

## CHAPTER 52

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## CHAPTER 52

### MAINTENANCE AND AFFILIATION

*Acts Nos. 16 of 1971, 9 of 1977*

AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO  
MAINTENANCE OF MARRIED WOMEN AND CHILDREN AND TO  
AFFILIATION ORDERS RELATING TO ILLEGITIMATE CHILDREN  
[1st September, 1971]

#### PART I—PRELIMINARY

*Short title*

1. This Act may be cited as the Maintenance and Affiliation Act.

*Interpretation*

2. In this Act, unless the context otherwise requires—
  - “affiliation order” means an order made under the provisions of Part III;
  - “custodian” includes any person, other than the mother or putative father of an illegitimate child, who is appointed to have custody of such a child or to whose care such a child is committed under or by virtue of any written law;
  - “habitual drunkard” means a person who is by reason of habitual intemperate drinking of intoxicating liquor or of habitual taking or using, except upon medical advice, of opium or other dangerous drugs at times dangerous to himself or to others, or incapable of managing himself or his affairs;
  - “single woman” means a woman who is single at the time of the birth of the child and includes a married woman who is living apart from her husband.

#### PART II—MAINTENANCE

*Wife may apply for order*

3. Any married woman whose husband—
  - (a) has been convicted of an offence against her person under the provisions of Chapters XXIII or XXV of the Penal Code and sentenced to pay a fine of more than \$10 or to a term of imprisonment exceeding two months; or
  - (b) is an habitual drunkard; or
  - (c) has been guilty of adultery, and such adultery has not been condoned or connived at or been conducted to by her wilful neglect or misconduct; or
  - (d) has deserted her; or

- (e) has been guilty of persistent cruelty to her or her children; or
- (f) has been guilty of wilful neglect to provide reasonable maintenance for her or her infant children whom he is legally liable to maintain; or
- (g) whilst suffering from venereal disease and knowing that he was so suffering has insisted on having sexual intercourse with her; or
- (h) has compelled her to submit to prostitution or has been guilty of such conduct as was likely to result and has resulted in her submitting herself to prostitution,

may apply to the court for an order or orders under the provisions of this Act:

Provided that when a married woman is entitled to apply for an order or orders under the provisions of this section on the grounds of the conviction of her husband in the Supreme Court, a certificate of such conviction under the hand of the Chief Registrar of the Supreme Court sealed with the seal of the Supreme Court may be put in evidence before a magistrate hearing an application under the provisions of this Act and such certificate shall be evidence of the facts therein stated.

(Cap. 17)

*Powers of court*

4. A magistrate hearing any application under the provisions of section 3 may make an order or orders containing all or any of the following provisions:—

- (a) that the applicant is no longer bound to cohabit with her husband (which provision while in force shall have the effect in all respects of a decree of judicial separation on the grounds of cruelty);
- (b) that the legal custody of any children of the marriage between the applicant and her husband be committed to the applicant or to any other person and, where such a provision is made, such provision also as the court thinks fit for access to those children by the husband or wife as the case may be;
- (c) that the husband shall pay to any officer of the court for the use of the applicant such weekly sum or sums as the magistrate shall, having regard to the means both of the husband and wife, consider reasonable for the maintenance of herself and of each child the legal custody of whom has been committed to the applicant under the provisions of paragraph (b) but, in the case of such child, only until such child attains the age of sixteen years;
- (d) for payment by the applicant or the husband or both of them of the costs of the court and such reasonable costs of the parties as the magistrate may think fit.

*Powers of court when wife is habitually drinking or guilty of persistent cruelty*

5. When any married woman is an habitual drunkard or has been guilty of adultery or has been guilty of persistent cruelty to his children, her husband may apply to a magistrate for an order under the provisions of this section and on any such application the magistrate may make one or more of the following orders containing all or any of the following provisions:—

- (a) a provision that the applicant be no longer bound to cohabit with his wife (which provision while in force shall have the effect in all respects of a decree of judicial separation on the grounds of cruelty);
- (b) a provision for the legal custody of any children of the marriage, which provision may, if the court thinks fit, provide for access to those children by the husband or wife as the case may be;

- (c) a provision that except where the wife has been guilty of adultery the applicant shall pay to any officer of the court for the use of the applicant's wife such weekly sum as the magistrate having regard to the means both of the applicant and his wife may consider reasonable;
- (d) a provision for payment by the applicant or his wife or both of them of the costs of the court and such reasonable costs of the parties or either of them as the magistrate may think fit.

