

Order dated 05.08.2026

Today is fixed for passing of necessary order.

Both parties are present.

Heard the both parties on previous occasion.

Now the record is taken up for passing necessary order.

The petitioner has submitted that she and the Opposite Party are legally married, having solemnized their marriage on 1 May 1993 at the Petitioner's parental home in Bandhutia, Bhadrak, Odisha. Out of the said wedlock, they have two children, namely Dipteshwar Mullick and Amrita Mullick. Their son, Dipteshwar, is about 30 years old and is 70% physically disabled, while their daughter is married and resides with her husband. According to the Petitioner, on 5 March 2004, the Opposite Party deserted the family and started residing with another woman, Sandhya, at Bally, Howrah. Despite the Petitioner's repeated efforts to persuade him to return and resume their marital life, he refused and allegedly admitted that he had married the said woman. Since his desertion, the Petitioner has been left to maintain herself and her disabled son with the help of relatives. The Opposite Party has allegedly neglected his legal and moral responsibilities by providing only nominal financial assistance, which is insufficient to meet their daily expenses. The Petitioner has also suffered severe mental and physical cruelty due to his abandonment. She states that her name and the names of their children continue to appear in the Opposite Party's official BSNL service and medical records, reflecting their status as his lawful family. The Petitioner further submits that the Opposite Party is employed with Bharat Sanchar Nigam Limited (BSNL), earning more than Rs. 1,00,000 per month, whereas she has no independent source of income and is facing acute financial hardship while caring for her disabled son. She also suffers from various health ailments, including diabetes, high blood pressure, and joint pain. Whenever she sought financial assistance for her medical treatment and household expenses, the Opposite Party allegedly refused and subjected her to abusive and threatening behaviour. As the Opposite Party was due to retire in November 2024 and was expected to receive retirement benefits exceeding Rs. 1 crore, the Petitioner apprehended that it would become even more difficult to secure maintenance, particularly as she was unaware of his current residential address. Consequently, after the Opposite Party refused her request for financial support on 13 June 2024 and asked her to seek relief through legal proceedings, the Petitioner was compelled to file the present petition under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking monthly maintenance of Rs. 40,000, comprising Rs. 20,000 for herself and Rs. 20,000 for her physically disabled son, along with future financial security.

Whereas the OP has denied all the allegation by the petitioner and submitted that

the present maintenance application has been filed with an ulterior motive to harass him and is based on exaggerated and misleading claims regarding both the Petitioner's financial needs and his own financial capacity. According to him, the Petitioner has sufficient independent means to maintain herself and has voluntarily chosen to live separately without any justifiable reason, thereby disentitling herself from claiming maintenance. He further contends that the application has been filed on false and imaginary grounds with the intention of misleading the Court and obtaining an order by suppressing the true facts.

The Opposite Party further states that he retired from Bharat Sanchar Nigam Limited (BSNL) on 30 November 2024 and is now a retired senior citizen with no regular employment. His only source of income is his monthly pension and the returns generated from his retirement corpus, which, according to him, are limited and gradually diminishing. He submits that the Petitioner's allegations regarding his income and retirement benefits are grossly exaggerated and do not reflect his actual financial position. He also emphasizes that, due to his advancing age, he has to bear substantial medical and living expenses, and any excessive maintenance order would adversely affect his own livelihood.

The Opposite Party also points out that the Petitioner has already filed a separate application for interim maintenance under Section 24 of the Hindu Marriage Act, 1955, in the pending matrimonial suit, and the same is awaiting adjudication before the competent court and has also filed another Misc Case for maintainance. On these grounds, he prays for dismissal of the present maintenance application, contending that the relief sought is excessive, unjustified, and not maintainable in law.

Upon perusal of the materials on record, it appears that the marriage between the parties was solemnized on 01.05.1993 and the petitioner has stated the date of separation as 05.03.2004. The petitioner is presently residing at her her matrimonial house and has claimed a sum of Rs. 40,000/- per month towards interim maintenance for herself and her son. She has further alleged that the opposite party earns Rs. 1,00,000/- per month from salary; however, the OP has disclosed his monthly income to be Rs. 42,060/- from his pension. It is pertinent to note that both parties have placed their respective claims on record by way of duly sworn affidavits.

There is a major disable son namely, Dipteswar Mallick born out of this wedlock and as per the disability certificate, he has 80% disability which is not likely to improve and he has no capacity to earn.

Upon perusal of the pleadings, affidavits of assets and liabilities, and the documents placed on record, this Court finds certain material inconsistencies and omissions which require consideration at the stage of deciding the present application for interim maintenance. Although the petitioner has disclosed that she maintains bank

accounts, she has neither furnished the particulars of such accounts nor produced complete bank statements before this Court. Further, while the opposite party has specifically disclosed that as many as four litigations are pending between the parties, namely Misc. Case No. 43 of 2025, Misc. Case No. 408 of 2024, MAT Suit No. 1049 of 2024, and G.R. Case No. 2715 of 2024, the petitioner has not disclosed all such pending proceedings either in her affidavit of assets and liabilities or in the present application under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Such non-disclosure assumes significance, particularly when one of the pending proceedings is an application for interim maintenance under Section 24 of the Hindu Marriage Act.

It is also an admitted position that, according to the petitioner herself, the parties have been living separately since 05.03.2004 and the Opposite Party has allegedly neglected his legal and moral responsibilities and providing only nominal financial assistance, which is insufficient to meet their daily expenses. However, the present maintenance proceeding came to be instituted only on 06.07.2024, nearly twenty years after the alleged desertion. The petitioner has not offered any satisfactory explanation for such prolonged delay. In this background, this Court is naturally required to examine how the petitioner and her children maintained themselves during this long intervening period. During the course of hearing, when queried by the Court, the petitioner stated that she had been sustaining herself by borrowing money from her married daughter. However, such explanation does not inspire complete confidence, as the daughter was a minor at the time of the alleged separation in 2004 and admittedly could not have been financially supporting the petitioner throughout the entire period of separation.

It is pertinent to note that in the affidavit of assets and liabilities filed by the opposite party, he has disclosed that he has three children, of whom only two are stated to have been born from the petitioner. This admission *prima facie* indicates that the opposite party has another child from another woman. Such a disclosure raises a strong presumption that he has either contracted another marriage or maintained a relationship with another woman during the subsistence of his marriage with the petitioner.

The Explanation to Section 144(3) expressly provides that where a husband has contracted marriage with another woman or keeps a mistress, the same constitutes a just ground for the wife's refusal to live with him. Therefore, the opposite party's own admission in his affidavit lends support to the petitioner's case that she had sufficient and legally justifiable cause to refuse cohabitation. Consequently, the opposite party cannot take advantage of his own conduct to deny the petitioner the relief sought.

The provision of the chapter X of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 is intended to fulfill a social purpose. The object is to compel a man to perform

the moral obligation which he owes to the society in respect of his wife, children and parents. By providing a simple, speedy but limited relief, it was aimed to ensure that the neglected wife and children are not left beggared and destitute on the scrap-heap of the society and thereby driven to a life of vagrancy, immorality and crying crime for their subsistence.

It is a fact that If any person having sufficient means neglects or refuses to maintain his wife, unable to maintain herself, or his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother as such Magistrate thinks fit.

But when one is seeking relief under this section, he/she must prove the O.P. has sufficient means but still neglected or refused to maintain his wife or children or parents who are unable to maintain themselves. Moreover, the section 144(4) is stating clearly that no wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent. But If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

As regards the means of the opposite party, it is settled law that an able-bodied person is presumed to be capable of earning and cannot avoid his legal and moral responsibility by merely pleading financial hardship and as he has another child born from another relationship which clearly a sufficient reason for the petitioner to live separately from her husband/OP. The duty to maintain wife and children is absolute so long as they are unable to maintain themselves. Section 144 of BNSS is intended to provide immediate relief and prevent destitution. The standard of proof required is not as strict as in a civil trial, and the provision must be construed liberally to advance its object.

Here in this case, the marriage and paternity of the major disabled son are admitted by the O.P. Thus, the relationship is not in dispute. The major disabled son is legally entitled to be maintained by his father.

As regards income the O.P. is retired employee of BSNL and it is well settled that an able-bodied man cannot evade his statutory liability to maintain his wife and child merely by pleading poverty or other expenditure.

The OP is directed to make payment of Rs. 15,000 /- [Fifteen Thousand only]

per month for the petitioner and Rs. 10,000/- [Ten thousand only) per month for her major disabled child till disposal of this case as monetary relief by the 10th day of every succeeding month from the date of filing of the case [06.07.2026] under section 144 of BNSS. Be it mentioned here that the amount received by the petitioner in this case shall be adjustable with any other monetary relief accepted by the petitioner under any provision of law and by order of any Ld. Court.

The interim petition is disposed of accordingly.

Fix 11.09.2026 for evidence and personal appearance of both the parties and payment.

Dictated and correct by me

Judicial Magistrate,
2nd Court, Howrah
(In-Charge)

Disha Barai
(JO Code WB01420)
Judicial Magistrate,
2nd Court, Howrah
(In-Charge)