla*, (1974) P.L.R. (Del.) 33.

⁶ *D. Thimmappa v. Nagaveni*, A.I.R. 1976 Karn. 215; *Subhashini v. Umakanth*, A.I.R. 1981 Karn. 115.

⁷ *Radha Kumari v. K.M.K. Nair*, (1982) K.L.T. 417 (Sukumaran, J.).

⁸ *Balbir Kaur v. Raghubir*, A.I.R. 1974 P & H 225.

⁹ *Baboo Lal v. Prem Lata*, A.I.R. 1974 Raj. 93.

¹⁰ *Puran Chand v. Kamla Devi*, A.I.R. 1981 J & K 5.

¹¹ *Akasam Chinna Babu v. Akasam Parvati*, A.I.R. 1967 Orissa 163.

¹² *Bankim Chandra v. Anjali*, A.I.R. 1972 Pat. 80.

¹³ *Narendra Kumar v. Suraj Mehta*, A.I.R. 1982 AP. 100.

¹⁴ *Radha Kumari, v. K.M.K. Nair*, (1982) K.L.T. 417 (Sukumaran, J.).

¹⁵ See articles by Shri P.V. Ayyappan, Shri S. Balachandran, Shri Siby Mathew and Shri V.K. Francois, respectively in (1982) K.L.T. (Journal) pages 65, 79, 83 and 90.

According to the Madras High Court¹, this can be done. According to the Bombay² and Gujarat³ High Courts, this cannot be done.

3.6. On considering the two questions that have created trouble as above,⁴ Amendment needed in section 26, Hindu Marriage Act. it would appear that there is need to settle the legal position on both of them which are of a recurring nature. As to the tenor of the amendment required, the better course would be to give a wide scope to the power of the Court, under section 26 of the Hindu Marriage Act,⁵ so as to make it clear that the power there-under can be exercised with or without an application.

The object could be achieved by inserting, in section 26 of the Hindu Marriage Act,⁶ after the words "from time to time", the words "*and whether or not an application for the purpose is made on behalf of the minor children*". Such an amendment should suffice to make it clear that (i) interim orders regarding children, (ii) as well as permanent orders regarding them, can be made without a formal application. Of course, the court will pass such orders only where the existence of children and the need to pass orders regarding their custody, education and maintenance are known to exist. That need not be specifically emphasised while amending the section. In any case, what the section envisages is a power, and not a duty. Incidentally, the present structure of section 26 imposes some strain on the reader. Opportunity should, therefore, also be taken of breaking up the section into clauses so as to facilitate reading.

¹ *Munuswamy Rajoo v. Hansa Rani*, A.I.R. 1975 Mad. 15.

² *Dalli Ram Jain, v. Taravati*, A.I.R. 1982 Bom. 15.

³ *Dharamshi Premji v. Bai Sakar Kanji*, A.I.R. 1968 Guj. 150.

⁴ Paragraphs 3-1 and 3-5, *supra*.

⁵ Paragraphs 2-3, *supra*.

⁶ Paragraphs 2-6, *supra*.

CHAPTER 4*

INTERIM MAINTENANCE : THE EFFECTIVE DATE

The effective date. 4.1. Arising out of sections 24 and 26 of the Hindu Marriage Act is another question relating to the date from which interim maintenance can be granted by the court. Can such maintenance be granted from the date of the service of summons on the main petition? Or, can it be granted only from the date of the *application for interim relief* (where such an application is made)? Or, should it be operative only from the date of the *order for interim relief*. Sections 24 and 26 of the Hindu Marriage Act are silent in this regard and do not bind down the court to a specific date. However, there is some uncertainty in this respect as will be evident from the case law summarised in the paragraphs that follow.

One view—service of main petition to be the effective date. 4.2. According to some High Courts, the order for interim maintenance can be made effective from the date of service of summons on the main petition. The High Courts taking this view are :—

- (i) Calcutta;¹
- (ii) Delhi;²
- (iii) Kerala;³
- (iv) Mysore;⁴ and
- (v) Punjab and Haryana.⁵

Second view—date of issues the effective date. 4.3. The second view is that the order can relate back to some date later than the date of the main petition. Thus, one of the Jammu & Kashmir rulings⁶ holds that maintenance is payable only from the date on which issues are framed (in the main petition).