*No order enforceable while wife resides with husband*

6. No order made under the provisions of this Act shall be enforceable and no liability shall accrue under any such order whilst the spouse in favour of whom the order was made resides with the spouse against whom the order was made and any such order shall cease to have effect if for a period of nine months after it was made the spouses continue to reside together. Any such order shall also cease to have effect when the spouses having lived apart after such order has been made resume co-habitation.

*No order in favour of adulterous women*

7. No order shall be made under the provisions of this Act on the application of a married woman if it shall be proved that such married woman has committed an act of adultery unless the court is satisfied that the husband has condoned or connived at or by his wilful neglect or misconduct conduced to such act of adultery.

*Court may vary or discharge order*

8.—(1) A magistrate having jurisdiction in the place in which an order under the provisions of this Part has been made may, upon the application of either spouse and upon cause being shown upon evidence of a change in circumstances not occasioned by the default or neglect of the applicant, to the satisfaction of the magistrate, at any time alter, vary or discharge any such order and may upon any such application from time to time increase or diminish the amount of any weekly payment order to be made.

(2) If any married woman upon whose application an order shall have been made under the provisions of this Part shall commit an act of adultery such order shall on proof thereof beyond all reasonable doubt be discharged:

Provided that the magistrate may, if he thinks fit—

- (a) refuse to discharge the order if in the opinion of the court such act of adultery was conduced to by the failure of the husband to make such payments as in the opinion of the magistrate he was able to make under the order; and
- (b) in the event of the order being discharged, make a new order that the legal custody of the children of the marriage shall be or continue to be committed to the husband or wife and that the husband shall pay to the wife or to any officer of the court or third person on her behalf such weekly sum as the magistrate, having regard to the means both of the applicant and his wife, considers reasonable for the maintenance of each such child committed to the custody of the wife until the child attains the age of sixteen years.

(3) In making an order under the provisions of paragraph (b) of the proviso to subsection (2), the magistrate shall have regard primarily to the interest of the

children and provision may be made in any such order for access to the children of the marriage by the husband or wife as the case may be.

*Evidence of marriage required on application by wife*

9. Before a magistrate may make any order under the provisions of this Part he shall satisfy himself upon evidence produced by the applicant of the fact of the marriage.

*Warrant of apprehension*

10. Any magistrate upon being satisfied on oath that any husband has deserted his wife or that any child has been deserted by his father or mother or that any husband or father or mother is about to depart from Fiji or to proceed to a remote part within Fiji to defeat the provisions of this Part or any order made in pursuance thereof may issue a warrant for the apprehension of such husband or father or mother.

*Powers of court in respect of deserted children*

11. When a parent is brought before a magistrate under the provisions of section 10, such magistrate may order such parent to pay to an officer of the court such weekly sum as the magistrate may consider reasonable in all the circumstances from the time the desertion commenced:

Provided that no order shall be made under the provisions of this section relating to a child included in an order made under paragraph (b) of section 4 so long as the child is being maintained by his mother.

*Recognizance to be entered into*

12. When an order is made for the maintenance of any wife or child the magistrate may immediately on pronouncing his decision or at a later date require the defendant to enter into a recognizance with sureties for the due performance of such order and in default of so doing commit such defendant to prison until such recognizance has been entered into or the said order complied with:

Provided that the period of such committal shall not exceed three months.

