SAVE INDIAN FAMILY JHARKHNAD

(MEN'S RIGHTS ARE HUMAN RIGHTS)

संकल्प

# SANKALP

Nov-2022, Volume - II

On the occasion of International Men's Day

## Every Reform was Once an Opinion

**All India Helpline for Men**

**8882-498-498**

- Only time most people think about injustisce is when it happens to them
- The bitter truth-One Married man Commits Suicide every 8.3 minutes

Twitter : @Sifjharkhand
www.facebook.com/sifjharkhand20
Website : https://sifjharkhand.in

SIF Jharkhand is working for the cause of justice.


(MEN'S RIGHTS ARE HUMAN RIGHTS)

# Unleashing of Legal Terrorism by Misuse of Section 498-A of IPC.

# CONTENTS

SIP Jharkhand is inviting people to fight against gender biased laws like Section 498A of IPC, Dowry Prohibition Act, Domestic Violence Act, Maintenance Laws and saving institution of marriage/family in the country.

**SAVE MEN, SAVE NATION, SAVE CONSTITUTION**

Email Id: helpsifjharkhand@gmail.com, sifjhcare@gmail.com, contact@sifjharkhand.in

All India Helpline for Men: 8882-498-498

Twitter: @Sifjharkhand

Website: https://sifjharkhand.in

www.facebook.com/sif]harkhand20

Address: SIF Jharkhand
C/o Chandeshwar Singh,
Chuna Bhatta, P.0. - Kokar,
Ranchi, Jharkhand - 834001

# Introduction

Save Indian Family-Jharkhand (SIF-Jharkhand) works for safeguarding the interest of those men and their families who are implicated in false cases because of gross misuse of gender biased laws. SIF-Jharkhand provides free help & counselling to men and their families who are victimized by misuse of gender biased laws such as IPC Section 498A, Dowry Prohibition Act, Domestic Violence Act, parental alienation of child, and other cases of similar nature arising out matrimonial discord.

SIF-Jharkhand is a movement, a group of non-funded, non-profit, Non-Government Organization in India (NGO). SIF is a movement which promotes, associates with formation of various NGOs, which intend to work for Men's welfare and strongly believe in replacing the word Men/Women by Person and Husband/Wife by Spouse in any law/ Government Policy. SIF-Jharkhand is body registered under The Societies Registration Act, 1860. Jharkhand Registration No. 145/2020, Ranchi.

The main broad objectives of the group among many are:

- To spread legal awareness about Fundamental Rights, Social justice, the Constitution, etc.
- To provide legal help and counselling to needy people.
- To spread legal awareness against gender biased laws, abuse of Section 498A/Dowry Prohibition Act, DV Act, suicide by married men due to gender biased laws, abuse of old parents by their daughter in-laws, parental alienation of child.
- To provide counselling and support to men and their families in distress.
- To provide financial, emotional support to children affected by matrimonial disputes.
- To protect the institution of marriage & safeguard interest of old aged parents.
- To work for family and matrimonial harmony.
- To work for formation of Men's Commission, Ministry for Men, help line number for men, playing pivotal role in making laws gender neutral.

## Our Mission:

To help men and their families who are victims of gender biased laws and try to be catalyst to bring positive changes in their lives. To fight against gender biased laws and work for protection of Men's rights and save the reverent institution of marriage. To strive for creation of Men's commission and amendment in laws that are feminist and make it gender neutral. To work for family and matrimonial harmony.

## Our Vision:

To strive for creation of society which values rights of men and gender-neutral laws are enacted in all spheres of marriage, inheritance, procreation, personal and family laws.

# Unleashing legal terrorism through misuse of Section 498A IPC.

Section 498A of IPC and Sections 3,4 of Dowry Prohibition Act is most misused section in Indian Law. It has become a tool to harass husband and his family members. Since the section is non-bail able/cognizable, the husband and his family members are arrested by Police in most mechanical manner without proper investigation. Even distant relatives of husband are not sparred. When bail application is filled in the court, generally, it is the tendency of lower courts while hearing bail pleas to send both the sides to negotiation centre. And there, negotiation of money starts by the wife and her parents. Since, the husband is mostly in custody or fearing custody, they become easy prey to such un-scrupulous demands of wife. Section 498A has also become tool to extract money. The harsh law has become a source of blackmail and harassment of husbands and his family members. Once a complaint (FIR) is lodged with police under Section 498A and Section 3,4 of DP Act, it becomes an easy tool in the hands of the Police to arrest or threaten to arrest the husband and other relatives named in the FIR without even considering the intrinsic worth of the allegations and making a preliminary investigation.

