

CRITICAL ANALYSIS OF MULTIPLICITY OF PROCEEDINGS IN
MATRIMONIAL DISPUTES WITH SPECIFIC REFERENCE TO HINDU
LAW

- Dr. Revati Naik

(Assistant Professor, Marathwada Mitra Mandal's
Shankarrao Chavan Law College, Pune)

ABSTRACT

The recognition of importance of stable family as a foundation of stable society is found in all legal systems of civilized nations and it in turn leads to the focus of family laws to preserve the marital institution. Various matrimonial laws as well as social security legislations provide for wide range of remedies to address various issues arising in marital relation. This article deals with the issue of multiplicity of proceedings which is the outcome of multiple matrimonial remedies that can be pursued simultaneously, with specific reference to the law applicable to Hindus.

Regulation of various aspects pertaining to marital institute is justified on account of its relation to the society and public wellbeing as a whole. This often has served the justification for state's retention of interest in area of private interest of parties to the marriage. We observe the state regulation of marital institution in the form of determination of age of marriage, recognition of validity of marriage and provision of various matrimonial remedies.

(Keywords – Matrimonial Disputes, Hindu Law, Multiplicity of Proceedings, Remedies)

INTRODUCTION

When people have too many choices, they make bad..... Thom Browne

The Hindu Marriage Act, 1955 (hereinafter HMA), the Hindu Minority and Guardianship Act 1956, the Hindu Adoption and Maintenance Act 1956, (hereinafter HAMA) constitute a law in a coded form governing matrimonial aspects of Hindus. Religion professed by the person is the basis of application of all these laws. Accordingly, the marriage between a Hindu couple who had a ceremonial celebration of it, is governed by the HMA. Inter religious marriage of a Hindu can be solemnized by way of registration and is then governed by the Special Marriage Act, 1954. Remedies provided under certain social welfare legislations provided for all irrespective of religion can also be availed by a Hindu such as Protection of Women from Domestic Violence Act, 2005 (hereinafter PWDVA), the Code of Criminal Procedure, 1973 (hereinafter CrPC) and the Dowry Prohibition Act, 1961 etc. These different enactments provide distinct remedies designed with specific objective and purpose and, each of it can be pursued independently. Following is the analysis of the matrimonial reliefs commonly availed by the parties and their interplay which leads to some unanticipated and undesirable results: -

Remedies under the personal law: - The matrimonial reliefs available under different enactments are discussed below: -

1. **Restitution of Conjugal Rights: -** With the objective of restoring matrimonial rights of the spouses, the remedy of restitution of conjugal rights is provided

Dr. Revati Naik

under the HMA¹ and the Special Marriage Act². When either the husband or the wife has without the reasonable excuse, withdrawn from the society of the other, the aggrieved party can seek the decree of restitution of conjugal rights. Objective of this remedy is to bring together separated spouses who are deprived of companionship of each other. However, in reality the remedy is very often used either to prolong the proceeding where the other spouse has filed the petition for other matrimonial relief such as divorce or maintenance or it is used as a step in the ladder to obtain the relief of divorce due to the particular ground which provides for non-resumption of cohabitation between the parties to marriage for a period of one year or upwards after the passing of a decree of restitution of conjugal rights in a proceeding to which they were parties, as a ground for divorce.³ Petition for divorce on this ground can be filed by that spouse against whom the decree of restitution is passed as refusal to comply with decree of restitution does not amount to wrong within the meaning of sec 23 of HMA.⁴

Further the remedy of restitution of conjugal rights is often been condemned to be infringing the fundamental right of privacy and human dignity incorporated in the constitution of India.⁵ Subsequent to the wide interpretation of right to privacy so as to include within its ambit 'decisional privacy' i.e. privacy to make interpersonal intimate choices such as right to decide who to live with,

¹ The Hindu Marriage Act, 1955 (Act 25 of 1955), s. 9.

² The Special Marriage Act, 1954 (Act 43 of 1954), s. 22

³ *Supra* note 1, s.13(A) (ii)

⁴ *Saroj Ranj v. Suda Choudha*, (1984) 4 S.C.C. 90.