*Leaving wife for thirty days*

13. Where any person has left his wife or any parent his or her children or child for a period exceeding thirty days during seven at the least of which such wife or children or child has been left by him or her without means of support such husband or parent shall prima facie be deemed to have unlawfully deserted such wife or children or child:

Provided that nothing contained in this section shall prevent any magistrate from adjudging the fact of the desertion on other evidence or on proof of abandonment for a lesser period than thirty days if he thinks fit.

*Power to order interim payments where application adjourned*

14.—(1) Where, on the hearing of an application for an order of maintenance, such application is adjourned for any period exceeding seven days the court may order that the husband do pay to the wife or to an officer of the court or third person on her behalf, with effect from the date of service of the application a weekly sum not exceeding such an amount as might be ordered to be paid under a final order for the maintenance of the wife or any child or children in her custody until the final determination of the case:

Provided that no order directing such payment shall remain in operation for more than two months from the date on which it was made and any such order may be renewed from time to time until the final determination of the case.

(2) Any order made under the provisions of subsection (1) shall be enforceable in like manner as if it were a final order of the court.

*Conciliation and investigations by probation officers*

15.—(1) In any proceedings under this Part, the magistrate may request a probation officer to attempt to effect a conciliation between the parties thereto.

(2) If such attempt is unsuccessful, the probation officer shall furnish a written report upon the circumstances of the case to the magistrate and the magistrate may, if he thinks fit, make use of such report in attempting himself, in chambers, to effect a conciliation between the parties:

Provided that such report shall not be admissible in evidence.

(3) In any proceedings under this Part, the magistrate may direct a probation officer to conduct an investigation into the means of the parties to the proceedings and to report the result of this investigation to him, and the probation officer shall furnish a written report to the magistrate. A report under this subsection may be received by the magistrate as evidence notwithstanding anything to the contrary in any enactment or rule of law relating to the admissibility of evidence, but copies of such report shall be furnished to the parties who shall have the right to call evidence in rebuttal of the matter contained therein.

### PART III—AFFILIATION

*Commencement of affiliation proceedings*

16. A single woman who is with child or who has been delivered of a child may—

- (a) before the birth of the child; or
- (b) at any time within twelve months after the birth of the child; or
- (c) at any time thereafter upon proof that the man alleged to be the father of the child has before, or within twelve months after, the birth of the child paid money or has otherwise made provision for its maintenance; or
- (d) at any time within twelve months after the return to Fiji of the man alleged to be the father of the child upon proof that he ceased to reside in Fiji within the twelve months next after the birth of the child,

make an application on oath to a magistrate having jurisdiction in the place where she resides, for a summons to be served on the man alleged by her to be the father of the child:

Provided that where the mother has died before making any complaint under the provisions of this section, the person in whose care the child has been placed may make application in her stead.

*Magistrate may refuse summons*

17. A magistrate may, on any application for a summons under this Act, refuse to issue a summons if he is not satisfied that there is reasonable cause to believe that the man alleged to be the father of the child is the father of the child

and that the application is made bona fide and not for any purpose of intimidation or extortion.

*Powers of magistrate on hearing of complaint*

18.—(1) On the hearing of the complaint, the magistrate shall hear the evidence of the complainant and such other evidence as may be produced in support, and shall also hear any evidence tendered by or on behalf of the defendant.

(2) If the evidence of the complainant is corroborated in some material particular by other evidence to the satisfaction of the magistrate, he may adjudge the defendant to be the putative father of the child, and may also, if he sees fit in all the circumstances of the case, proceed to make against the putative father an order for the payment by him—

(a) of a sum of money not exceeding five hundred and twenty dollars annually for the maintenance and education of the child;

(b) the expenses incidental to the birth of the child;

(c) the funeral expenses of the child if it has died before the making of the order; and

(d) such costs as may have been incurred in obtaining the order:

Provided that the magistrate in making an order for payment of a sum of money under the provisions of paragraph (a) may direct that such payment shall be made by weekly, fortnightly, monthly or quarterly instalments.

*(Amended by 9 of 1977 s. 2)*

(3) If the application is made before or within two months after the birth of the child the payment to be made under paragraph (a) of subsection (2) may, if the magistrate thinks fit, be calculated from the date of the birth.

