

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

CASE COMMENTARY

ARNESH KUMAR V. STATE OF BIHAR

AUTHORED BY - PARITOSH SHANDILYA¹

& ANANYA AGGARWAL²

1. INTRODUCTION

Citation: (2014 8 SCC 273)

Petitioner: Arnesh Kumar

Respondent No 1: State of Bihar

Respondent No 2: Sweta Kiran

Court: Supreme Court of India

Bench: Justice Chandramauli Kr. Prasad and Justice Pinaki Chandra Ghose

Case Type: Special Leave Petition; Criminal

Decided on: 2nd July 2014

2. FACTS

The wedlock between the petitioner and the respondent no. 2 that is Sweta Kiran was solemnized on 1 July 2007. The petitioner apprehended his arrest in a case under Section 498-A of the Indian Penal Code, 1860 (now section 85 BNS) and Section 4 of the Dowry Prohibition Act, 1961. The allegations made by the wife against the petitioner was that demand of Rupees eight lacs, a Maruti car, an air-conditioner, television set etc. was made by petitioner's mother and father and was supported later on by the petitioner himself who added on to the misery by threatening to marry another woman. It was alleged that she was driven out of the matrimonial home due to non-fulfilment the demand of dowry. He therefore attempted to get an anticipatory bail; however, he was rejected by the learned Sessions Judge and thereafter by the High Court. Hence, he reached out to the Supreme Court of India by means of Special Leave Petition.

¹ Paritosh Shandilya, student at USLLS, Guru Gobind Singh Indraprastha University, Delhi,

² Ananya Aggarwal, student at Rajiv Gandhi National University of Law, Patiala,

3. ISSUES

- i. Misuse of arrest powers under Section 498A IPC, leading to unnecessary harassment in matrimonial disputes.
- ii. Rights of the accused with respect to arrest, violating individual liberty and due process of law and granting of anticipatory bail
- iii. Remedies against misuse of section 498 A of IPC

4. LEGAL PROVISIONS

1. *Section 4 of Dowry Prohibition Act, 1961*, (hereinafter referred to as DPA) provides for punishment for demanding dowry, directly or indirectly.
2. *Section 498A Indian Penal Code, 1860*, (hereinafter referred to as IPC) provides for punishment to the husband or his relative for subjecting a woman to cruelty. The provision now forms Section 85 of BNS,2023.
3. *Section 41 of Code of Criminal Procedure, 1973* (hereinafter referred to as CrPC) entails the provisions when police may arrest without warrant. The provision now forms Section 35(1)/(2) of BNSS.
4. *Article 22(2) of Constitution of India* entails that the arrested person needs to be produced before the magistrate within 24 hours of arrest excluding traveling time and no person will be detained beyond that time period without authorization from magistrate.
5. *Section 438 of CrPC* is a provision of Anticipatory Bail Application for non-bailable offences. The provision now forms Section 482 of BNSS.

5. ARGUMENTS

i. Raised by the petitioner

Challenging the rejection of his anticipatory bail, the appellant approached the Supreme Court through a criminal appeal.

ii. Raised by the defendant

She was demanded dowry by the petitioner's parents and was allegedly driven out of her matrimonial home. Thus, she seeks protections under section 498A of IPC and Section 4 of Dowry Prohibition Act,1961.

6. JUDGEMENT

The petitioner was granted provisional bail by the Apex Court after observing that the provisions under section 498A of IPC are used as weapons rather than shield by some wives, which brings humiliation to the lives of the husbands for the law makes the offence non-bailable and cognizable. The Supreme Court further provided guidelines commonly referred to as Arnesh guidelines mandating that the police should consider the need and reason for an arrest before they take any action against the accused. The court highlighted that the directions must be applied to other offenses as well that are punishable with imprisonment up to seven years. These guidelines instruct the state government to direct the police not to arrest individuals automatically under section 498A of IPC without considering section 41 of CrPC. A checklist with specified sub-clauses under Section 41(1)(b)(ii) must be used by the police officers before making an arrest and they must forward the filled checklist and reasons for arrest to the Magistrate when presenting the accused for further detention. Magistrates must ensure satisfaction with reasons provided for detention after reviewing the police report and the checklist before authorizing the arrest. If no arrest is made, the decision must be reported to the Magistrate within two weeks of the case's institution, with extensions allowed if district's Superintendent of Police gives written reasons. The accused should be given a notice to appear under Section 41-A of the CrPC within two weeks. If needed, this time can be extended, but only if the Superintendent of Police provides a written explanation. If police officers fail to follow these guidelines, they could face disciplinary action and may even be charged with contempt of court.

Magistrates who approve detention without properly recording their reasons may face disciplinary action from the relevant High Court as well. The Hon'ble Supreme Court of India has carefully crafted its decision to safeguard the rights of the accused, ensuring that due process is followed, while also maintaining strong protections for women against abuse. This balanced approach not only shields women from harm but also prevents the misuse of legal provisions, aiming for fairness and justice for all parties involved.

7. ANALYSIS

In an Indian society, marriage is considered to be of great importance both culturally and religiously as it is regarded as a sacred bond created to nurture love, support, and companionship. However, when tension arises in marital relationships, this sacred bond can be

strained, sometimes leading to irreparable conflicts.

The case *Arnesh Kumar v. State of Bihar*³ involved a dowry harassment complaint where the respondent, the wife, accused her husband and his relatives of demanding dowry. However, the appellant denied and filed for anticipatory bail, which was rejected by both Sessions Judge and the High Court, but finally relief was granted via Supreme Court.

Recognizing the potential for abuse and cruelty within the confines of marriage, particularly towards women, the Indian legislature introduced Section 498A of the Indian Penal Code (IPC)⁴. Section 498A was inserted in the statute with the laudable object of punishing the abusive husbands or his relatives particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the *Statement of Objects and Reasons of the Act 46 of 1983*.⁵ It provides visibility to violence which is private in nature and is influential enough to shake the age-old belief that tolerating violence within marriage is women's destiny. However, the provision under this case has become the means to settle personal grudges and has been severely misused.

According to National Crime Records Bureau (NCRB) reports on Crime in India 2022⁶, a total of 65,923 cases were resolved in courts. Notably, about 28.71% of the cases were settled without going to trial. Of these, nearly 82% were resolved through compromise, where parties—often the husband made a significant monetary settlement to the wife to avoid further legal proceedings. Around 7% of the cases were resolved through plea bargaining, while roughly 8% were quashed by the courts. On the other hand, 71.28% of the cases did go to trial, with a surprising 76.59% of them ending in acquittal. The conviction rate for cases that were tried stood at just 17.67%. Overall, only 12.60% of the total cases resulted in a conviction, which raises concerns. Furthermore, a staggering 92.27% of cases are still pending, many of which are expected to have similarly low conviction rates, subjecting the husband and his family to prolonged stress and hardship.

A lot of times out of personal vendetta, the husband and his other family members are also

³ *Arnesh Kumar v. State of Bihar* (2014), 8 SCC 273 (India)

⁴ Indian Penal Code, § 498A, No. 45 of 1860, India.

⁵ India, The Statement of Objects and Reasons, The Criminal Law (Amendment) Act, 1983, Act No. 46 of 1983.

⁶ National Crime Records Bureau, Ministry of Home Affairs, Government of India, *Crime in India 2022*, Vol. 1 (2023).

implicated and subjected to unnecessary harassment by being summoned to police stations. Even when there is no genuine need for arrest, it happens repeatedly which is seemingly driven by the complainant's ego or anger. It's widely known that many complaints often include exaggerated versions of incidents and tend to accuse more people than necessary. Further, going through such legal proceedings is not only long and drawn-out but also deeply stressful and painful for everyone involved. It is widely recognized that in these cases, even a brief period of imprisonment for the husband or his relatives can completely destroy the possibility of reaching an amicable resolution.

To substantiate the above stated arguments, we may look at a case filed by a wife under Section 498A of the Indian Penal Code, accusing members of her husband's family, including his five sisters. These sisters were now petitioning for the charges to be quashed. The High Court noted that one of the sisters had been married and living elsewhere since 1994, five years before the couple even got married, and another sister was only 15 years old at the time of the marriage, making their involvement highly improbable. The court observed that it seemed like "a wider net had been cast" to drag in the petitioners unfairly.