⁵ The Constitution of India, art. 21.

Dr. Revati Naik

as upheld in *Puttaswami's case*⁶ the remedy of restitution is being criticised on the count of its inability to be relevant with changing notions of privacy and equality. Presently also the petition challenging the constitutional validity of the remedy of restitution of conjugal rights is pending before the nine-judge bench of the Supreme Court.⁷ Its deletion from the statute has been recommended by the Report of the High-Level Committee on the status of women in India, 2015.⁸

2. **Judicial Separation:** - To suspend certain mutual rights and obligations arising from the marriage, the remedy of judicial separation is granted. It can be availed on any of the grounds on which the divorce can be obtained and after the passing of the decree, it will be no longer obligatory for the petitioner to cohabit with the respondent spouse.⁹ It suspends the marital tie and intend to afford an opportunity to the spouse for reconciliation and readjustment. Similar to the remedy of restitution, the relief of judicial separation is used as a stepping stone towards divorce.¹⁰
3. **Divorce:** - In family laws the divorce is considered as the drastic remedy. It dissolves the marital tie. Various grounds based on the fault theory (i.e. matrimonial wrong committed by one spouse), consent theory and non-compliance of a decree of restitution of conjugal rights or of judicial separation

⁶ *Justice K.S. Puttaswamy (Retd) v. Union of India*, (2017) 10 SCC 1.

⁷ *Krishandas Rajagopal*, "Plea on conjugal rights pending in Supreme Court" *The Hindu*, January 23, 2022.

⁸ Ministry of Women and Child Development, "Report of High-Level Committee on Status of Women in India" (2015).

⁹ *Supra* note 1, s.10.

¹⁰ *Supra* note 1, s. 13

Dr. Revati Nalk

for a period of one year which is a species of the genus of irretrievable breakdown of marriage are provided under Indian laws.

Even though the irretrievable breakdown of marriage is not expressly recognized ground of divorce under the Indian law, in many cases the Apex court in exercise of its inherent jurisdiction has dissolved the marriage where it found that marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if the facts of the case do not provide a ground in law on which the divorce could be granted.¹¹ For this purpose, it has taken a recourse to Art. 142 of the Indian Constitution.

4. **Maintenance:** - There are various statutes which provide for the maintenance of neglected wives and children from the husband who has sufficient means. The matrimonial relief of maintenance provided under these enactments can be categorized into substantive and ancillary relief, e.g. under the HAMA, maintenance is a substantive relief, however under the HMA, it is ancillary. Various provisions pertaining to maintenance are analyzed below.
- **Classical uncodified law:** - Under the classical Hindu Law, a Hindu was held to be morally and legally liable to maintain his aged parents, a virtuous wife and infant child. The uncodified law emphasized that a Hindu is under the legal obligation to maintain his wife, minor sons, his unmarried daughters and his aged parents whether he possesses any property or not. The obligation to

¹¹ Durga Prasad Tripathy v. Anandakali Tripathy (2005) 7 SCC 353; Navasa Kotli v. Neetu Kotli (2006) 4 SCC 358; Sanglamsira Ghosh v. Kajal Kumar Ghosh (2007) 2 SCC 226; Sannat Ghosh v. Jaya Ghosh (2007) 4 SCC 511; K. Srinivas Rao v. D.A. Deepa (2013) 5 SCC 226; and Sukhendu Das v. Rita Mukherjee (2017) 9 SCC 632, R. Srinivas Rao v. R. Shanmuga (2019) 9 SCC 405

Dr. Revati Nalk

maintain these relations is personal in character and originates from the very existence of the relation between parties¹².