Third view—date of application for interim relief the effective date. 4.4. According to the Andhra Pradesh High Court,⁷ maintenance is payable from the date of the application for interim relief (by the spouse) under section 24. In holding so, it points out that otherwise the respondent may frustrate the application by avoiding service of the main summons.

Maintenance in appeal. 4.5. Similar controversy has arisen in regard to award of maintenance at the stage of appeal.⁸ In an Allahabad case, *alimony pendente lite* was claimed in appeal, and was allowed retrospectively from the date of filing of the appeal.⁹ But, according to a ruling of the Andhra Pradesh High Court,¹⁰ the order for interim maintenance cannot be made effective from the date earlier than service of the notice of appeal.

Need for amendment by inserting new section 26A, in the Hindu Marriage Act. 4.6. In this position, it is desirable to make the law specific and certain by inserting in the Hindu Marriage Act a provision—say, as section 26A—making it clear that an order for interim maintenance under section 24 (spouse) or under section 26 (children) may be given effect—

- (a) from such date, not earlier than the date of the application under that section, as the court considers just and proper in the circumstances,
- (b) or where no application has been made under section 26, then from such date, not earlier than the date of service of the notice issued on the petition by which the main proceeding was instituted, as the court considers just and proper in the circumstances.

¹ (a) *Samir Banerjee v. Sujata Banerjee*, (1966) 70 C.W.N. 642.

(b) *Sobhana v. Amar Kanta*, A.I.R. 1959 Cal. 455.

² *Gajna Devi v. Purshotam*, A.I.R. 1977 Delhi 178.

³ *Radha Kumari v. K.M.K. Nair*, (1982) K.L.T. 417, 424, para 26.

⁴ *N. Subramanyam v. M.G. Saraswath*, A.I.R. 1964 Mys. 38, para 7.

⁵ *Sarita Mehta v. Aravind Kumar Mehta*, (1978) 8 P.L.R. 213.

⁶ *Puran Chand v. Kamla*, A.I.R. 1981 J & K 5. (Decision on corresponding provision of the State Act.)

⁷ *Narendra Kumar v. Suraj Mehta*, A.I.R. 1982 A.P. 100, 106, para 18 (March).

⁸ As to the appellate stage, see *Harlochan Singh v. Mohinder Kaur*, A.I.R. 1963 Punj. 249, 250.

⁹ *Mahabir Prasad v. Pushpamala*, (1970) All L.J. 1408.

¹⁰ *Subba Rao v. Anasuyamma*, A.I.R. 1957 A.P. 170.

CHAPTER 5

APPEAL, REVISION AND ENFORCEMENT

5.1. Questions have, we find, been raised as to the competence of revision Appeal and revision against orders for interim maintenance passed under the Hindu Marriage Act.¹ (interim orders). We have given some thought to the matter and have come to the conclusion that after the amendment of section 28 of the Act, there should be no difficulty or obscurity in this regard. Briefly stated, the position as clarified by amended section 28, is that an order for interim maintenance is not appealable. Revision is therefore permissible in law² against such an order, but only if the High Court, in its discretion, regards the case as fit for interference by way of revision in the circumstances of the particular case. No amendment can better or alter this position, and none is therefore proposed.

5.2. Questions have also been raised as to the mode of enforcement of Enforcement under section 28A, Hindu Marriage Act and other modes of enforcement. orders for interim maintenance. Under section 28A as inserted in the Hindu Marriage Act, all decrees and orders made by the Court in any proceeding under the Act shall be enforced in like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction for the time being are enforced. For all practical purposes this should suffice.

5.3. This does not, of course, mean that other modes of enforcement are Other modes of enforcement. necessarily barred. These other modes could include, for example, (a) stay of proceedings, where the party in default in paying the interim maintenance is the petitioner in the main proceedings;³ (b) striking off the defence under section 151, Code of Civil Procedure, 1908, where the party in default in paying the interim maintenance is the respondent in the main petition;⁴ (c) punishment for contempt.