Similarly, in *Preeti Gupta & Anr v. State of Jharkhand & Anr*⁷, the wife accused several family members of physically assaulting her in Mumbai and demanding a luxury car. However, the facts showed that one of the accused had been living in Navsari, Gujarat, with her husband for over seven years, and another was a resident of Goregaon, Maharashtra. Neither of them had ever visited the place where the incident allegedly occurred or lived with the couple.

The Supreme Court noted that for offences with a punishment of up to seven years, a police officer cannot arrest someone simply based on accusations. The Court further emphasized that an arrest in such cases is only justified if the officer believes it is necessary to prevent further crimes, to stop evidence from being tampered with, or when it is not possible to bring the arrested person before the court. The lawmakers must understand that the ultimate object of justice is to find out the truth and punish the guilty and protect the innocent.

In a 2009 advisory, state governments were instructed to follow the procedures laid down by the Supreme Court in the **DK Basu v. State of West Bengal**⁸ case. It emphasized that arrests

⁷ Preeti Gupta & Anr. v. State of Jharkhand & Anr., (2010) 7 SCC 667 (India)

⁸ DK Basu v State of West Bengal, (1997) 1 SCC 416

should only be made after reasonable grounds for belief are established and encouraged resolving disputes through counseling, mediation, and conciliation between the parties. The misuse of this law, particularly highlighted in the **Arnesh Kumar** case, prompted the courts to issue guidelines for arrests under Section 498A. These guidelines aimed to ensure procedural fairness, striking a balance between protecting the rights of the accused and addressing genuine cases of abuse. The guidelines mandate that police officers cannot arrest someone under Section 498A without ensuring that the specific requirements under Section 41 of the Criminal Procedure Code (CrPC)⁹ are fulfilled. These requirements include an investigation into the necessity of the arrest and proper documentation of reasons.

Despite these safeguards, the misuse still persists which is clearly visible in the data stated above released by NCRB in 2022¹⁰. When it comes to custodial deaths which is a broader aspect covering the ambit of arrest, also showcase disappointing figures. The year 2019 recorded 1,723 which averaged five deaths per day.¹¹

When compared with international provisions, the gaps in enforcement of arrest guidelines and custodial management of the accused in India is further highlighted. For example, in the USA, the Fourth Amendment¹² demands "probable cause" for arrest, requiring police officers to have a reasonable belief, based on factual evidence, that the crime has been committed by the individuals. Similarly, the UK's Police and Criminal Evidence Act (PACE) 1984¹³ requires "reasonable grounds" for suspicion before an arrest is made. The Philippines also has conditions like commitment of crime in presence of investigating officer or if there is a probable reason for warrantless arrests under its Revised Rules of Criminal Procedure (2000), requiring legible grounds for suspicion.¹⁴

India's Section 41(1) CrPC attempts to imitate this by permitting warrantless arrests only in cases where there is reasonable suspicion or credible evidence. The notion of "probable cause" or "reasonable suspicion" is the basis of arrest laws worldwide. Furthermore, courts now take

⁹ Code of Criminal Procedure, § 41, No. 2 of 1974, India.

¹⁰ National Crime Records Bureau, Ministry of Home Affairs, Government of India, *Crime in India 2022*, Vol. 1 (2023).

¹¹ Dr J. Lakshmi Charan, *Custodial Torture in India: Intersection of Criminal Law and Constitutional Rights*, SCC Online (March 23, 2024) <https://www.sconline.com/blog/post/2024/03/23/custodial-torture-in-india-intersection-of-criminal-law-and-constitutional-rights/>

¹² U.S. Const. amend. IV.

¹³ Police and Criminal Evidence Act 1984, c. 60 (UK)

¹⁴ Revised Rules of Criminal Procedure, Rule 113, § 5, A.M. No. 00-5-03-SC (2000) (Phil.)

a more severe approach due to the abuse of Section 438 of the IPC (Anticipatory Bail provisions) by various accused to conduct additional crimes under other cognizable offenses, which typically results in the accused not being granted Anticipatory Bail. On theory, India's procedural safeguards are similar but in fact, because of delays, corruption, and mishandling of the judicial system, they frequently fall short.