The men's right movement in India stemmed from the feelings of oppression and injustice that came from the growing tide of gross misuse of women centric laws like Section 498A IPC, Dowry Prohibition Act. It stemmed from the understanding that there has been widespread neglect of men's welfare in India which has been aggravated by the growth of rude feminism and women's activism.

The corrupt elements in the police force in connivance with some lawyers have been making money using this law. Since a complaint by the wife results in a non-bailable warrant against the husband and his family members they run around and whatever to not get arrested by whatever means available to them. Unscrupulous elements have profited from "Section 498A IPC Jail and Bail Industry".

Laws like Section 498A IPC, Dowry Prohibition Act meant to empower women serve as weapons that perpetuate large scale human rights abuse against men, women and children. The irony is that laws designed to protect some women (read wives) often bring suffering to other women (Read mothers and sisters). There is a national commission for women. But there is no such commission for men. Men are committing suicide on being harassed by women, and false cases are being lodged against men and their family members.

It is fashionable to rope in all poor relatives of husband under Section 498A IPC even if they never lived together.

There has been increased tendency to employ provisions such as 498A IPC as instruments to settle personal scores against the husband and his family members.

The 243rd Law Commission report highlighted the reason for amendment of Section 498A IPC. The Law Commission pointed out that the police officials must exercise their powers cautiously in case of "cognizable cases" i.e. the power must be exercised sparingly under the context of Sections 41 and 41A of the Criminal Procedure Code, 1973.

In Sushil Kumar Sharma v. Union of India, the Supreme Court lamented that in many instances,

complaints under Section 498A were being filed with an oblique motive to wreck personal vendetta and observed, " it may therefore become necessary for the Legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. It was also observed that by misuse of the provision, a new legal terrorism can be unleashed."

Honourable Supreme Court in Rajesh Sharma and Ors. vs. State of U.P. has observed: Section 498A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife 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. The expression 'cruelty' in Section 498A covers conduct which may drive the woman to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. It is a matter of serious concern that large number of cases continues to be filed under already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant and resultant arrest may ruin the chances of settlement.

In Arnesh Kumar vs. State of Bihar Honourable Supreme Court observed: There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed- ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested.

Following directions were issued by the Apex Court in Arnesh Kumnar judgment.

1. All the State Governments to instruct its Police officers not to automatically arrest when a case under section 498Aof the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC.
2. All Police officers be provided with a check list containing specified sub-clauses under section 41(1)(b)(ii).
3. The Police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention.
4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the Police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention.
5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing.

6. Notice of appearance in terms of Section 41A of Cr. PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing.

7. Failure to comply with the directions aforesaid shall apart from rendering the Police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of Court to be instituted before High Court having territorial jurisdiction.

8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

In Preeti Gupta & Anr. Vs. State of Jharkhand Honourable Supreme Court observed that it is a matter of common experience that most of these complaints under section 498A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

In Geeta Mehrotra & Anr. Vs. State of UP Honourable Supreme Court observed, it would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of G.V. Rao vs. L.H.V. Prasad & Ors. reported in (2000) 3 SCC 693 wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that: there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their young days in chasing their cases in different courts. The view taken by the judges in this matter was that the courts would not encourage such disputes.

In K. Subba Rao v. State of Telangana, Apex Court observed that, the Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.

The fact that Section 498A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision.

Misuse of Section 498-A in many cases has been judicially noticed by the Apex court as well as various High Courts.

A comparison of the conviction rate of all IPC crimes and the cases under 498A reveals that the conviction rate of the cases under 498A has continuously reduced. The conviction rate of cases under 498A has drastically reduced from 21.9% in 2006 to 13% in 2018. Conviction rate of 498A cases in 2018 is almost a quarter of conviction rate of all IPC crimes. Only 1 out of 7 cases under Sec 498A resulted in a conviction in 2018.

Data indicates that while the highest numbers of FIRs are filed under Section 498A, the conviction rate is one of the lowest.

National Crime Records Bureau data showed that the number at the number of cases registered under Section 498A of IPC or 'cruelty by husband or his relatives' registered an increase of 21.3% in 2019 compared with 2018.

According to the NCRB data of the Government of India in the year 2021, against 28,680 married women, 81,063 married men were forced to commit suicide due to matrimonial disputes.