5.4. In this position, it does not appear to be necessary to make any amend- Amendment not needed as to enforcement. ment on the question of the mode of enforcement of orders for interim maintenance.

5.5. While on the subject of maintenance orders and their enforcement we Earlier Report of the Law Commission as to criminal liability. may mention that some years ago, the Law Commission made a recommendation for imposing, in certain circumstances, criminal liability for failure to pay maintenance or permanent alimony granted to the wife by the court under certain enactments or rules of law. The Report awaits implementation.

¹ Articles published in the Kerala Law Times: see footnotes to para 3.4, *supra*.

² *Narendra Kumar v. Suraj Mehta*, A.I.R. 1982, A.P. 100.

³ (a) *Malkan Rani, v. Krishna Kumar*, A.I.R. 1961 Punj. 42.

(b) *Anita v. Birendra*, A.I.R. 1962 Cal. 88.

(c) *Bhuneshwar v. Dronta Bai*, A.I.R. 1963 M.P. 259.

(a) *Jai Singh, v. Khimi Bhiklu*, A.I.R. 1978 H.P. 45, 49, 50, para 20.

(b) *Ram Swaroop v. Janak*, A.I.R. 1973 Punj. 40.

(c) *Anuradha v. Santosh Nath*, A.I.R. 1976 Del. 246.

⁴ *Ram Swaroop v. Janak*, A.I.R. 1973 Punj. 40.

⁵ Law Commission of India 73rd Report (Criminal Liability for failure to pay maintenance or Permanent alimony granted to the wife by the Court under certain enactments or rules of law).

CHAPTER 6

COMMENTS RECEIVED ON THE WORKING PAPER

Comments on the Working Paper. 6.1. As stated in the Introductory Chapter,¹ we had circulated to interested persons and bodies a Working Paper on the subject of this Report, inviting their views in the matter. A request was made to send views to the Commission by the 31st January, 1984. All replies received upto the date of signing this Report have been taken into account before finalising this Report.

Replies received. 6.2. In all, ten replies have been received on the Working Paper. Of these, two replies are from High Courts,² four are from State Government,³ one reply is from a State Law Commission,⁴ one reply is from an Advocate,⁵ one reply has been received from a social organisation,⁶ and one is from a gentleman from Madras.⁷ Almost all of them have agreed with the need for amending the Hindu Marriage Act, on the lines envisaged in this Report.

Whether amendment necessary. 6.3. One comment received from the office of a State Law Commission,⁸ raises a query that an amendment of section 28 is not required. The comment, however, (it has been stated) is subject to approval of the State Law Commission. We may mention in this context that we are not recommending⁹ any amendment of section 28. The amendments that we are going to recommend¹⁰ concern the matters dealt with in section 24 and 26 of the Hindu Marriage Act and are necessary in view of the case law discussed (and other points made) in the relevant Chapters of this Report.¹¹

Some of the comments received on the Working Paper while agreeing that there is need for amending the Act, also make certain additional suggestions. We shall deal with these in later paragraphs of this Report.¹²

High Courts. 6.4. Of the two High Courts that have sent in their replies to the Working Paper issued by the Commission, one has no comments to offer,¹³ while the other¹⁴ agrees that there is need to amend the Act on the points dealt with in this Report.

State Government. 6.5. As regards the four State Governments¹⁵ that have sent in their replies to the Working Paper, all agree with the need for amendment. One of them has made certain additional suggestions, which we shall mention in due course.¹⁶

Additional points—Execution of maintenance decrees. 6.6. Coming to the additional suggestions made in a few of the replies, we may first mention that two of the replies have expressed concern about the delay and difficulties experienced in the execution of decrees and orders passed for maintenance. Of these one is from an Advocate in Madhya Pradesh,¹⁷ who

¹ Paragraph 1-3, *supra*.

² Law Commission File No. 2(14)/83-L.C. S. No. 5 and 10.