- **HMA:-** Maintenance under the Act is an ancillary relief which can be prayed for during the pendency and at the time of disposal of the proceedings under the Act. The remedy of maintenance under the Act is gender neutral in the sense that just like a wife, a husband who lacks independent income to support himself can avail it from his estranged wife.¹³ Divorced wife, wife of void or voidable marriage can avail the remedy of maintenance under the Act. Change in the circumstances of either party to the marriage is recognized as a valid justification for variation, modification or recession of the order of maintenance. The period for disposal of application for maintenance prescribed under the Act is sixty days from the date of service of notice to the other party¹⁴. Similarly, in proceedings initiated under the Act, orders regarding custody, maintenance and education of minor children can be made by the court. Further the court is also empowered to make provisions in the decree regarding the property jointly owned by the spouses.
- **HAMA:-** With a view to amend and codify law relating to adoption and maintenance among Hindus, the HAMA was passed. The Act defines maintenance in all cases as provision for food, clothing, residence, education, medical attendance and treatment and in case of unmarried daughter it includes reasonable expenses of an incident to her marriage.¹⁵ The substantive relief of

¹² Dr. Hoera Bhorihoke and Dr. Bhagyashree Dashpende (eds), *Mulla Hindu Law Statutory Enactments Annotated* (Delhi Law House, Delhi, 2020).

¹³ *The Hindu Marriage Act, 1955* (Act 25 of 1955), s. 24, 25.

¹⁴ *Id.*, s. 24.

¹⁵ *The Hindu Adoption and Maintenance Act, 1956* (Act 78 of 1956), s. 3(1).

Dr. Revati Nalk

maintenance is provided for wife, widowed daughter in law, children and aged parents. Under the Act, the Hindu wife of valid marriage can claim maintenance as well as separate residence¹⁶. While determining the amount of maintenance payable to the wife the Act has laid down list of factors to be taken into consideration such as position and status of parties, reasonable wants of claimant, in case of separate residence whether living separate is justified, value of claimant's property and any income derived from such property or from the claimant's own earning or from any other source and number of persons to be entitled to maintenance under the Act.¹⁷ Manifesting the classical approach the Act provides the maintenance to the daughters till the time of marriage.

- CRPC:- With a view to enable a deserted wife and legitimate and illegitimate children to get urgent relief the CRPC has provided for the relief in the form of maintenance which can be availed by the summary procedure¹⁸. The provision is in the interest of community and intends to serve the social purpose by establishing a forum which could provide the quick means of sustenance for neglected wife and children. The relief is available to persons of all religions and there is no relationship with the personal law applicable to parties. The relief is provided to wife (of valid marriage and includes the divorced wife also) and minor children (legitimate and illegitimate) and parents who does not have sufficient means to maintain themselves. The obligation to maintain in case of both legitimate and illegitimate children is extended beyond the

¹⁶ *Id.*, s. 18(2)

¹⁷ *Supra*note 15, s. 23.

¹⁸ The Code of Criminal Procedure, 1973 (Act 2 of 1973), s.125.

Dr. Revati Nalk

minority if such child by reason of physical or mental abnormality or injury is unable to maintain himself.

- PWDVA:- The Act provides for the monetary relief provided which is different than the maintenance in the sense that it can be in addition to an order of maintenance under sec 125 of the CRPC, or any other law. It includes loss of earnings, medical expenses, loss suffered by the aggrieved person or the children of the aggrieved person as a result of domestic violence. The Act is reformative in the sense that it expands the scope of protection to the parties who were/ere in the relationship resembling with marriage.

These alternative remedies to avail the maintenance are mutually exclusive and can be persuaded separately. As far as the maintenance under CRPC and HAMA is concerned the court in *Nanak Chand's* case held that there is no inconsistency between the relief under both enactments and both can stand together. The court observed that the maintenance under the criminal law provides a summary remedy and is applicable to all persons belonging to all religions and has no relationship with the personal laws applicable to the parties.¹⁹ However, the substantial difference in the scope of remedy and purpose to be achieved produces certain inconsistencies when put to an application e.g. wife of null and void marriage can obtain the maintenance in the proceeding for nullity, under the HMA but not under CRPC. HAMA provides maintenance to the daughter till the time of marriage and CRPC provides it only during minority. These inconsistencies ultimately lead to multiplicity of proceedings as in such cases generally the court advises parties to pursue the litigation under the statute which specifically

¹⁹ *Nanak Chand v. Chandra Kishore Aggarwal*, (1969) 3 SCC 802.