## Suggested Remedial Measures

It is impeccable need of the hour to look beyond Arnesh Kumar judgment, in order to control the misuse of Section 498A, D.P. Act and D.V. Act with the following immediate changes in the statute from the Govt i.e. the legislature:

1. Making Section 498A and Section 3/4 of D.P. Act, bailable sections and these sections must be compoundable as they emanate from domestic tiff.
2. Making these sections non-cognizable, FIR can only be registered after due investigation and permission from the magistrate.
3. No arrest of old aged parents and family members of husband. The word relative is required to be removed from Section 498A so as to stop its misuse against innocent family members of the husband.
4. Gender neutral law is required. Wife also perpetrates cruelty on husband and his parents, there are so many instances that are reported daily, so a new Section 498B to counter this menace should be brought in IPC at par with Section 498A.
5. Dowry givers must also be punished. They must not be excused under the grab of gender biased law.
6. Making domestic Violence act as gender neutral. Provision in DV Act for mother-in-laws to file cases against their daughter-in-laws if they are subjected to inhuman treatment at the hand of their daughter-in-laws.
7. Need of gender neutral laws, helpline for men, Commission for men, counselling centers for men and their families in every district.

**Samir Kumar Jha**
Activist and founding member
SIF Jharkhand

***Neither thief can steal supreme bliss i.e knowledge, Nor Sovereign power can confiscate the same. Neither it is divisible, nor same is burdensome. It gets augmented regularly with sharing. Knowledge is supreme treasure among all wealths.***

# CHARITY & SOCIAL ACTIVITIES


# FIRST ADDITION INAUGURATION



# OTHER ACTIVITIES

# Matrimonial Disputes and Their Impact on Children

Family is considered to be one of the most basic units in a civilized society. Out of all the social institutions, family is the most immediate one, and all of the exposure that a child gains in her/her early years is through family itself. Because of this, the family holds a significant influence on an individual's life and personality. Matrimonial disputes not only create a challenge for the married couple but can also cause emotional and mental distress to the entire family, most importantly the children. The children turn out to become the real victim of the disagreements and often find themselves helpless in such situations.

Children require a safe and healthy environment to grow up to their potential and they often require a good role model to help them navigate through life. A child continuously learns from their environment ever since birth. They learn most from their parents and their relationships. They undergo various physical, social, and emotional changes in life that are dependent on the nature of the relationships that surround them. Children with an unstable home environment are potentially at risk of developing emotional and behavioral disorders. Continuous disharmony between parents can hinder the developmental process of a child.

Marital conflict is a significant source of stress for children of all ages. These influences can be direct or indirect eliciting unhealthy internalized or externalized behavior in children.

The direct impact of matrimonial disputes on children:

1. Poor academic record: children with issues at home are often neglected by their parents and this leads them to perform poorly in school.
2. Disturbed mental health: conflicts can have an adverse impact on the mental health of a child and this could lead to long-term issues like stress and anxiety.
3. Substance abuse: Youth in India is already very vulnerable to the problem of addiction and young adults often resort to alcohol and drugs when they do not get the required care and attention from their parents.
4. Juvenile delinquency: the factor of neglect can also amount to petty crimes by children that belong to a broken household.

Research indicates that during infancy, exposure to distress can result in hampered physical growth and psycho-social withdrawal. Young children may express fear, anxiety, anger, and sadness by displaying overt behavior like being non-compliant or being aggressive in school and among peers. They may also have trouble sleeping and communicating their feelings to their parents and act socially withdrawn. Conflicts during adolescence can result in decreased self esteem, isolation, and delinquency.

Children often feel emotionally insecure in the family when they see their parents arguing. As a result, they may act out, or try to stop the fight, or even hide in their rooms and withdraw themselves in such situations. They can learn these unhealthy patterns of conflict resolution and use them in their adult relationships as well. Some children might start blaming themselves for their parent's conflicts and that can lead to a breakdown of self-worth and depression.

Sometimes parents tend to displace their anger towards their children and punish them or maybe give them less attention due to preoccupation with the conflicts. This can lead to a hindrance

in the parent-child relationship, even in the long run. Children may also start feeling neglected and unwanted or unloved, making them feel more insecure. Children may face loyalty dilemmas and they may take sides of either parent especially if one is lacking in devoting energy and time to the child.

Parents must understand that it's not the conflict but how they manage the conflict that determines its effect on their children.

There is no comprehensive law in India to deal with emotional aspects of child. Courts also refrain from going into finer details of child's problem. Parameters of Child welfare are decided on clumsy ground and many times vital issues are missed out. In such situation child becomes nothing more than mute spectators and seems to be helpless.

**Conclusion:** Child is precious gift given by God who must not be dragged into matrimonial disputes. As both husband and wife are responsible for bringing child into this world and hence it's their duty to give proper love & care and attention else the consequences can be very serious and irreversible. Matrimonial disputes may sometimes be inevitable but parent should be conscious so as to minimize its impact on child behavior. Judiciary should genuinely be more sensitive towards child welfare and framing of comprehensive law is need of hour.