³ Law Commission File No. 2(14)/83-L.C. S. No. 6, 7, 8 and 11.

⁴ Law Commission File No. 2(14)/83-L.C. S. No. 9.

⁵ Law Commission File No. 2(14)/83-L.C. S. No. 4.

⁶ Law Commission File No. 2(14)/83-L.C. S. No. 3.

⁷ Law Commission File No. 2(14)/83-L.C. S. No. 12.

⁸ Law Commission File No. 2(14)/83-L.C. S. No. 9 (Madhya Pradesh Law Commission).

⁹ See Chapter 5, *supra*.

¹⁰ Chapter 7, *infra*.

¹¹ Chapter 2-4, *supra*.

¹² Paragraph 6-6, *et. seq. infra*.

¹³ Law Commission File No. 2(14)/83-L.C. S. No. 5.

¹⁴ Law Commission File No. 2(14)/83-L.C. S. No. 10.

¹⁵ Law Commission File No. F. 2(14)/83L. C. S. No. 6, 7, 8 and 11.

¹⁶ Paragraphs 6-10 to 6-14, *infra*.

¹⁷ Law Commission File No. F. 2(14)/83-L.C. S. No. 4 (An Advocate from Madhya Pradesh.)

states that owing to poor economic condition, women are unable to represent their case properly in court. This is a point outside the scope of this report, though certainly deserving of attentions by appropriate authorities and organisations. The other—and more elaborate—suggestion is from the Joint Women's Programme (Christian Institute for the Study of Religion and Society), New Delhi¹. The suggestions made by it are of a detailed character and are dealt with in the succeeding few paragraphs.²

6.7. In the reply received from the Joint Women's Programme (Christian Institute for the Study of Religion and Society), New Delhi, mentioned above,³ it has been stressed that maintenance granted under various personal laws and under the Code of Criminal Procedure, 1973, does not sufficiently provide for the protection of the deserted wife. It has been suggested that to protect the deserted wife and the children and to make the wife's remedy more effective, provision should be made to deduct the amount of maintenance from the husband's salary, if the husbands employed in Government or in public or private sector. If the husband is self-employed or not traceable, provision should (it is suggested) be made for maintenance, with the State as a party, for the protection of the deserted family.

Attachment of husband's earnings (Suggestion of Joint Women's Programme C.I.S.R.S.).

We appreciate the concern and anxiety felt by such organisations in regard to the need for the proper enforcement of decrees and orders for maintenance. Some of the points raised—for example, the State taking over the burden for protecting the deserted family in specified cases—touch matters transcending the specific areas of the Hindu Marriage Act or any other particular matrimonial enactment. But we would like to point out that so far the attachment of salary or other earnings of the defaulter is concerned, the Code of Civil Procedure, 1908 make sufficient provisions. All disposable property of the judgment debtor who is in default can under the Code, be attached in execution of a decree or order for maintenance.⁴ This includes salary or other periodical earnings of the defaulter. The only qualification is that the case of salary, the Code renders exempt from attachment a specified portion.⁵ Under the present law, the exempt portion is one-third of the salary in case of a decree for maintenance. It may further be mentioned that the Code⁶ contains specific provisions as to the procedure to be followed by the Courts for the attachment of (i) the salary of Government Servants as well as other employees, and (ii) the non-salary income of self-employed and other persons. We hope that with increased legal literacy, these provisions will become more widely known.

6.8. The same organisations⁷ (Joint Women's Programme, New Delhi) has stated that men employed overseas enter into dubious and deception marriages with women in India. Such men, it is stated, disclaim the wife after marriage and the deserted wife is left without any provision for her livelihood or maintenance. The suggestion is that in order to overcome this deficiency, the husband should make a declaration of assets and provide, at the time of marriage, for the wife's maintenance. While we appreciate the need for protecting women in such circumstances, we must note that the suggestion, even if it be regarded as a feasible one, falls outside the scope of this report.

Declaration of assets before marriage, where husband residing outside India.