Dr. Revati Naik

provides for it.²⁰ Further certain issues regarding the jurisdiction which is to be exercised by the Family Courts and other ordinary civil and magisterial courts can also be observed. The Family Courts Act, confers on the family court the jurisdiction exercisable by a Magistrate of the First Class relating to order of maintenance to wife, children and parents under the Code of Criminal Procedure, 1973.²¹ Therefore there may be a case that the family court has jurisdiction to decide a claim for maintenance both under sec 125 of CRPC or sec 20 of HAMA and in such a situation it can exercise the jurisdiction under both enactments to grant the maintenance to unmarried daughter by using the sec 20 of HAMA, who has become major while exercising her claim to maintenance under sec 125 of CRPC. In such situation the court can avoid the multiplicity of proceeding by making the use of wide jurisdiction conferred on it under the Family Courts Act, however, it provides for establishment of Family Courts by the state government in the cities or towns with the population exceeding one million. So, in places, where the family court is not established, the claim of maintenance under CRPC sec 125 will be dealt by the criminal court and as it lacks the jurisdiction to deal with HAMA, relief under Sec 20(3) will be granted by the district civil court. Thus, in such situation multiplicity becomes inevitable. Presently as per the website of Ministry of Justice, 718 family courts are functioning in India. Taking in consideration the huge population, multiple remedies available and pendency of cases, this number seems to be inadequate.²²

²⁰ *Abhilasha v. Prakash*, Criminal Appeal no. 615 of 2020 arising out of SLP (Crl.) No. 8260/2018 decided by the Supreme Court of India on 15th Sept. 2020.

²¹ The Family Courts Act, 1984 (Act 66 of 1984) s. 7(2).

²² Information of Family Courts by Department of Justice available at <https://doj.gov.in/familycourts/#:~:text=718%20family%20Courts%20are%20functional%20across%20the%20country%20%28,June%202022%29.%20For%20more%20information%20visit%20https%3A%2F%2Fdoj.gov.in%2Ffamily-court-care%2F> lastly visited on September, 2022.

Dr. Revati Naik

Custody of children: - Both under HMA and Special Marriage Act, the custody of children comes as an ancillary provision. Usually in divorce proceedings it becomes the important and burning issue to be decided by the court. While granting the physical custody to both the parents, access is granted to both. The HMA provides that in the proceeding under the Act, the court can make both interim and final order at the time of passing of the decree providing for custody, maintenance and education of children consistently with their wishes. While making such order, welfare of the minor is given the paramount consideration.²³ The order regarding custody is subject to change in circumstances of the party.

Disposal of Property: - The Family courts are further empowered to make provision in the decree with respect to any property which belongs jointly to both spouses while granting the relief prayed by the parties.²⁴

The Family Courts Act of 1984, can be considered as a positive measure to centralise all litigation relating family matters. The purpose of the Act is to promote conciliation in and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith. The Act makes it compulsory for the state government to establish the family court in a city or town where the population exceeds one million.²⁵ It provides for the appointment of those persons as judges who are committed to the need to protect and preserve the institution of marriage and to

²³ *The Hindu Marriage Act, 1955 (Act 25 of 1955)*, s. 26

²⁴ *Id.*, s. 27

²⁵ *The Family Courts Act, 1984 (Act 66 of 1984)*, s.3

Dr. Revati Naik

promote the settlement of disputes by conciliation and counselling.²⁴ It empowers the High Court to prescribe the rules of procedure to be followed by the family courts in arriving at the settlement of disputes. It was expected to make it possible for the parties to represent their own case so as to have more control over the decision-making process, however in reality we seldom find parties representing their own cases.

Apart from these wide range of matrimonial reliefs available under matrimonial laws, various remedies are available under the social welfare legislations. The overview of the reliefs provided under some of these prominent legislations is as follows: -

- a. **Domestic Violence Act** - The Act was enacted to provide more effective protection to women suffering from domestic violence. The Act is often conceptualized as a combination of civil and criminal law elements. Various reliefs provided under the Act includes right to reside in a shared household, protection orders, residence orders, monetary reliefs, custody orders and compensation orders. However, the noble objectives which this Act tries to achieve very often remain on paper and in reality, remedies under this law are used as an instrument to harass or to bargain the compromise on the terms of person putting this criminal law in motion. In *Loha v. District Educational Officer* while dismissing the writ petition filed by the daughter against the father in law, a government employee, demanding the departmental enquiry for not disclosing the criminal charges made against him under the PDVW Act and requesting not to grant him promotion of head master, the Apex court lamented the abuse of statutory reliefs. The court observed that now a days

²⁴ Id., s.4

Dr. Revati Naik

filing cases under the domestic violence Act has become very common. It further says that it is certain that there is something sinister about a law, when it intimidates and instills fear in innocent people. It further goes on saying that when a person, who has not committed any crime, begins to fear punishment under the provisions of a law, it will certainly create panic amidst male genders. The notable flaw in this law is that it lends itself to such easy misuse that women will find it hard to resist the temptation to teach a lesson to their male relatives and will file frivolous and false cases.²⁷

- b. **Sec 498A of I.P.C.** :- With the noble objective to curb the menace of dowry, the act of demand of dowry by greedy husbands and in-laws which may result in cruelty to women was penalized under the Indian Penal Code, 1872.²⁸ Subjecting a married woman to a cruelty by husband and in laws is made non bailable and cognizable offence punishable with imprisonment upto 3 years and fine. However, in many cases the noble provision has been misused so as to drag the innocent husband, parents and even the grandparents of husband on the basis of vague and exaggerated allegations of cruelty without any verifiable evidence of physical and mental harm. The abuse results in the harassment and even the arrest of innocent family members. The abuse of sec 498 A is judicially recognized²⁹. In *Sushil Kumar Sharma v. Union of India*³⁰ the Supreme Court observed that in many cases the complaints under sec 488A are

²⁷ W.P.(MD) No 8646 of 2015 decided by the Supreme Court on 8/6/2015.

²⁸ Indian Penal Code, 1872 (Act 3 of 1872), s. 498A.

²⁹ *Preeti Gupta v State of Jharkhand*, 3(2010) 7 SSC 667, *Rathgopal v. State of M.P.* 3(2010) 13 SCC 540, *Savitri Devi v. Ramesh Chand* 4 IJR (2003) 1 Delhi 484.

³⁰ AIR 2005 SC 3100.

Dr. Kevani Nalk

not bonafide and are with oblique motive. Even though the Apex Court refused to invalidate the provision as unconstitutional but it recognized the sufferings of the accused in such frivolous cases and emphasized the need on the part of legislature to take the appropriate steps to prevent the abuse or misuse of the sec 498A. To prevent the abuse of the remedy, the Apex Court has issued guidelines on various occasions³¹. Unnecessary paralysing of remedy under sec 498A can hinder the conciliatory efforts being done in other matrimonial proceedings and instead of providing the remedy it rather complicates the existing problems between the spouses. Arrest of husband and in laws leads the marriage at such point from which all the roads to matrimonial peace gets blocked. To deal with this the suggestion to make the offence under sec 498A bailable and non cognizable is also given by the Andhra Pradesh High Court³².

Another problem associated with the sec 498A is the closure of the proceedings subsequent to the settlement of the matrimonial disputes between the spouses. Many times, spouses who have evoked multiple remedies against each other find it difficult to effect the compromise due to the procedural aspects. E.g. spouses who have decided to withdraw the divorce petition and resume the cohabitation will have to file the petition under section 482 of the Cr.P.C. to quash the proceedings initiated under sec 498A of the I.P.C. The power to quash the proceedings rests with the court. Regarding this it is apt to mention the observation of the Supreme Court. In *Gian Singh v State of Punjab*, it observed that the criminal cases which are predominantly civil in flavor

³¹*Rajesh Sharma v. State of U.P.*, *Chandra Bhan v State 5* (2006) 151 DLT 691, *Social Action Forum for Minor Adilkar v Union of India* 2018 (10) SCC 443.