**Samir Agrawal**
Member, SIF-Jharkhand

***Justice is the greatest interest of man on earth. It is the ligament which holds civilized beings and civilized nations together.***

# वैवाहिक विवाद में पिता के अधिकारों की अवहेलना और बच्चों पर इसका प्रभाव

हमारे समाज के इतिहास में सबसे बुनियादी सामाजिक संरचनाओं में से एक संयुक्त परिवार है।

सभी सामाजिक संस्थाओं में से, परिवार सबसे प्राचीन है, और एक बच्चे को अपने प्रारंभिक वर्षों में जो भी परिवेश प्राप्त होता है, वह परिवार के माध्यम से ही होता है। इसलिए परिवार व्यक्ति के जीवन और व्यक्तित्व को महत्वपूर्ण रूप से प्रभावित करता है। वैवाहिक संघर्ष न केवल विवाहित जोड़े के लिए एक समस्या पेश करते हैं, बल्कि वे पूरे परिवार, विशेषकर बच्चों के लिए भावनात्मक और मानसिक रूप से तनावपूर्ण भी हो सकते हैं। बच्चे असहमति के असली शिकार बन जाते हैं और अक्सर ऐसी स्थितियों में खुद को असहाय पाते हैं। बच्चों को जीवन में आगे बढ़ने में मदद करने के लिए अक्सर एक सकारात्मक रोल मॉडल की आवश्यकता होती है। जन्म के क्षण से ही बच्चा अपने परिवेश से सीखना जारी रखता है। साथ ही, बच्चे के माता–पिता और उनके रिश्तेदार उनके लिए सबसे बड़े शिक्षक हैं। वे जीवन में विभिन्न शारीरिक, सामाजिक और भावनात्मक परिवर्तनों से गुजरते हैं जो उनके आसपास के संबंधों की प्रकृति पर निर्भर होते हैं। अस्थिर घर के वातावरण वाले बच्चों में भावनात्मक और व्यवहार संबंधी विकार विकसित होने का खतरा होता है।

पति–पत्नी के बीच का संबंध आदर्श रूप से मधुर और सामंजस्यपूर्ण होना चाहिए, लेकिन ऐसा हमेशा नहीं होता है। दुनिया के लगभग हर समुदाय ने किसी न किसी समय आदर्श विवाह के विघटन को देखा है। इसके बावजूद, माता–पिता के विवाह में कटुता के कारण बच्चों का व्यक्तित्व खंडित नहीं होना चाहिए। अधिकांश वैवाहिक विवाद में बाल अभिरक्षा का अधिकार दुर्भाग्य से एक नया मुद्दा बन जाता है, जिसका सीधा असर बच्चे पर पड़ता है। आज भी बिना किसी भी तर्कसंगत या वैज्ञानिक आधार पर माना जाता है कि माँ नैसर्गिक रूप से बच्चे की हितैषी है, जिस कारण पिता के अधिकारों की लंबे समय से अनदेखी या अवहेलना की जा रही हैं। ज्यादातर मामलों में, केवल माँ को ही बच्चे की सुरक्षा का अधिकार दिया जाता है। प्रति सप्ताह कुछ घंटे या 15 दिन में कुछ घंटे अपने ही बच्चे के साथ बिताने का अधिकार पिता के हिस्से में शामिल है, जैसे कि यह दर्शाया जाता हैं कि पिता सिर्फ एटीएम मशीन हैं और वह अपने बच्चों के साथ जीवन के पल नहीं बिता सकता या अतिथि के जैसा अपने बच्चे से मिले।

रिचर्ड ए वर्शाक ने "डिवोर्स पॉइजनः हाउ टू प्रोटेक्ट योर फैमिली फ्रॉम बैडमाउथिंग एंड ब्रेनवॉशिंग" में में टिप्पणी दिए हैं कि, ''एक बच्चे को एक पिता की जरूरत होती है, न कि एक अतिथि की। रिचर्ड और उनके सहयोगियों द्वारा वैवाहिक विवाद से जुड़े मुद्दों पर किए गए शोध के अनुसार, जब बच्चे और उनके पिता अलग हो जाते हैं, तो वे एक–दूसरे के साथ अधिक समय बिताना चाहते हैं। रिचर्ड का विचार था कि बच्चों के पालन–पोषण में पिता की जिम्मेदारी को भौतिक आवश्यकताओं की संतुष्टि तक सीमित करना अन्यायपूर्ण था। रिचर्ड के अनुसार, जो बच्चे अपने माँ कि साथ बिताए हुए पल कि अनुसार में पिता के साथ समान रूप व्यतीत करते हैं वैसे बच्चों का अकादमिक, बौद्धिक और सामाजिक परिणाम अपेक्षाकृत बेहतर होते हैं, एकल माता–पिता की परिवेश की अपेक्षा।