6.9. A suggestion regarding the custody of minor children, made by the same organisation,⁸ similarly falls outside the scope of this Report. The suggestion is that custody in divorce cases be awarded to the spouse who is best suited in the child's interests, and that it may be borne in mind that for the congenial and happy growth of a child, the mother is of primary importance, unless she is mentally deranged.⁹

Custody of minor children.

¹ Law Commission File No. F. 2(14)/83-L.C. S. No. 3 (Joint Women's Programme, CISRS, New Delhi).

² Paragraphs 6.7 to 6.9, *infra*.

³ Paragraph 6.6, *supra*.

⁴ Section 60(1), Code of Civil Procedure, 1908.

⁵ Section 60(1), Proviso (i) and (ia), Code of Civil Procedure, 1908.

⁶ Order 21, rules 46 and 48, Code of Civil Procedure, 1908.

⁷ Law Commission File No. 2(14)/83-L.C. S. No. 3.

⁸ Law Commission File No. F. 2 (14)/83-L.C. S. No. 3 paragraph 2.

⁹ As to handicapped children, see paragraph 6.14, *infra*.

Suggestion to dispense with application under section 26 for order at the conclusion of the proceedings. (Suggestion of Government of West Bengal).

6.10. A number of additional points have been made by the Government of West Bengal (in the Legislative Department) in its comments on the Working Paper.¹ The points made show an earnest desire for effecting improvements in the law, though they touch matters beyond the scope of the Report—indeed, come of them go beyond the province of the matters that may be litigated in matrimonial proceedings. Emphasising the fact that a broken conjugal home and an alienated couple spell great disaster to children, the suggestion makes a number of points, which we shall mention in brief. The first point made by the Government of West Bengal is that there should be no insistence on an application, even under section 26, latter part, Hindu Marriage Act, (orders for maintenance to be passed at the conclusion of the hearing) and that the requirement of application may be dispensed with. We have given some thought to this matter. However, in the absence of any serious difficulties actually felt in practice, we are not inclined to recommend its deletion. The matter is one relating to permanent maintenance, and if it is dealt with on the basis of some material which is on record, there is some convenience in practice.

Disclosure in pleadings about children.

6.11. The second point made in the suggestion² of the Government of West Bengal is that in every matrimonial proceedings, the pleadings must disclose whether the couple has any children, with details regarding the number, sex, age, custody, maintenance and education of children. The object is making this suggestion is to ensure that relief for children, if they are the victims of cruel indifference, may attract urgent judicial attention, the expectation being that on receipt of pleadings, the court may have this aspect of the matter taken up first with the urgency that it deserves.

The suggestion is, no doubt, worthy of serious consideration. We do not deal with it in this Report, as the suggestion transeends the somewhat narrow topics to which this Report is addressed. But the suggestion can be taken up if and when the question of reformation the law relating to the welfare of children is taken up on a broader level³.

Orders whether to be made effective from a date prior to institution of proceedings.

Suggestion of Government of West Bengal).

6.12. Commenting on the proposal put forth in the Working Paper of the Law Commission as to the date from which an order for interim maintenance may be made effective, the Government of West Bengal⁴ has suggested that liability to pay should arise precisely from the date when the duty to pay maintenance was violated, and that the date of omission or neglect to maintain a spouse or child in distress should, therefore, be the criterion in this regard. We are, however, afraid that the suggested change would not quite fit in with the provisions under consideration in this Report, or even with the Hindu Marriage Act taken as a whole. The question of orders for maintenance *in the context of that Act* arises because matrimonial relief provided for the Act. Since the subsistence of the marriage is in issue in these proceedings, it becomes necessary for the law to look into matters consequential on the break-up of the conjugal life of the spouses. It is only to that extent that orders for maintenance are provided for in the Act. Maintenance for the period to the petition seeking relief under the Act would not be a matter ancillary to the filing of the petition for matrimonial relief and may not appropriately fall within the Act. A matrimonial proceeding does not appear to be an appropriate proceeding wherein to litigate what are, for all practical purposes, claims for the recovery of arrears of past maintenance. As a matter of substantive law, liability to pay maintenance may arise as soon as there is neglect, but the machinery for enforcing the liability may not necessarily find a place in matrimonial legislation. It is for these reasons that we are unable to accept the suggestion. Lest this should appear to be too technical an approach, we should hasten to add that we do not underrate the importance of speedy disposal of claims for maintenance. Suitable machinery in that regard is provided in the Hindu Adoptions and Maintenance Act, 1956, or (where the Act does not apply) in the general law.