³²*Sarvika v R. Ramchandra* 2002(6) ALD 319.

Dr. Kevani Nalk

stands on totally different footing as in such cases the wrong is essentially private and personal in nature and while exercising the power of quashing such proceedings the court must have a due regard to the fact that because of the compromise between the victim and the offender, the possibility of conviction has become remote and bleak and non quashing the criminal proceedings will be unjust for the accused. ³³ Taking in consideration the fact that the proceedings under sec 498A can be quashed only by taking a recourse to the High Court, it becomes mandatory for the parties to go through the rigours of the procedural law in spite of the fact that they have compromised the basic matrimonial dispute between them.

In addition to these enactments the Dowry Prohibition Act, 1961 penalizes the act of giving and taking the dowry.

Apart from these multiple remedies, the technical approach of the procedural laws also contribute significantly to the multiplicity of proceedings, which are discussed below:-

1. Criminalization of civil wrongs:- Interface between family laws and criminal law leads to some unanticipated problems. There is a basic difference between the approach of criminal law which is concerned with the protection of society and maintenance of law and order while the family law is concerned with the maintenance of integrity of family as a unit by preserving the marital relationship. The glaring differences between the criminal law and family law with respect to various aspects such as focus and the objective which each desires to achieve, parties to

³³(2012) 10 SCC 303.

Dr. Revati Nark

the proceeding, the way of dealing with the deviation, message which it intends to give to other stakeholders and desired outcome, contribute towards the incompatibility issues.³⁴ One of the object of the criminal law is to give narrative message to the society and to achieve this, it prescribes the wrong and uses the penal sanction to command the observance and achievement of various public purposes such as deterring the prospective criminals, satisfaction of feeling of vengeance of victims and society and reformation of the criminal. On the contrary, the focus of the family laws is on rebuilding the relationships between the parties to the marriage and allows the separation as a drastic remedy to be granted when working out the relationship is not possible. It considers the past behaviour of the parties as a ground for granting the relief and does not investigate as to the legality of the behaviour itself.

Further, the approach of the lawyers dealing with family dispute and a criminal case between the spouses can also be different such as the family lawyer may view the situation as a family case that involves criminal issues and a criminal lawyer may interpret the situation as a criminal case in the context of family dispute. Further there is difference between the rules regarding the admissibility of evidence in criminal and family matters. In criminal case, the admissibility of evidence will be judged by the parameters laid down under the Indian Evidence Act i.e. the measure of 'proof beyond reasonable doubt' will be applicable and in the family courts

³⁴ Samuel V. Scheerstacker, "Criminal law or the family laws: the overlapping issues" 44 *Family Law Quarterly* 153(2010).

Dr. Revati Nark

the standard as laid down under the Family Courts Act, 1984 will be followed. The family court is allowed to receive as evidence any report, statement, documents, information or matter that may in its opinion assist it to deal effectually with dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act.³⁵ Due to this difference in the quality of evidence to be adduced there may be cases where the same piece of evidence may be admissible in a matrimonial case but may not be admissible in the criminal case.³⁶ These differences contribute to the incompatibility issues between these two branches.

2. **Alternative Forum and Issue of transfer:-** The one of the basic reason of multiplicity of the proceedings under the family law is provisions prescribing alternative forums to avail the remedy e.g. for the purpose of availing the remedies prescribed under the HMA, the jurisdiction is conferred on the court on the basis of the place of solemnization of the marriage, the place of the residence of the respondent, place of last residence of the couple and the place of residence of wife applicant.³⁷ There is no provision in the Act to club the proceedings instituted in different courts. The transfer of proceedings in such case is governed by the Civil Procedure Code³⁸. If the proceedings are pending before two distinct courts subordinate to same Appellate court then transfer can be sought by the Appellate Court, but if the courts where distinct proceeding

³⁵ Sec 14 of the Family Courts Act, 1984

³⁶ Deepthi Kapur v Kanol Jaita, CMM(M) 40/2019 and CM APPL. No. 1226/2019 decided by the Delhi High Court on 30th June 2020.

³⁷ The Hindu Marriage Act, 1955, S. 19.

³⁸ The Civil Procedure Code, 1908, (Act 5 of 1908), ss.22, 23, 24, 25.

Dr. Revati Nalk

are initiated are subordinate to the same High Court, then transfer has to be prayed before the High Court³⁹. The problem becomes more difficult if the proceedings are instituted in different states as in such situation the application of transfer the proceedings needs to be filed in the Supreme Court.⁴⁰ Approaching the Supreme Court for transfer, thus involves expenditure in terms of money and time and, economically weak litigant will definitely find it difficult to deal with. This can be considered as a procedural victimization of litigants. The large number of transfer petitions are filed in matrimonial cases and huge pendency is judicially recognized⁴¹. Generally, when spouses institute the proceedings in different courts, the application of transfer filed by the wife is allowed on account of genuine difficulties faced her, but then the husband may face it difficult to contest the matter at place of wife. Thus, transfer of proceeding is the solution which can't be acceptable to both parties. Further the interest of minor children and senior citizens in the family is likely to be affected if due to the transfer of proceedings, one of the party is required to undertake trips to distant place to face the proceedings.

While dealing with the transfer application by the wife in a case where the husband had filed a divorce petition in Jabalpur and wife had filed a domestic violence case at Hyderabad, the Apex Court recognized the hardship faced by the litigants to travel to the Delhi and spend on litigation. It also took note of the fact that in the process of

³⁹ *Id.*, s. 23.

⁴⁰ *Id.*, s. 25.

⁴¹ *Anandika Das v. Srijit Das* (2006) 9 SCC 197.

Dr. Revati Nalk

hearing the transfer petition original matrimonial dispute gets inordinately delayed. The court recommended the use of video conferencing in matrimonial cases where one of the party resides outside the court's jurisdiction. The Court issued the direction that in matrimonial cases where the defendant are located outside the jurisdiction of the court, the court where the proceedings were instituted may examine as to whether it is in the interest of justice to incorporate any safeguards in the form of video conferencing facility, availability of legal aid services, deposit of cost of travel, lodging and boarding or provision of e-mail where the litigant can contact so as to ensure that summoning of defendant does not result in denial of justice⁴². However, this case is overruled by the higher bench in *Sarhini v. Vijaya Venkatesh*⁴³ which held that the in view of the scheme of Family Courts Act the hearing of the matrimonial disputes needs to be conducted in camera. The court further observed that when most of the time a case is filed for the transfer relating to matrimonial disputes, the statutory right of the women to have in camera proceedings can not be nullified by taking a route to technological advancements so as to destroy her right under the law. The majority of bench has taken a strict stand that in a transfer petition video conferencing can't be directed however, it upheld the limited discretion of the family court to allow video conferencing only in those matrimonial cases where both the parties have consented to its use. However, the dissenting judgment of Justice Dhananjay Chandrachud deserves a special mention. While rejecting the contention that the video conferencing is inconsistent with the right to in camera proceedings, he opines that the Family Courts

⁴² *Krishna Veni Nigam v. Harish Nigam*, T.P.(C) No-001912/2014 decided by the Supreme Court on March 9th, 2017.

⁴³ AIR 2017 SC 5745.

Dr. Revati Naik

Act has enabling provisions broad enough to allow video conferencing. He further mentioned that allowing the video conferencing only after the conclusion of settlement procedure and that too only when consent is given by both the parties will seriously obstruct the right of justice and in specific situation it will enable one spouse to cause interminable delay which will defeat the purpose of the Act itself. He emphasized the need leave the use of video conferencing to the careful exercise of the discretion of the family court⁴⁴.

There is a need to amend the law so as to provide the jurisdiction at a place other than where the wife resides should be made available only at the option of the wife or that such jurisdiction should be available only in exceptional cases where the wife is employed and husband is unemployed or where the husband suffers from the physical handicap or is looking after the child.

