

# A CASE OF THE COURT STRAYING INTO THE LEGISLATIVE SPHERE

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

‘Any directions which do not emanate from the provisions of law, are likely to be struck down by the Supreme Court again’ | Photo Credit: Getty Images/iStockphoto

Recently, the Allahabad High Court, while allowing two criminal revisions pertaining to a dowry case, took cognisance of the misuse of Section 498A of the Indian Penal Code (IPC), proposed certain safeguards and directed the State authorities of Uttar Pradesh to take the necessary steps for their implementation in a given time period. The High Court expressed its concern over the growing tendency of dowry victims to rope in the husband and all his family members using general and sweeping allegations.

The directions, inter alia, include constitution of a family welfare committee in each district under the District Legal Services Authority (DLSA), handing over the first information report to such a committee immediately after its registration, and no arrest to be made by the police during this “cooling period” of two months. As far as the High Court judgment reads, there were no allegations against the police that had dropped charges against two persons for lack of evidence and charge-sheeted only the husband and his parents based on available evidence.

Strangely enough, the High Court specifically mentioned in its judgment of taking guidance from the judgment of the Supreme Court of India in *Social Action Forum for Manav Adhikar vs Union of India* (2018), a case in which the Supreme Court overturned the judgment of its two-judge Bench and held constitution of similar committees and an embargo on arrest by the police for one month till the submission of report by the family welfare committee, impermissible under the scheme of the Code of Criminal Procedure (CrPC) (*Rajesh Sharma vs The State of U.P.*, 2017). Both Court judgments also dealt with the growing misuse of dowry provisions.

Except for the minor difference in the composition of the family welfare committees (such as inclusion of a young mediator or an advocate or a senior law student) as directed by the High Court, the primary role of such committees remains the same, i.e., settling the matrimonial dispute between the two parties. Whereas, in the Rajesh Sharma (supra) case, directions did not apply to the offences involving tangible physical injuries, the High Court’s directions shall apply to the cases involving Section 498A IPC, along with no injury – Section 307 (attempt to murder) and other sections in the IPC in which the imprisonment is less than 10 years. In other words, if a woman’s bone is fractured or permanent privation is caused to any eye or ear or a joint by her husband during the course of a matrimonial fight, the police shall not effect arrest, as the maximum imprisonment prescribed in such cases of grievous hurt is seven years. The police shall only do peripheral investigations such as collecting the injury report and recording the statements of witnesses, whose worth is unsure in further proceedings. The judgment is also silent about the role of the police if a repeat offence is committed during such a “cooling-period” of two months, which was only one month in the overruled Rajesh Sharma (supra) case.

The moot question (without going into the nuances) is whether the High Court was well within its jurisdiction to issue such directions when the scheme of investigation under the CrPC was clearly laid down and there was no ambiguity about or gaps in the law on arrest, inviting such a fresh interpretation. In *Vishaka vs State of Rajasthan* (1997), the Supreme Court issued directions to enforce fundamental rights in the absence of law in certain cases of sexual

harassment at the workplace. However, in the case of Social Action Forum for Manav Adhikar (supra), the Court held that a third agency (i.e., the family welfare committee) had nothing to do with the CrPC, and more so in stalling arrest till a report is submitted by the committee. The directions to settle a case after it is registered is not a correct expression of law, the top court held.

It cannot be refuted that the directions issued by the High Court were inspired with noble intentions to curb the tendency of reporting cases with exaggerations and sweeping allegations in the heat of matrimonial discord. But these directions potentially fall in the sphere of legislature. The constitutionality of dowry provisions has already been established. Also, the misuse of Section 498A IPC by itself cannot be a ground to dilute it and issue directions which do not flow from any provision of the Code. Moreover, these directions might curtail the rights of a genuine victim of dowry harassment.

However, in order to check false cases of dowry and avoidable incarcerations, two solutions seem plausible. First, the police must strictly enforce the Supreme Court's directions issued in Arnesh Kumar vs State of Bihar (2014) and ensure that there is sufficient reason and credible material against the accused person to necessitate arrest. The investigating officers must be imparted rigorous training with regard to the principles stated by the Court relating to arrest. At the same time, wrong-doers need to be punished departmentally.

Second, the legislature may deliberate upon and make Section 498A IPC bailable. Similarly, though the High Court (using its inherent powers under Section 482 CrPC) can quash a criminal proceeding which is not compoundable (after a settlement is reached between the opposing parties), the legislature can amend and make the offence under Section 498A IPC compoundable so that a compromise could be arrived at with or without the permission of the competent court. This will not only save cost to the parties in dispute but also the High Court's valuable time. Similarly, once the Mediation Bill, 2021 is enacted, the institutional mediation mechanism may also help in settling the matrimonial dispute through the civil route.

Till the time any such amendment is made or law is enacted, the law of the land needs to be enforced strictly by both the police and the courts, without any dilution. Any such directions which do not emanate from the provisions of law, are likely to be struck down by the Supreme Court again.

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