Financial and psychological constraints on the woman.

6.13. It is true that sometimes, because of non-availability of resources to file a proceeding and because of other constraints (including a psychological

¹ Law Commission File No. F. 2(14)/83-L.C. S. No. 6.

² Law Commission File No. F. 2(14)/83-L.C. S. No. 3.

³ Matter for future consideration.

⁴ Law Commission File No. F. 2(14)/83-L.C. S. No. 6.

reluctance felt by the woman to bring matters to the Court), a woman may not be able to take proceedings immediately, and because of such delay, some maintenance may fall in arrears. But this does not seem to be an adequate reason for disturbing the scheme of the Act.

6.14. The Government of West Bengal has also suggested that provision¹ should be made in the Hindu Marriage Act regarding the maintenance of handicapped children. This point also raises issues of the general law of maintenance and cannot be appropriately dealt with in this Report, which is concerned with the machinery for the award of maintenance as a *step consequential on matrimonial relief*².

Handicapped
children.

¹ Law Commission File No. F. 2(14)/83-L.C., S. No. 6.

² See paragraph 6.12 *supra*.

CHAPTER 7

RECOMMENDATIONS

Recommendations

7.1. In the light of what we have stated in the preceding Chapters, and having regard to the problems that have arisen with regard to (i) the question whether a formal application for *interim* maintenance under section 26, Hindu Marriage Act, 1955 is needed, and (ii) the date from which an order for *interim* maintenance (for spouses or for children) can take effect under the Act, we are of the opinion that it is necessary to amend the Act on both the points mentioned above. We have come to the conclusion that the most just and convenient course would be—

- (a) to amend section 26 of the Act¹, so as to expressly dispense with the need for a formal application for *interim* maintenance for the purposes of the section, at the same time also splitting up the section so as to improve its readability; and
- (b) to insert in the Act a new section (say, section 26A), so as to make a specific provision as to the date from which the order for maintenance *interim* can take effect².

Revised section 26 Hindu Marriage Act

7.2. Here is a concrete suggestion for revising section 26, if the above recommendation finds favour :—

Revised section 26 Hindu Marriage Act, 1955 (as recommended).

“26. In any ‘proceeding under’ this Act—

- (a) the court may, from time to time, *and whether or not an application for the purpose is made on behalf of the minor children*, pass such *interim* orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and
- (b) the court may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made, by such decree or *interim* orders in case the proceeding for obtaining such decree were still pending, and
- (c) the¹ court may also, from time to time, revoke, suspend or vary any such orders and provisions previously made”.

We recommend amendment as above of section 26 of the Hindu Marriage Act.

New section 26A, Hindu Marriage Act, 1955 (reco- mmended).

7.3. We further recommend that a new section 26A should be inserted in the Hindu Marriage Act, 1955 on the following lines:—

“26A. An order for *interim* maintenance under section 24 or section 26 may be given effect—

- (a) from such date, not earlier than the date of the application under that section, as the court considers just and proper in the circumstances,
- (b) or, where no application has been made under section 26, then from such date, not earlier than the date of service of the notice

¹ Paragraph 3·6, *supra*.

² Paragraph 4·6, *supra*.

issued on the petition by which the main proceeding was instituted, as the court considers just and proper in the circumstances of the case."

(K.K. MATHEW)
Chairman

(J.P. CHATURVEDI)
Member

(Dr. M.B. RAO)
Member

(P.M. BAKSHI)
Part-time Member

(VEPA P. SARATHI)
Part-time Member

(A.K. SRINIVASAMURTHY)
Member-Secretary

Dated: