

To,

Shri Salman Khurshid

The Honorable Minister for Law and Justice

Sub: – Paying (multiple) maintenance to qualified and empowered women for short marriage must be stopped with immediate effect.

Honorable Minister,

Ordering maintenance to a qualified woman voluntarily, incapacitating herself after a short marriage, just to extract money from her husband is nothing but a judicially imposed system of involuntary servitude wherein one human being is placed within the bondage to another one as long as the maintenance term is ordered. I feel that it is every parent's responsibility to provide for child support however paying maintenance to qualified women in childless marriages who voluntarily incapacitate themselves must be stopped outright.

Accepting multiple maintenance petitions from wife clearly amounts to "Double Jeopardy". In Constitution of India and various Acts there is a bar on "Double Jeopardy".

a) Even our Constitution of India has given protection to every citizen not to be prosecuted twice for the same offence. Article 20(2) of the constitution provides a bar on this.

b) Indian Penal Code (section 71) provides immunity from double jeopardy.

c) General Clauses Act, 1897 section 26 provides immunity from double jeopardy.

d) Code of Criminal Procedure, 1973 section 300 provides immunity from double jeopardy.

The current condition of Indian Women

No matter how much the women's organizations and women's ministry want to fictionalize to the world, the sorry state of Indian women (especially wives), the reality is however quite the opposite. India has undergone a sea change as far as the empowerment and earning potential of women are concerned. Women now dominate many fields like Call Centers, BPO's, Advertising and Media. Women get equal opportunities at workplace and are better educated than men because the cost of educating girls in India is far less than cost of educating boys. **Women get free education and also pay lesser taxes for the same amount of salary earned as compared to a man.**

Delhi recently registered more female births than male births effectively killing the India female foeticide agenda that was drummed around so far and used as a negotiating bait to draw social concessions for women albeit at the cost of men. Women have special trains and buses for them to make commuting to and from their workplaces easy. They also enjoy reservations at various levels of the government including the now historical recommendation of reserving 33% of all seats in the parliament for women.

The percentage of reservation for women has now been increased to as high as 50% in some cases. While women contribute only 18% of the country's taxes the Indian government spends over Rs 6800 crores on them annually under the various different heads. Women have a fully functional cabinet ministry and a National Commission for women working just for their needs. Women have over 15 marital laws to protect themselves including about 5 different laws to get maintenance from their husbands. The misuse statistics of some unconstitutional laws Anti Dowry law (IPC 498A) and the Domestic Violence Act of 2005 has been widely known now the world over and is not presented in this letter.

Indian Maintenance laws for women:

Divorce and Maintenance laws in India were created when the majority of women in India were illiterate and no means to earn a living and were totally dependent on their fathers, brothers or husbands for their livelihood. Maintenance laws had the noble intention of ordering the husband to provide separate livelihood expenses for his wife of many years, his children whom he had fathered so that the wife who had never worked before or was uneducated could provide for herself and her children and elk out a decent living.

The current reality in Indian family courts however, is shocking. Extracting maintenance is becoming a cause and motivation for marriage for many women and not an outcome of an unfortunate divorce as the popular perception goes. Women marry so that they can extract money through the various maintenance laws; many times filing simultaneous maintenance cases under various sections. Indian women have access to as many as 5 different laws to get maintenance from their husbands.

- Section 125 of the CrPC: Meant to provide no-fault maintenance to wife from husband.
- Section 24 of the Hindu Marriage Act, 1955 (HMA): Though gender neutral, is largely used by women to extract maintenance from their husbands in pendency of a divorce. It will not be off the record to mention here that even the judiciary is unpleasantly reluctant to provide maintenance to a man who knocks the doors of courts; having lost employment due to any misfortune, from his wife who can support him.
- Section 25 of the HMA: Meant to provide alimony to women from divorce.
- Section 18 of the Hindu Adoptions and Maintenance Act: Another provision for maintenance to wives.

- Domestic Violence Act: This Act also is used to extort money from the husband under the cute name of maintenance and exhort their properties under the cute name of “**Right to Residence**”.

Out of these 5 laws only one law is gender neutral, at least on paper; the rest of them can only be used by women against their husbands.

Qualified women extracting maintenance – A modern Menace

A visit to a family court in any of the metropolitan cities like Delhi, Mumbai or Bangalore will reveal a shocking reality that in almost all divorce cases high maintenance is demanded by women in even marriages as which are short as 2 months or 6 months. The educated and empowered women in these cases are all very qualified, the minimum qualification being a graduate degree.

A large number of women are highly qualified engineers, doctors or IT professionals. These qualified women still demand maintenance stating the fact that it is the responsibility of the husband to provide for the lifestyle maintenance of these women as they were maintained during their very short marriage. These women at first voluntarily incapacitate themselves, and most of the times extract astronomical amounts in the form of maintenance even if they are gainfully employed by lying to courts and hiding their professional status.

The various different ways that money is extracted is highlighted below.

- Section 498A is used in many cases to arrest the husband and then force him for a ‘**compromise**’ which is nothing but a huge lump sum amount that is to be paid to the wife by the husband. This is not a normal maintenance case but nevertheless is still a great extortion tool.
- CrPC 125 is used along with Domestic violence act and maintenance is demanded simultaneously in both cases.
- Women with marriages less 1 year voluntarily incapacitate themselves at their parents’ home and then demand maintenance so that they can now live life to the same standards in their parents place as they have enjoyed during the marriage.
- DV act is abused to get access to home and residences apart from ex-parte maintenance orders in marriages shorter than even 1 year.
- Once interim maintenance is granted the women drag the cases, being patronized by our inefficient and complacent judiciary, so that the interim maintenance is continued to be paid for a longer time.
- Qualifications and previous work experience is deliberately hidden by women to get the sympathy of the court. Women are not penalized for coming to the court with unclean hands or committing perjury openly.

In the HMA 24 case of Smt. Mamta Jaiswal vs. Rajesh Jaiswal where the wife was qualified, had voluntarily incapacitated herself was demanding maintenance from her husband, Honorable Madhya Pradesh High court stated the below.

“In view of this, the question arises as to in what way Section 24 of the Act has to be interpreted. Whether a spouse who has capacity of earning but chooses to remain idle, should be permitted to saddle other spouse with his or her expenditure? Whether such spouse should be permitted to get pendent life alimony at higher rate from other spouse in such condition?”

According to me, Section 24 has been enacted for the purpose of providing a monetary assistance to such spouse who is incapable of supporting himself or herself in spite of sincere efforts made by him or herself. A spouse who is well qualified to get the service immediately with less effort is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of his or her own purse by a cut in the nature of pendent life alimony. The law does not expect the increasing number of such idle persons who by remaining in the arena of legal battles, try to squeeze out the adversary by implementing the provisions of law suitable to their purpose.”

“In fact, well qualified spouses desirous of remaining idle, not making efforts for the purpose of finding out a source of livelihood, have to be discouraged, if the society wants to progress. The spouses who are quarreling and coming to the Court in respect of matrimonial disputes, have to be guided for the purpose of amicable settlement as early as possible and, therefore, grant of luxurious, excessive facilities by way of pendent life alimony and extra expenditure has to be discouraged.”

In spite of having such sensible judgments, the courts in India regularly grant maintenance to qualified women who prefer to incapacitate themselves at their parents home and demand that their husbands keep them in the same standard as during the marriage. The courts never question the motive of these women not earn a living for themselves and still rely on the centuries old tradition that the husband must maintain the wife come what may. A woman no matter qualified, no matter how short her marriage and no matter how much her contribution to the marriage is more or less guaranteed to get maintenance in India if she petitions for it.

Recommendations

- 1) Alimony for graduates, doctors, lawyers, professionals, engineers, MBAs, CAs and the likes should be rejected prima facie and concept of lifetime parasitism be replaced by a better concept to provide interest free sustenance loans returnable in 3-5 years upon obtaining gainful employment. Voluntary incapacitation by capable spouses asking for maintenance to be made a punishable offense to discourage it. Moreover interim maintenance should not be allowed to be used as a dole leading to treatment of husbands as FREE ATM MACHINES.

- 2) The quantum of maintenance must be strictly based on the duration of the marriage. For example, in most states of the United States, the wife can qualify for maintenance only if she has lived with the husband for a minimum period of time and the quantum of the maintenance is dependent on that. In the state of Texas a wife can claim maintenance from her husband if she has stayed with her husband for a minimum of 10 years.
- 3) Women with children must be provided with sustenance loans from their husbands so that they can train themselves in order to enter the workforce again. These loans must be returnable to the husbands once the women start earning. This is apart from the child support payments that the husband must contribute.
- 4) Multiple provisions for maintenance viz. Domestic Violence Act, Section 125 CrPC, Section 18 – HMA, Section 24 – HAMA etc. should be simplified and normalized to one single provision as people are entangled in multiple litigations for the same alleged cause of action leading to infringement of Constitutional Rights vide Article 20,21 and 22 of the Indian Constitution.
- 5) Husbands also must be provided with maintenance when they need it. Maintenance must not be made the exclusive right of a woman in a marriage. Men are today increasing taking over roles of a mother and a father and husbands are liable to be maintained by qualified wife if the need arises.
- 6) The upper ceiling of a maintenance amount must always be fixed by law and based on the country's living standard so that unscrupulous women do not use the marriage as a way to riches.
- 7) Provisions be made for gender-sensitivity trainings for judges of lower courts and sessions courts from a husband's perspective, to be conducted by reputed firms having expertise in men's rights awareness and an understanding of the needs and problems of the male gender.

A marriage must not be made a way for qualified unscrupulous women to profit. Breaking a marriage must never be made monetarily lucrative, as it has been made in India today. Today qualified Indian women stand to gain a lot by marrying and then by quickly breaking the marriages and thereafter immediately demanding huge maintenance and alimonies. **Maintenance must be based on genuine need and not greed of a woman.** Today, however the practice and the urge to get maintenance through multiple maintenance laws has become the cause of breaking marriages and extracting money. The government must make the maintenance laws such reasonable so that while parties (either husband or wife) who are truly needy can take relief under this section, the unscrupulous ones whose sole intention is to extract maintenance from the husband can be punished.

Thanking you,

Yours faithfully,

Name: