


MAREVA INJUNCTION

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Mareva Injunction

1. What is a Mareva Injunction?

A **Mareva injunction** is a court order that freezes someone's money or property so that they cannot hide or sell it before the case ends.

👉 it's like the court saying: "Don't touch your money or property until we finish this case."

Example

👤 Suppose Mr. A takes ₹5 crore loan from a bank. Before paying, he starts transferring all his money abroad. The bank goes to court and says:

"Please stop him from moving money, otherwise we can't recover our loan."

👉 The court gives a **Mareva injunction**, and Mr. A's accounts get **frozen**. He cannot touch that money until the case is over.

Purpose:

To make sure that if the plaintiff (like a bank, creditor, or business partner) wins the case, the defendant still has enough property or money to pay.

It is also called a **Freezing Order**.

2. Why it was needed

Before this concept, many dishonest people used to **move their money to another country or sell their property** when someone filed a case against them.

So, even if the court later gave a judgment, there was **nothing left to recover** from them.

To stop this kind of cheating, English courts created the **Mareva injunction** in 1975.

3. Origin of the Term

- The term comes from the **English case (1975):**
Mareva Compania Naviera SA v International Bulkcarriers SA

- The case involved a ship-owner (Mareva Company) who feared that the other party would move money out of England to avoid paying.
- The court, led by **Lord Denning**, ordered that the defendant's bank account be **frozen**.

 Lord Denning said:

“The time has come when we should revise our practice... There is no reason why the court should not make such an order.”

That's how the **Mareva injunction** was born.

4. Nature of the Mareva Injunction

- It is a **temporary (interim)** order.
- It is “**ad personam**”, meaning it applies personally to the person, not the property.
- It can stop a person from selling or transferring **any assets**, even if those assets are **not part of the case**.
- It can even apply to **assets outside the country** (worldwide freezing order).

5. Conditions for Getting a Mareva Injunction

To get this special order, the applicant (like a bank or creditor) must prove:

1. **Strong case** – There is a real claim, not just a false one.
2. **Assets exist** – The defendant has assets that can be identified.
3. **Risk of hiding assets** – There is a real danger that the person may sell or move their assets to avoid paying.
4. **Balance of convenience** – Freezing the assets will not cause more harm than it prevents.
5. **Good faith and honesty** – The applicant must tell the court all important facts honestly.
6. **Undertaking for damages** – The applicant must promise to pay damages if later the order turns out to be unfair.

6. Mareva Injunction vs Other Injunctions

Basis	Normal Injunction	Mareva Injunction
Purpose	To stop an act (like construction, publication, etc.)	To stop moving or hiding money/assets
Against what	Usually against property or act in dispute	Can apply to any assets of the defendant
When used	During or after case filing	Usually before judgment

Result	Stops activity	Freezes assets
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7. Development in England

Year	Development
Before 1975	No power to freeze assets before judgment in English law.
1975 – The Mareva Case	First time court allowed freezing of assets to prevent injustice.
1979 – Limited Scope	Initially only used against <i>foreign defendants</i> .
1980 – Rahman v Abu Taha	Extended to <i>domestic defendants</i> (residents).
1981 – Section 37(3) Supreme Court Act	Legal recognition of Mareva injunction in UK statute law.
Today	Common across many Commonwealth countries (UK, Canada, Australia, India, etc.).

8. Mareva Injunction in India ELEGAL

In India, the exact term “Mareva injunction” is not used, but **same principle exists** through the **Code of Civil Procedure, 1908 (CPC)**.

♦ (a) Order 38 Rule 5 – Attachment Before Judgment

Allows the court to **attach (seize)** a defendant’s property if it believes he might dispose of it to delay justice.

♦ (b) Order 39 Rules 1 & 2 – Temporary Injunctions

Allows the court to grant temporary injunctions to maintain the *status quo*.

♦ (c) Section 151 – Inherent Powers

Gives courts power to pass *any order necessary to secure justice*, including freezing assets.

👉 So, Indian courts **use these provisions to issue Mareva-type freezing orders**.

9. Indian Court Cases

(a) Mohit Bhargava v. Bharat Bhushan Bhargava

Supreme Court said — courts can pass orders **restraining someone from transferring property**, even if that property is outside jurisdiction.

Such orders are similar to **Mareva injunctions**.

(b) Popular Jute Exchange Ltd. v. Murlidhar Ratanlal Exports Ltd.

Calcutta High Court said —

Indian courts also have power to **stop a person from removing assets** from jurisdiction when it is **just and convenient**.

(c) Iridium v. Motorola

Bombay High Court explained that before freezing assets:

- There must be a **clear debt or liability**.
- The applicant must **disclose all facts honestly**.
- There must be **evidence of risk** that assets will be hidden.
- Plaintiff must give **undertaking in damages**.

(d) Indian Oil Corporation Ltd. v. Iranian Offshore Engineering Co.

Court said:

Freezing someone's property is a **serious step**, so the court must first ensure:

- There's a **real chance of winning**, and
- The defendant is **actually trying to move assets** to avoid paying.

(e) Formosa Plastic Corporation Ltd. v. Ashok Chauhan

Court said: Even if no specific rule fits, it can still **use its inherent power (Section 151 CPC)** to stop a person from selling or hiding property to ensure justice.

10. Mareva Injunction vs Attachment Before Judgment

Point	Mareva Injunction	Attachment Before Judgment
Nature	Injunction (order not to act)	Attachment (court seizes property)
Objective	Stops a person from hiding assets	Secures property for recovery
Basis	English Law	Indian CPC (Order 38 Rule 5)

Effect	Freezes assets	Temporarily seizes assets
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In short — both protect the creditor, but **Mareva injunction** is **softer** (restrains), and **attachment** is **stronger** (takes control).

11. Worldwide Mareva Injunction

In some cases, especially **international banking or commercial disputes**, courts grant a “**worldwide freezing order**”.

That means —

The defendant is stopped from transferring or dealing with assets **anywhere in the world**, not just within one country.

Courts issue such orders carefully, ensuring they don’t conflict with other nations’ laws.

12. Criticism and Caution

While powerful, courts are **very cautious** in granting Mareva injunctions because:

- It can **paralyse a person’s business**.
- It can be **misused** by plaintiffs to pressure defendants.
- Therefore, the applicant must act in **good faith** and make **full and fair disclosure**.

13. Importance in Banking Law

- Helps **banks and financial institutions** stop borrowers from **hiding money** or **selling assets** before loan recovery cases end.
- Widely used in **commercial fraud, banking, corporate, and arbitration cases**.
- Protects the **creditor’s right** to recover money after judgment.
- Prevents dishonest parties from escaping liability by transferring assets abroad.
- Builds **trust and fairness** in financial and legal systems.
- Ensures that **court orders remain effective** even in cross-border disputes.

14. Conclusion

- The **Mareva injunction** is one of the most powerful tools in modern law to prevent injustice.
- It protects honest creditors, banks, and businesses from being cheated.