लंबे समय से इस बात का नकारा जाता है कि

पिता बच्चे के सामाजिक विकास नहीं कर सकता। पितृसत्तात्मक व्यवस्था में यह स्वीकार किया जाता है कि माँ–बच्चे का रिश्ता ही खास होता है और उसका वर्चस्व किसी भी अन्य की तुलना में अधिक महत्वपूर्ण होता है, जो कि यह धारणा गलत है। वैवाहिक विवाद सभी उम्र के बच्चों के लिए तनाव का एक मुख्य कारण है। ये प्रभाव प्रत्यक्ष या अप्रत्यक्ष रूप से बच्चों में अस्वस्थ आंतरिक या बाहरी व्यवहार को प्रेरित कर सकते हैं।

माइकल लैम्ब और अन्य विशेषज्ञों के अनुसार, जीवन के पहले कुछ वर्षों के दौरान अपने पिता के साथ एक नवजात शिशु की बातचीत उसी तरह होती है जैसे उसकी मां के साथ होती है। आधुनिक विचारधारा वाले द्वारा यह तर्क दिया जाता है कि चूंकि एक महिला आईवीएफ के माध्यम से गर्भवती हो सकती है, बच्चों को पिता की आवश्यकता क्यों है और ऐसी बातें कहकर पिता के अस्तित्व को पूरी तरह से नकार देते है। आधुनिक विज्ञान हास्यपूर्ण ढंग से एकतरफ हमें पिता के बिना जीने की कल्पना करने की अनुमति तो देता है, परंतु ऐसा करने से वह एक ऐसी पीढ़ी के निर्माण की बात करता है जो कि अवसादग्रस्त हो।

सारा मैकलानहन और डी श्नाइडर ने 'द कैजुअल इफेक्ट आफ फादर एब्सेंस' में बच्चों के जीवन में पिता के अनुपस्थिति के कारण नकारात्मक प्रभाव के बारे में विस्तार से बताए है। डी. पैक्वेट के अध्ययन के अनुसार, ''द फादर चाइल्ड रिलेशनशिप एक्टिवेशनः ए न्यू थ्योरी टू अंडरस्टैंडिंग द डेवलपमेंट ऑफ इन्फेंट मेंटल हेल्थ,'' जिन बच्चों के जीवन में पिता कि उपस्थिति हैं, वैसे बच्चे नई चीजें सीखने, चुनौतियों को दूर करने और अजनबियों के बीच बहादुरी से कार्य करने में बेहतर और अपने आप को बेहतर बनने के लिए प्रेरित करते हैं।

यह माना जाता हैं कि ऑक्सीटोसिन हार्मोन जन्म के बाद अपनी संतान के साथ मां के शुरुआती लगाव में एक महत्वपूर्ण भूमिका निभाता है, जो कि यह अवधारणा गलत हैं। सच्चाई यह हैं कि इस हार्मोन का स्राव उन पिताओं में भी आरंभ हो जाता है जो अपने नवजात बच्चों के पालन–पोषण में संलग्न होते हैं। हमें यह समझना चाहिए कि पिता के बिना बच्चे के व्यक्तित्व का विकास अधूरा है।

## बच्चों पर वैवाहिक विवादों का सीधा प्रभावः

1. खराब शैक्षणिक रिकॉर्डः घर में समस्याओं वाले बच्चों को अक्सर उनके माता–पिता द्वारा उपेक्षित किया जाता है और इससे उनका स्कूल में खराब प्रदर्शन होता है।

2. परेशान मानसिक स्वास्थ्यः वैवाहिक विवाद बच्चे के मानसिक स्वास्थ्य पर प्रतिकूल प्रभाव पड़ सकता है और इससे तनाव और चिंता जैसे दीर्घकालिक मुद्दे हो सकते हैं।

3. मादक द्रव्यों का सेवनः भारत में युवा पहले से ही नशे की समस्या की चपेट में हैं और युवा वयस्क अक्सर शराब और नशीली दवाओं का सहारा लेते हैं, जब उन्हें अपने माता–पिता से आवश्यक देखभाल और ध्यान नहीं मिलता है।

4. किशोर अपराधः टूटे हुए घर या वैवाहिक विवाद में उपेक्षा हुए बच्चों द्वारा छोटे–मोटे अपराध भी कर सकते हैं।

अनुसंधान द्वारा यह मालूम चला हैं कि शैशवावस्था के दौरान अपने माता–पिता को बहस करते हुए देखने पर बच्चे अक्सर परिवार में भावनात्मक रूप से असुरक्षित महसूस करते हैं, और शारीरिक विकास और मनो–सामाजिक वापसी में बाधा आती कुछ बच्चे अपने माता–पिता के विवादो के लिए खुद को दोष देना शुरू कर देते हैं और इससे उनका आत्मविश्वास टूटने लगता हैं और अवसाद का शिकार हो जाते हैं। कभी–कभी माता–पिता अपने बच्चों के प्रति अपना गुस्सा निकाल देते हैं और उन्हें दंडित करते हैं या शायद विवादो में व्यस्तता के कारण उन्हें कम ध्यान देते हैं, अन्ततः लंबे समय तक माता–पिता–बच्चे के रिश्ते में बाधा उत्पन्न होने लगता हैं। जिस कारण बच्चे भी अपने आप उपेक्षित और अवांछित या अप्राप्य महसूस करना शुरू कर देते हैं, जिससे वे असुरक्षित महसूस करते हैं। बच्चों को वफादारी संबंधी दुविधाओं का सामना करना पड़ता है और वे माता–पिता में से

किसी एक का पक्ष लेते हैं, खासकर जब माता पिता में कोई एक अपने बच्चे को समय नहीं दे पाते है।

ऐसे में माता–पिता को समझना चाहिए कि यह विवाद को आपस में तालमेल मिलाकर विवाद को जड़ से खत्म करने की जरुरत हैं, जो उनके बच्चों के भविष्य को निर्धारित करता है। बच्चे के भावनात्मक पहलुओं से निपटने के लिए भारत में कोई व्यापक कानून नहीं है। न्यायलय बच्चे की समस्या के बारीकी से विवरण में जानने से भी परहेज करती हैं। बाल कल्याण के मापदंड अनाड़ी आधार पर तय कर दिए जाते हैं जिस कारण कई बार महत्वपूर्ण मुद्दे छूट जाते हैं। ऐसी स्थिति में बच्चे मूकदर्शक बनकर रह जाते हैं और वह खुद को असहाय महसूस करते है। बेब फॉरेस्ट यूनिवर्सिटी में मनोविज्ञान के प्रोफेसर लिंडा नीलसन के अनुसार, साझा परवरिश में पलने वाले बच्चे में चिंता, निराशा और तनाव से संबंधित विकार होने की संभावना कम होती है। वह स्वीकार करती है कि अगर न्यायलय साझा पालन–पोषण का आदेश देती हैं तो शुरुआती दौर में अदालत को विरोध का सामना करना पड़ सकता है, कुछ समय पश्चात् दोनों जोड़े इसके लिए सहमत होंगे, जो बच्चों के भविष्य के लिए आवश्यक है। पश्चिमी देशों में पिता की भूमिका और बच्चों के जीवन में पड़ने वाले सकारात्मक प्रभावों पर निरंतर शोधों ने वहां की न्यायिक व्यवस्था में अलगाव की स्थिति में साझा परवरिश की अवधारणा को प्रतिस्थापित किया है, परंतु भारत में ऐसे शोधों का अभाव पिता की अवहेलना का कारण बन रहा है। निरंतर बढ़ते हुए निजी मतभेदों के बीच ऐसा मानना हैं कि पति–पत्नी में अलगाव ही न हो, तो यह अव्यावहारिक होगा। ऐसी परिस्थितियों में न्यायपालिका को साझा परवरिश की अवधारणा को ध्यान में रखना चाहिए। अन्यथा, बच्चों के हितों के विषय को केवल लिखित रूप में संबोधित किया जाएगा।

**निष्कर्ष :** बच्चे ईश्वर द्वारा दिया गया अनमोल उपहार है जो इस दुनिया में बच्चे को लाने के लिए पति और पत्नी दोनों जिम्मेदार ही हैं उन्हें वैवाहिक विवादों में नहीं घसीटा जाना चाहिए। इसलिए बच्चे को दोनों का उचित प्यार और देखभाल और ध्यान देना उनका कर्तव्य है अन्यथा परिणाम बहुत गंभीर हो सकते हैं। वैसे बच्चे अपने माता – पिता के साथ समान समय व्यतीत करते हैं, वैसे बच्चों का अकादमिक, सामाजिक परिणाम अपेक्षाकृत बेहतर होते हैं, एकल माता–पिता के अपेक्षा।

यह ध्यान रहे की पिता एक एटीएम मशीन नहीं हैं, जिससे उसकी पत्नी अपने और अपने बच्चों के लिए सिर्फ पैसे की मांग करे और वैवाहिक जीवन से विमुख रहे। साथ ही बच्चे को पिता से अलग न करे, न ही मिलने तथा बातचीत करने से रोके।

न्यायपालिका बच्चे और पिता को एक साथ समान रूप से समय व्यतीत करने का आदेश भी दे जैसे कि माता अपने बच्चे के साथ करती हैं, जिससे बच्चों का भविष्य उज्जवल हो सके और साथ ही बच्चों को एक पिता की कमी और प्यार न खले।

अलगाव की स्थिति में, भारतीय न्यायिक प्रणाली को साझा परवरिश के विचार को प्रतिस्थापित करना चाहिए, अन्यथा ऐसा प्रतीत हो रहा हैं की सिर्फ दिखावे के लिए बच्चों के हित में केवल मौखिक–लिखित रूप में संबोधित किया जाता हैं।

अतः न्यायपालिका को वास्तव में बाल कल्याण के प्रति अधिक संवेदनशील होना चाहिए और व्यापक कानून बनाने की आवश्यकता है।

**धर्मेंद्र कुमार मधुकर**
सदस्य, SIF-Jharkhand

# Fundamental Rights and its Protector Supreme Court.

## Introduction

The Constitution is the supreme law of the land. The Supreme Court is the guarantor of the Fundamental Rights of the citizens and the guardian of the Constitution. The Constitution gives the role of Supreme Court as the protector and guardian of fundamental rights through Article 32. The Constitution makers gave the right of a citizen to move the Supreme Court under Article 32 and claim an appropriate writ against the unconstitutional infringement of his fundamental rights, which itself is a fundamental right. The Supreme Court acts as the interpreter of fundamental rights and has been seeking to integrate directive principles with fundamental rights. Article 13 gives teeth to the fundamental rights. Article 13(2) states that the State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

## Fundamental Rights

The Constitution provided for seven fundamental rights i.e.

1. Right to equality (Articles 14-18)
   a. Article 14:Equality before law and equal protection of laws.
   b. Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
   c. Article 16: Equality of opportunity in matters of public employment.
   d. Article 17: Abolition of untouchability and prohibition of its practice.
   e. Article18: Abolition of titles except military and academic.

2. Right to freedom (Articles 19-22)
   a. Article19: Protection of six rights; freedom of speech and expression, assembly, form association, unions, co-operative societies, movement, residence, profession.
   b. Article 20: Protection in respect of conviction for offences.
   c. Article 21: Protection of life and personal liberty.
   d. Article 21A: Right to elementary education.
   e. Article 22: Protection against arrest and detention in certain cases.

3. Right against exploitation (Articles 23-24).
   a. Article 23: Prohibition of traffic in human beings and forced labour.
   b. Article 24: Prohibition of employment of children in factories, etc.

4. Right to freedom of religion (Articles 25-28).
   a. Article 25: Freedom of conscience and free profession, practice and propagation of religion.
   b. Article 26: Freedom to manage religious affairs.
   c. Article 27: Freedom as to payment of taxes for promotion of any particular religion.
   d. Article 28: Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

5. Cultural and educational rights (Articles 29-30)
   a. Article 29: Protection of language, script, and culture of minorities.

b. Article 30: Right of minorities to establish and administer educational institutions.

6. Right to constitutional remedies (Article 32) Article 32: Right to move Supreme Court for the enforcement of fundamental rights including Writs of habeas corpus, mandamus, prohibition, quo warranto, and certiorari.

However, in this write up we would focus mainly on Article 14 & 21.

## Article 14: Equality before law

Article 14 equality before law states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The article thus bars discrimination and prohibits discriminatory laws. This provision confers rights on all persons whether citizens or foreigners. Moreover, the word person includes legal persons, statutory corporations, companies, registered societies or any other type of legal persons. The concept of equality before law is an element of the concept of Rule of Law. The Honourable Supreme Court has held that the Rule of Law is a basic feature of the Constitution. Equality before law connotes the absence of any special privileges in favour of any person, the equal subjection of all persons to the ordinary. Article 14 bars discrimination and prohibits discriminatory laws. Article 14 also embodies a guarantee against arbitrariness on the part of the administration. No law ought to confer excessive discretionary power on any authority. Uncontrolled discretionary power may degenerate into arbitrariness, or may result in discrimination and thus contravenes Article 14 which bars discrimination.

Justice PN Bhagwati enunciated the same principle in Maneka Gandhi vs. Union of India AIR 1978 SC 597 in the following words: "….when a statute vets unguided and unrestricted power in an authority to affect the rights of a person without laying down any policy or principle which is to guide the authority in exercise of this power, it would be affected by the vice of discrimination since it would leave it open to the Authority to discriminate between persons and things similarly situated."

The notable principle developed out of Article 14 is that every action of the government or any of its instrumentalities must be informed by reason. When there is arbitrariness in government action, Article 14 comes to life and judicial review strikes down such an action. In Shrilekha Vidyarthi vs. State of UP AIR 1991 SC 537 Honourable Supreme Court observed: It is now too well settled that every state action, in order to survive must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us.

