

Taking A Narrow View: SC ruling on misuse of the dowry law raises questions

In the *Rajesh Sharma v. State of UP* case, the Supreme Court has directed that each complaint of cruelty to a woman by her husband or his relatives, that does not involve tangible physical injuries or death, shall be referred to the Family Welfare Committee of the district. This judgment is based on the Court's observations that Section 498-A of the IPC is abused by some women, particularly to harass elderly in-laws. The Court cited National Crime Record Bureau (NCRB) data in support. The committee may comprise para-legal volunteers or social workers or retired officers or even the wives of serving officers but the members shall not be called as witnesses if the police or magistrate decide to investigate a particular case. There is no doubting the court's intention. But the route it has taken - to substitute investigation - raises many questions.

In most complaints registered under Section 498-A, a victim approaches the police after exhausting all options to settle matrimonial disputes. In most states, the police have a counseling centre at the district headquarters, where both the complainant and the accused - wife and husband - are encouraged to talk about their grievances against each other. At times, a complainant requests the police to not register a case but help strike a compromise between the two parties. A criminal case is registered only when a compromise is not possible. However, once a criminal case is registered, the police have no option but to proceed with the investigation.

The Code of Criminal Procedure (CrPC) clearly lays down the procedure an investigating police officer must follow after registering a cognisable criminal case. These provisions have stood the test of time. Therefore, there was no compelling reason for the Court to substitute investigation through the constitution of an extraneous committee which will have no accountability if the disputants do not arrive at a settlement.

It is pertinent to recall the *Vishakha (1997)* case in which the SC issued guidelines to prevent the sexual harassment of women at workplaces. The Court had observed that the sexual harassment of women at workplaces was not clearly dealt with in the existing statutes. It, therefore, decided to lay down norms to be followed till the time Parliament took a call to legislate on the matter. We now have a separate law in place to deal with cases of sexual harassment at workplaces.

However, in *Rajesh Sharma v. State of UP*, the SC neither consulted the states nor deliberated over the practice of counseling in dowry-related cases. In fact, neither the Additional Solicitor General (ASG) nor the counsels who assisted the court in the case suggested the constitution of the family welfare committees. Directing the police to not arrest the accused mechanically, when a case under section 498-A of the IPC is registered, was a welcome judgment in the *Arnesh Kumar v. State of Bihar (2014)* case. The police should use the power of arrest carefully, only when such an action becomes necessary under Section 41 of the CrPC. However, the powers of investigation cannot be substituted by constituting an unaccountable committee, especially when there is no ambiguity about this issue in the existing law.

The SC will review its order after six months. Though such a short period is not sufficient to come to a fair conclusion, the National Legal Services Authority must consider the practices prevalent in the states before submitting its report to the SC. The Court should not impose its will on the clearly laid down provisions of law. The doctrine of statutory interpretation, *casus omissus*, cannot be applied here.

The NCRB data on dowry cases, which forms the rationale of the judgment, either indicates more awareness among women of their rights or the increasing trend of crime in society. Judicial orders that impact society require much wider deliberations. The fundamental right of women to live with dignity cannot be taken away even if a law is found to be misused by a few. The law can take its

own course in such cases.

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