

Critical Evaluation of the case *Rajesh Sharma and others v. State of U.P. and another*, AIR 2017 SC 3869, under section 498 of Indian Penal Code.

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Abstract:

This article shades light on the injustice towards women, although there is criminal law made to protect women. Few false cases doesn't nullify the essence of the Section 498A, IPC, but such cases has created doubts in the minds of the Judges and so they started giving directions to curb them and protect the husbands and his family. The author tries to portray the mindset of Judges and wants that every individual case is different and so there cannot be any generalized statement about it.

Keywords: Indian Penal Code, Section 498A

I. Introduction:

“Man and women are equal before Law” – The statement made is true as far as written law is concerned. But whether it is true in our day to day life? The increasing rate of crime against women give us a different picture altogether. The Judiciary and Legislature has time and again has introduced many laws for the upliftment of women. In India, customs and traditions play a very important role in directing social behavior. These customs are held so sacred that performance of behavior against it is sin. The laws made to protect women therefore cannot operate effectively as they negate customs prevailing in society. The Legislation introduced Section 498A of Indian Penal Code, in 1983 but the number of cases, particularly, of harassment of women for the want of dowry is continuously on increase. Though demand of dowry is prohibited by law it is still practiced in society which is evident from the fact that the number of dowry deaths are on increase. Though the case related crimes against women are increasing, the conviction rate is very low at absolute level and as compared to other crimes under Indian Penal Code. The rate of conviction under all crimes is more than three times than that under section 498A of Indian Penal Code in 2016.

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One cannot generalize the statement that all acquitted cases are false. If women are so empowered to implement the cruelty section to harass the male counterpart there would have been no reason to enact this Act in order to protect them. The interpretation of low conviction rate is associated against women stating that they make false complaint. Such attitude of men can be observed in judgments given in various cases by the Courts. The landmark case is *Rajesh Sharma and others v. State of U.P. and another*.

The issue of the case was:

- Innocent relatives were roped in by women in order to satisfy their ego and anger. The purpose of the Act to curb the threat of dowry.
- Women taking undue advantage of the Section to enhance their importance and make the in-laws behave as per their wishes.
- The Court relied upon Statistics provided by National Crime Records Bureau:
- Rising number of cases is associated with misuse of the Section by women.
- Low conviction rate which was associated with women being misusing the Section and lack of evidence to prove guilt.

Directions by the Court:

- “Family Welfare Committees” to be constituted at district level to which the complaint related to the section should be referred and on their recommendation there should be arrest or no arrest. The Committee should submit the report within one month after receiving from the police or Magistrate. Arrest shall be postponed until the report is submitted by the Committee.
- A designated investigating Officer appointed to investigate the complaint against the section only should investigate.
- The Judiciary at the District and Session level shall have the discretion of disposing off the case if it is found that the case is related to matrimonial conflict.
- While determining an application for bail, factors such as role of the person, conceivable truth of the allegations, need for detention and rendering actual justice shall be taken into consideration. The bail application should be decided on the same day of filing it. The bail cannot be denied on the ground that there is any dispute related to recovery of dowry material. The rights related to minor child and maintenance rights of the woman can be protected.
- The family members are given exemption of not appearing in the Court personally, particularly the outstation relatives. If required the relatives can appear through video conferencing.
- The confiscation of passport of a member residing out of India should be rare.

Interpretation of the Guidelines:

Though the Section is related to matrimonial dispute it is introduced under Indian Penal Code, so it comes under criminal offence. There is no provision of establishing committee to investigate the offence under criminal law. A suggestion to form family welfare committee is going against the essence of criminal law provisions. The Court also stated that there can be no arrest until the Committee submits its report. The reason behind this no arrest was to check the authenticity of the case and to avoid arrest of the innocent in-laws. This is too long period of waiting for those women who are threat of their in-laws and husband. By the time the report of the committee arrives the condition of women might be altogether different. It clear that such an act is against the provision of direct arrest provided in the Section to protect woman from further harassment. The Court felt it necessary to take action against those who are misusing the provisions under Section 498A of IPC and maintain original aim and objective for which the Section was introduced and so they lay the guidelines to protect the innocent husbands and their relatives on human rights criterion. The Court assumed that the cases filed under the Section are as consequences revenge by women. There is a need to keep a check on the tendency of women to file false complaint against the in-laws.

The guideline as to the authority given to the District and Session Court to dispose off the case if found irrelevant to apply the Section is also encroaching upon the power of High Court to quash the case under the Section. In criminal law, the settlement of the case takes place with the consent of both the parties, who are required to file a petition under Section 482 of Criminal Procedural Code and it is the authority of High Court only to quash the case.

The non-bailable nature of offense was to protect women from further harassment, by introducing the application of bail by the recommendation of committee in a day's notice is totally denying the essence of the provision. In this case the direction given by court had nullified the essence of the provision; it is just like a sword without sharp edge. The Supreme Court, since the year 2005, acknowledged that there is a real chance for the Section 498A to be misused and repeatedly given guidelines to prevent the same. It has staunchly stood by the constitutional validity of the Section and supplied complementary or supplementary provisions to better its usage and curb the menace of misuse. It was in the year 2017 in Rajesh Sharma's case that the Court went on to formulate rules for the setting up of separate committees to examine allegations under the Section. These guidelines went on to be modified in the year 2018 as these guidelines were seen to be as overstepping of the judiciary into the field of the legislature.

The Court also exempted the relatives from appearing in the Court physically and allowed, if required, through video conferencing. The relatives of the husband, who play a major role in harassment of the woman, have no deterrent effect on them.

These guidelines were directed by Court to curb misuse of the Section by women. The Court also felt that the provision of Section 498A, IPC should be revised due to increasing number of false cases filed by egoistic women. The Court has also referred to the recommendations made by the Law Commission of India. The Court further mentioned that these directions will not be applicable to those trials where the women suffered physical

injuries or death. It can be interpreted that the women suffering mental harassments that which she is unable to prove has to undergo the scrutiny test as mentioned in the directions given by the Court.

Rajesh Sharma's was referred, analyzed and modified by the Court in recent case named *Social Action Forum for Manav Adhikar and another v. Union of India Ministry of Law and Justice and others*. In this case the Court directed that, establishing "Family Welfare Committee" is out of range of Indian Penal Code. There is no provision in the Penal Code to form a committee and mentioning of directions relating to its performance. The Court further directed the investigating officers to arrest the persons according to the conditions mentioned under section 41A as guided by landmark cases.

The Court also stated that it is out of purview of District and Session Judge or Senior Judicial officer to settle the case. The High Court only has the power to discontinue the proceedings of cases under section 498A of Indian Penal Code.

In this case, the Court also observed that, the essence of the section has been lost due to the directions given by the Courts in different cases. The aim and objective of the section was to help women to seek justice against the arbitrary behavior by their husbands and his relatives. The issue of misuse though real, has been exaggerated due to which the section itself has been diluted by the Court in several cases. A question arises as to whether the men are really suffering at the hands of women or are they crying wolf?

II. Conclusion

one can observe that Judiciary has through their interpretation tried to render justice to the victimized women, but due to lack of evidence that exists in four walls, most of the women are victim of it. But in Rajesh Sharma cases the judiciary has cross their limits and entered into the field of legislation which has further increased the prospects of not granting justice. The *Social Action Forum for Manav Adhikar and another v. Union of India Ministry of Law and Justice and other*, has rightly pointed out that the Judges have no right to make law in the form of directions that can remove the essence of the Section for which it was made.

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