Multiplicity of proceedings can make the case exponentially complicated. Simultaneous proceedings can cause the case veering in an extreme directions and beyond the control of parties and can lead the spouses to such position where they do not want to go.

Impact of multiplicity of proceedings:-

1. Huge pendency- Presently large number of cases are pending before the law courts in India. As per the information given by the law minister to the upper house, the total number of pending cases in Supreme Court are 71,411 out of which 55,365 are civil matters. Further as many as 59 lakhs cases are pending

⁴⁴ AIR 2017 SC 5745

Dr. Revati Naik

before various High courts in the country and most importantly 4.1 crore cases are pending in the subordinate courts in the country as on August 2, 2022. Large chunk of these cases is contributed by the matrimonial disputes and figures itself are indicative of the necessity of the urgent response in form of corrective action.⁴⁵

2. Use of remedies as an instrument of harassment: - As discussed above in practice actually remedies available under different statutes especially under criminal law are used as an instrument to harass the other party to marriage. They often are used as means of vengeance which can make the life of innocent persons a hell and can exercise devastating impact on overall life not only of the parties to the marriage but also on the life of close relatives. Recently dealing with a case with respect to the custody of child, where spouses instituted as many as eleven cases against each other within a span of one year, the High Court of Kerala, took the cognizance of recent trend of multiplying litigation between parties to the hearing⁴⁶. Court cautioned that the right of access to justice should not be used as a means to multiplicity of litigation by taking recourse to possible legal remedies before all available forums. The court relied upon the conciliation to find out amicable solution to wide range of disputes pending between them.

⁴⁵ Over 7.1 Crore Cases Pending in Supreme Court, 59 Lakhs in High Courts: Law Minister Tells Rajya Sabha, available on <https://www.livelaw.in/top-stories/over-71000-cases-pending-in-supreme-court-59-lakhs-in-high-courts-law-minister-tells-rajya-sabha-205784#:~:text=Over%207.1%20crore%20cases%20pending%20in%20supreme%20court%2059%20lakhs%20in%20law%20min%20tells%20rajya%20sabha&text=Over%204.1%20crore%20cases%20are%20subordinate%20courts%20in%20the%20country> lastly visited on Sept. 16th 2022.

⁴⁶ T. Vinod v. Manja S. Nair, 2008(1) ILR(Ker) 616

Dr. Revati Naik

3. Incompatible orders: - Multiplicity of proceedings sometimes leads to inconsistent orders which are impossible to implement. Very recently in Ahmedabad, one family court granted a divorce decree to the husband while another court situated in the same campus granted the relief of restitution of conjugal rights to the wife. The case is illustrative of irony of legal system.⁴⁷

Following initiatives can play significant role in addressing the issue of multiplicity of proceedings in the area of family laws: -

1. Revamping substantive laws: - There is a need to amend the substantive laws so as to address the issue of simultaneous proceedings. Making it mandatory for the parties to disclose pending litigation, expressly providing for considering the relief granted in previous litigation while deciding present case, stringent penalization in case of misuse of remedies, observing the time line prescribed for disposal of the case, amending the law regarding alternative forum can be useful in this regard.
2. Re-engineering the procedural laws: - Reengineering of the procedural laws such as change in the place of jurisdiction as discussed above or hearing the transfer petitions through video conferencing, amending the law regarding the quashing of FIR in cases having background of family disputes, simplifying the procedure under the Family Courts Act so as to make it litigant friendly can provide relief to a considerable extent.

⁴⁷ Gujarat court grant divorce to man, conjugal rights to wife available at <https://timesofindia.indiatimes.com/city/ahmedabad/husband-gets-divorce-wife-conjugal-rights/articleshow/86976156.cms> lastly visited on Sept. 16th 2022.

Dr. Revati Naik

3. Constructive Use of Artificial Intelligence and Technology: - The use of artificial intelligence so as to have the information of all disputes available on one click can be helpful in avoiding incompatible orders. Technology can prove to be blessings to reduce hardships suffered by the parties. The issue of multiplicity of proceedings in matrimonial disputes needs comprehensive efforts on the part of various stakeholder of legal system.