
WEAPONIZATION OF JUSTICE: MISUSE OF PERSONAL LAWS TO MEET THEIR NEEDS AND THE NEED FOR REFORM

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This article seeks to be an informative yet simple analysis of legal provisions and the judicial responses in connection to the maintenance laws of India.

Marriage, once considered a sacred institution, has now turned into a battleground, where the laws that were made with an intention to protect the vulnerable and oppressed wives are being weaponized to perpetrate injustice. The matrimonial laws that were once made with a noble intent have now become a tool of oppression and further create a complex web of provisions that enables forum shopping, frivolous litigation, and systematic harassment. The intent of the article is to analyse and examine how maintenance laws are misused and how the judicial system is responding to such frivolous acts and the attempts made by the various judicial institutions to stop such misuse.

Indian matrimonial law presents a bewildering array of provisions that can be invoked for maintenance claims simultaneously. The primary “weapon” is Section 125 of the Code of Criminal Procedure, which empowers the Magistrate of the 1st Class to award maintenance in favour of a wife, minor children, and elderly parents. This provision was interpreted by the Hon'ble Supreme Court, and further it was held that the term “wife” had a very wide meaning and further clarified the legislative intent. The court observed that the section was designed to prevent vagrancy and destitution, but recent trends suggest that it has now become a tool for extracting money irrespective of genuine needs.

The Hindu Marriage Act, 1955, also has Section 24 (interim maintenance during proceedings) and Section 25 (permanent alimony), which enable the wife to claim maintenance. Section 20 of the Domestic Violence Act adds another layer, while Section 18 of the Hindu Adoption and Maintenance Act, 1956, provides yet another avenue. This multiplicity can be termed “judicial arbitrage” which means the ability to shop for the most favourable forum. A litigant can file

multiple applications for maintenance claims simultaneously, seeking the same relief from different judicial forums, which results in multiple maintenance orders for identical maintenance obligations.

Considering the sections of various statutes that are concerned with maintenance, I have no hesitation in stating that the multiple avenues for the same relief from the spouse create a legal labyrinth that was previously very difficult to escape from. It was when the Hon'ble Supreme Court of India intervened in the matter and gave a way out to the other spouse, i.e., the husbands. The court addressed the issue that multiple pending maintenance cases filed by a wife against her husband is not a desirable scenario,, and such situations should be dealt with caution,, and maintenance should be awarded considering the fact that multiple maintenance claims might be made by a party, but the court should consider the fact that a husband has other liabilities as well as duties that he needs to attend to and cater to as well.

Courts Observation and How Attempts Were Made to Solve This Issue

Though the courts have not turned a blind eye to the misuse, or rather the abuse, of the enabling welfare provisions. It was observed by the Madhya Pradesh High Court that if it is the desire of well-qualified spouse to remain idle and if she does not make any effort to find a source of livelihood, then it is not a desirable scenario for the progress of the society. The court further held that “ *grant of luxurious, excessive facilities by way of pendente lite alimony and extra expenditure has to be discouraged*”¹. The observations made by the Hon'ble High Court, though, offer relief to the husbands who are oppressed and harassed, but the scope of relief was very limited, and relief can be granted only in those cases where the wife is qualified enough and does not want to settle the matrimonial dispute amicably and prays for monetary aid that supersedes their expenditure.

Another problem that arises out of this misuse is the interim maintenance orders that are passed by the judicial forums on a prima facie basis. Though the orders are made on an interim basis, we cannot ignore the fact that the purpose of the wives is fulfilled, i.e., to extract money from the husbands. Though the orders are made prima facie, the financial impact on the side of the husbands remains the same if the order would have attained finality. Allegations or contentions that are raised by the husbands are considered after the interim orders are passed, and as such,

¹ Mamta Jaiswal v. Rajesh Jaiswal, 2000 SCC On Line MP 580

these allegations and contentions are considered at the time of the final hearing after appreciation of evidence, and even if the contentions are proved and the interim orders are set aside, at the end we see that a humongous amount of money was already paid to the wife. Speaking about Section 125 CrPC, maintenance can be rejected mainly on some grounds, which are

A. The wife has wilfully refused to stay at the matrimonial home.

B. The wife was unable to maintain herself.

C. The wife was “living in adultery.”

It is pertinent to note that all the three above mentioned grounds could be established after an extensive trial and the true facts can come into light after adducing appropriate evidences which may take years to complete, and since interim orders are generally passed before the full-fledged commencement of the trial, at the end the husbands had already paid a humongous amount which will differ from case to case basis.

The Hon’ble Allahabad High Court in *Dr. Virender Kumar vs. State of U.P.*², while staying further operations in the instant case, observed that “*From a bare perusal of Section 125(4) Cr.P.C., it is patently manifest that once there is categorical allegation of adultery against the wife, then the court concerned dealing with the matter under Section 125 Cr.P.C. has to decide the issue of adultery and even interim maintenance can be awarded only after recording a finding on that issue.*”³ Hence, if allegations of adultery are categorically stated, then the issues in relation to their wives “living in adultery will be decided first, and subsequently interim orders shall be passed. This observation also gives a sigh of relief to those husbands who had to pay their wives even if they were engaged in an adulterous relationship at the time of marriage. Though it is pertinent to mention that the term “living in adultery” shall not be equated to acts of adultery. Acts of adultery that are not continuous will not fall into the category of “living in adultery.” The test of living in adultery was explained by the Hon’ble Supreme Court to be continuous acts of adultery that cannot be considered as acts that are individually done in isolation. This observation of the Hon’ble Apex Court possesses a serious

² CRIMINAL REVISION No. - 6106 of 2023

³ CRIMINAL REVISION No. - 6106 of 2023 at Para 4

problem, as continuous acts are very difficult to prove, and sometimes the task becomes impossible in practical life.

The landmark judgement of the Hon'ble Supreme Court *Rajnesh v. Neha*⁴, exhaustively deals with various questions that were previously not considered. The court also issued guidelines and directed the trial courts on how to handle cases of such nature. The court answered multiple questions whose answers were beneficial for both the oppressed victims of a failed marriage and the learned trial courts, as they got a clear direction on how to deal with cases of this nature.

The court directed both parties to file an affidavit that will disclose their assets as well as their liabilities. The court also noted the problem of multiplicity of maintenance proceedings that arose and was of the opinion that there was no straitjacket solution to this problem, and the maintenance amount should be adjusted as per the facts and circumstances of the cases at hand. The court also answered the questions regarding maintenance to a qualified, educated, and earning wife. The court held that the wives cannot be deprived of their right to maintenance, but the maintenance should be granted after considering the contents in the affidavit of the assets and liabilities filed by both parties. The court shall then ascertain the case of the aggrieved wife and shall award a maintenance amount that will be sufficient not for her mere survival but to lead her life in mere comfort. The court must award maintenance that will be sufficient for her, and the amount should satisfy expenses in such a way that the standard of living must be the same as she was accustomed to in the matrimonial home. The court also held that Section 340 Cr. PC proceedings can be initiated against the party to the trial proceedings if they stated falsely in the affidavit that reflected their assets and liabilities.

The judgment, as stated above, has significantly aided the noble cause of rendering justice and balancing the rights between both parties. The definitive directions also pave the way for guidance to the judicial magistrates as well as learned judges of the family courts across the country, which will help in delivering justice. The court has extensively dealt with the issue and answered many legal questions, and many directions were given for ensuring smooth justice delivery. Some of the major directions are mentioned below.

- Direction to file affidavits disclosing assets and liabilities

⁴ (2021) 2 SCC 324

- Adjustment of previous maintenance orders or setting them off
- A false statement before the court of law might lead to initiation of proceedings under Section 340 CrPC.
- Considering the financial status of the wife while adjudicating upon maintenance applications.
- Maintenance awarded must be enough so that the wife can live in a comfortable manner in the standard when she was living in her matrimonial home.

The author acknowledges that this analysis represents a perspective of his own on a complex issue that, according to him, is affecting multiple stakeholders. The goal is not to undermine any sort of legitimate legal protection; rather, the goal is to ensure that justice is delivered as smoothly as possible and to also ensure that the laws are not abused for the purpose of perpetrating injustice.