*(Amended by 9 of 1977 s. 2)*

(4) The magistrate if he thinks fit, may, in lieu of payments under paragraph (a) of subsection (2), order that a lump sum not exceeding two thousand six hundred dollars be paid into court and that such sum shall be expended on the maintenance of the child in such manner as the court may direct.

*(Amended by 9 of 1977 s. 2)*

(5) The magistrate, on the hearing of the complaint, may, if the complaint is dismissed, order that the complainant pay to the person alleged to be the father the reasonable costs incurred by him in defending the proceedings.

*Money to be paid to mother or custodian*

19.—(1) Subject to the provisions of this Act, the person entitled to any payments to be made under an affiliation order shall be the child's mother under the order.

(2) An affiliation order may, on the application of a custodian, be made or varied by a magistrate so as to entitle the custodian to any payments to be made under the order.

(3) A magistrate when making or varying an affiliation order may, order that the money shall be paid into court and then paid to the mother or any custodian entitled thereto in such manner and subject to such conditions as it may direct.

(4) Any custodian entitled to receive moneys under an affiliation order shall have the same power to recover the same as the mother would have had if the moneys had been payable to her.

*Variation of order*

20. A magistrate having jurisdiction in the place in which an affiliation order has been made may, on the application of the mother, or any custodian entitled to payments under such order, or the putative father, after inquiring into the circumstances, make an order either increasing or decreasing the amount previously ordered to be paid by the putative father but the amount shall in no case exceed the maximum sum provided in paragraph (a) of subsection (2) of section 18.

*Duration of orders*

21. Subject to the provisions of this Act, an affiliation order shall not, except for the purpose of recovering money previously due under the order, be of any force or validity after the child has attained the age of sixteen years or has died:

Provided that after the child has attained the age of thirteen years, a magistrate may order that an affiliation order may cease to be of any force or validity if he is satisfied that the child is in receipt of income sufficient substantially to maintain himself.

*Appointment of custodian and provisions relating to custody*

22.—(1) A magistrate may, at the time of making an affiliation order or thereafter, on being satisfied that—

(a) the mother of the child is not a fit and proper person to have custody of the child; or

(b) that the mother has died or become of unsound mind or is in prison, appoint some person other than the mother to have custody of the child.

(2) The appointment of a custodian may be made on the application of a probation or child welfare officer, or of the putative father, or of the mother if she is alive, and such appointment may be revoked and another person appointed to have custody of the child.

(3) When making an order as to custody under this section, the magistrate may order the child to be delivered by the person in whose custody the child is to the person entitled to the custody.

(4) If a child in respect of whom an affiliation order has been made or is sought is wrongfully taken out of the custody of its mother or custodian, a magistrate may, on the application of the mother or custodian, make an order that the child be returned to such custody as aforesaid, and any person who fails to comply with such an order shall be guilty of an offence and shall be liable to a fine not exceeding two hundred dollars or to imprisonment for three months or to both such fine and imprisonment.

*Neglect and desertion of child*

23. Every single woman neglecting to maintain her child, being able wholly or in part to do so, or deserting her child, shall be guilty of an offence and shall be liable to a fine not exceeding one hundred dollars or to imprisonment for one month or to both such fine and imprisonment.

*Misapplying moneys or ill-treating a child*

24. Every custodian who misapplies moneys paid by the putative father under an affiliation order, and every custodian and every putative father who has custody of a child who withholds proper nourishment from such child, or who in any manner ill-treats such child, shall be guilty of an offence and shall be liable to a fine not exceeding four hundred dollars or to imprisonment for six months or to both such fine and imprisonment.

*Investigations as to means*

25. In any proceedings under this Part, the magistrate may direct a probation officer to conduct an investigation into the means of the parties to the proceedings and to report the result of his investigation to him, and the probation officer shall furnish a written report to the magistrate. A report under this section may be received by the magistrate as evidence notwithstanding anything to the contrary in any enactment or rule of law relating to the admissibility of evidence, but copies of such report shall be furnished to the parties who shall have the right to call evidence in rebuttal of the matter contained therein.