8. STRATEGIC ACTIONS

Making the Indian Penal Code's Section 498A bailable and compoundable is one of the primary strategic objectives. This section is now non-bailable, which implies that an accused person may be taken into custody without being given the opportunity to post bail upon arrest. Major problems such as job loss or suspension result often for the accused as well as their relatives from this. However, if the offence is made bailable, it would reduce the possibility of arbitrary or rash arrests, providing comfort to innocent people caught in marital conflicts. Not only this, but this change would also aid in preventing the abuse of the court system for petty grudges.

Another crucial change would be to make Section 498A compoundable, which would enable the parties to potentially reach a mutually agreeable decision. Because the offense is non-compoundable within the current structure, the judicial system bars the complainant from withdrawing the accusations even if they so choose. This may hinder efforts at reconciliation and interfere with the couple's attempts to mend their relationship, which could ultimately result in a breakdown of the family structure. In *Ramgopal v. State of M.P.*¹⁵, the Supreme Court suggested that Section 498A be made compoundable in order to facilitate family reconciliation. This opinion has also been supported by the Law Commission, which stated in its 154th¹⁶ and 237th Reports¹⁷ that allowing settlements might encourage peaceful settlements of such disputes.

Additionally, authorities must be instructed to follow the guidelines laid by courts in various precedents and legislatures to avoid unnecessary arrests in 498A cases. These guidelines are crucial in preventing the misuse of the law, which could lead to unfair detentions and the misuse of legal provisions for financial or personal gain.

¹⁵ *Ramgopal v. State of M.P.*, (2010) 13 SCC 540 (India)

¹⁶ Law Commission of India, 154th Report on the Code of Criminal Procedure, 1973 (1996)

¹⁷ Law Commission of India, 237th Report on Compounding of (IPC) Offences (2011).

Lastly, Local Municipal Bodies related to family disputes must be constituted, which will dispose the function of laying stress on whether the case registered is a genuine case or just a case meant to harass the family of the husband. Such evidence can be used by the police to avoid arbitrary arrests and have a look into the matter before proceeding. By focusing on these reforms, the legal system would strike a balance between protecting women from genuine cases of cruelty and preventing the misuse of the law to punish innocent individuals.

9. CONCLUSION

The case “*Arnesh Kumar v. State of Bihar*” holds a position of great significance as it sets precedents for careful enforcement of law especially when it comes to marital relationships. It aims at protecting rights of the accused while maintaining the core intent of section 498A of IPC. The balanced approach will surely influence the future legal proceedings and would prevent misuse of law.

However, the decision also highlights a critical gap in the legal framework. Section 498A criminalizes violence within marriage. However, it does not criminalize rape within the relationship. The law thus maintains dual standards. A husband, if he physically abuses his wife, he may be penalized, however, if he rapes her, he is not punished. Instead of being seen as a tool to remedy a violent domestic situation it is erroneously portrayed as a measure ‘used by educated elite women to torment their husbands and in-laws to seek revenge’.

We can see from the case how an innocent man, who was subject to a frivolous case, had to run the doors of the court to finally seek relief from the Apex Court, the laws which were meant to save the women, has now become an undeterred weapon in their hands which has led to what constitutes a form of harassment.

The law-makers must underpin such issues and loopholes in the laws and strive to cure them. Such frivolous cases is a precipe to harass the family of the husband most of the times. Also it must be made sure that proper procedure is being followed.

10. REFERENCES

- i. Aman Singh & K. Nayan, 498A IPC—A Shield to Defend Women or a Weapon? 4 Indian J.L. & Legal Res. 1 (2022).

- ii. Tushar Singhal, *The Double-Edged Sword: Uncovering the Misuse of Section 498A IPC by Women in Marital Disputes*, SSRN (2024)
- iii. Tushar Suman, *Arnesh Kumar v. State of Bihar & Ors.*, 1 Indian J.L. & Legal Res. 5 (2023).
- iv. Jayati Khatter, *Guidelines for Arrest: Arnesh Kumar v. State of Bihar & Anr.*, 5 Indian J.L. & Legal Res. 4 (2022).
- v. National Crime Records Bureau, *Crimes in India Statistics* (2022)
- vi. K.D. Gaur, *Textbook on the Indian Penal Code* (2009).
- vii. Universal Law Publishing, *Indian Penal Code* (2009).
- viii. P. Gajmer & S. Tyagi, *Domestic Violence: An Overview of Sec 498A IPC—A Case Report*, 8 Indian J. Forensic & Community Med. 55 (2021).