## PART IV—GENERAL

*Procedure*

26. All applications under this Act, shall be made in accordance with the provisions of the Criminal Procedure Code, and in the case of a conviction of a husband by a magistrate's court for assault upon his wife, her application may, by leave of the court, be made by summons to be issued and made returnable immediately upon such conviction and such summons may be served upon the husband in court. (Cap. 21)

*Enforcement of orders*

27.—(1) If at any time the payment of any sum of money directed to be paid under any order made under the provisions of this Act, is not less than five weeks in arrear, a magistrate may, by warrant under his hand, cause the person so in arrear to be brought before him and in case such person shall neglect or refuse to make payment of the sum so in arrear together with the costs attending such warrant, apprehension and bringing up of such person the magistrate may by warrant under his hand, direct the sum so appearing to be due together with such costs to be recovered by distress and sale of the goods and chattels of such person and may order such person to be detained in custody until return can conveniently be made to such warrant of distress unless he gives sufficient security by way of recognizance or otherwise to the satisfaction of such magistrate for his appearance before the magistrate on the day which may be appointed for the return of such warrant of distress, such day not being more than one month from the time of taking any such security:

Provided that the magistrate may issue such a warrant at any time after any payments ordered to be made under the provisions of this Act, are at least one week in arrear if he is satisfied that undue hardship will be suffered if such order be not enforced before such payments are five weeks in arrear.

(2) If upon the return of a warrant issued under the provisions of subsection (1), or upon the admission of the person who is in arrear with his payments under an order made under the provisions of this Act, it appears that no sufficient distress can be had and if such person is unable to satisfy the magistrate that he is bona fide unable to pay, then such magistrate may if he sees fit by warrant under his hand cause such person to be committed to prison for a term not exceeding three months unless such sum or costs and all reasonable charges attending the distress together with the costs and charges attending the commitment and conveying to prison and of the persons employed to convey him to prison be sooner paid and satisfied and in this respect the provisions of section 39 of the Penal Code shall *mutatis mutandis* apply.

(3) No imprisonment under the provisions of this section shall operate as a satisfaction or extinguishment of any sum ordered to be paid under the provisions of this Act or of the costs of levying distress or otherwise enforcing the order.

(4) Notwithstanding the other provisions of this section, the magistrate may, when he is satisfied that the circumstances so warrant, order that the arrears or any part thereof be written off.

(Cap. 17)

*Compellable witnesses*

28. In all proceedings under this Act with respect to deserted wives, the wife and husband shall be competent and compellable to give evidence on his or her own behalf and for or against the other.

*Appeal to the Supreme Court.*

29. An appeal shall lie from any order or the refusal of any order by a magistrate under this Act to the Supreme Court. Such appeal shall be in accordance with the provisions of the Criminal Procedure Code so far as the same may be applicable.

(Cap. 21)

*Rules of Court*

30. Notwithstanding the provisions of sections 26 and 29, the Chief Justice may make rules of court regulating the practice and procedure of courts in relation to applications and appeals made under the provisions of this Act including the power to prescribe forms to be used.

*Notice of change of address*

31. Any person for the time being under an obligation to make payments (including costs) under an order made under this Act, shall give notice to the clerk of the court by which the order was made of any change of address within seven days of such change and any person failing to give such notice without reasonable excuse shall be guilty of an offence and shall be liable to a fine not exceeding twenty dollars.

*Enforcement of orders as to custody of children*

32. Where an order under this Act contains a provision committing to the applicant the legal custody of any children of the marriage, a copy of the order may be served upon any person in whose actual custody the children may for the time being be, and thereupon the provision may, without prejudice to any other remedy open to the applicant, be enforced by imprisonment for two months in the same way as if it were an order of the court requiring that person to give up the children to the applicant:

Provided that imprisonment shall cease when the children mentioned in the order have been handed over to the court.

*Controlled by Ministry of the Attorney-General*