The Natural Justice is also an integral part of administrative process. Article 14 guarantees a right of hearing to the person adversely affected by an administrative order. In Delhi Transport Corporation vs. DTC Mazdoor Union AIR 1999 SC 564 Honourable Supreme Court has stated that the audi alteram partem rule in essence enforces the equality clause in article 14 and it is applicable not only to quasi judicial bodies but also to administrative orders adversely affecting the party in question unless the rule has been excluded by the Act in question.

The concept of equality before law is an element of the concept of Rule of Law propounded by Sir AV Dicey, the British Jurist. His concept has the following three elements or aspects: Absence of arbitrary power, that is, no man can be punished except for a breach of law. Equality before the

law, that is, equal subjection of all citizens (rich or poor, high or low, official or non-official) to the ordinary law of the land administered by the ordinary law courts. The primacy of the rights of the individual, that is, the Constitution is the result of the rights of the individual as defined and enforced by the courts of law rather than the Constitution being the source of the individual rights. But in our Indian system, the Constitution is the source of the individual rights.

## Article 21: Protection of life and personal liberty

Article 21 states that no person shall be deprived of his life or personal liberty except according to procedure established by law. It is now well established that Article 21 has both a negative as well as an affirmative dimension. In AK Gopalan vs. State of Madras AIR 1950 SC 27, the Honourable Supreme Court took narrow view with regard to interpretation of Article 21. In the Gopalan case the Preventive Detention Act 1950 was challenged. The Court rejected the American doctrine of due process of law, refused judicial review. In this case the Court held that protection under Article 21 is available only against arbitrary executive action and not from arbitrary legislative action. The Honourable Court interpreted Article 21 extremely literally and opined that the expression procedure established by law only meant any procedure which was laid down in the statute by the competent legislature to deprive a person of his life or personal liberty and that it was not permissible to read in the article any such concept as natural justice, or due process of law, or reasonableness. Also, that the court ruled that each fundamental right was independent of each other and that Article 19 did not apply where Article 21 applied. Gopalan judgment held the field for over 25 years during which period the right to life did not have much of a security. However in Maneka case, the very first case which came before the court after the emergency, the Supreme Court overruled its judgments in Gopalan Case by taking a wider interpretation of Article 21. In Maneka Gandhi case, which was related to the issue of a passport, the Court under the leadership of Justice PN Bhagwati held that the right to life and liberty of a person can be deprived by a law provided the procedure prescribed by that law is reasonable, fair and just. In other words it introduced the concept of due process of law. The Court held that Article 21 and Article 19 have to be read together and so the procedure affecting any of the rights had to be reasonable, the procedure established by law in Article 21 must conform to Article 14 as well, the word procedure in Article 21 in itself meant right and just and fair procedure and not arbitrary fanciful or oppressive and any procedure which was not right, just and fair was no procedure at all and failed to meet the standard of Article 21. A nexus has been established between Articles 21, 19 and 14. Maneka Gandhi judgment completely overturned Gopalan judgment and ushered in a revolution in judicial thinking about Article 21. Maneka Gandhi judgment has helped in the administration of criminal justice. The Supreme Court emphasized the need of speedy trial in criminal cases, free legal aid to poor prisoners facing a prison sentence. The Supreme Court in DK Basu vs. State of West Bengal AIR 1997 SC 610 had stated that custodial violence, including torture and death in the lock-ups, strikes a blow to the rule of law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. The Court issued a list of eleven guidelines in addition to the Constitutional and Statutory Safeguards which were to be followed in all cases of arrest and detention.

Apart from improving the administration of criminal justice, the Supreme Court has used Article 21 creatively to improve the quality of life in the country and to imply therefrom a bundle of rights for the people. Article 21 has been given widest interpretation by the Supreme Court. In arguing that life in Article 21 does not mean merely animal existence but living with human dignity. In Bandhua Mukti Morcha vs. Union of India AIR 1984 SC 802 the Supreme Court gave expanded interpretation of Article 21 which is the heart of Fundamental Rights, it said……to live human dignity, free from exploitation. It includes protection of health and strengths of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief."

The Supreme Court has reaffirmed its judgments in Maneka case in the subsequent cases. It has declared the following rights as part of Article 21: Right to live with human dignity, right to livelihood, right to health, right to shelter, right to free legal aid, right against solitary confinement, right to speedy trial, right against handcuffing, right against in-human treatment, right against delayed execution, right against custodial harassment, right to fair trial, right of prisoner to have necessities of life, right not to be driven out of state, right against public hanging, right to privacy, right to information, right to emergency medical aid.

Source: The Constitution of India: DD Basu

The Constitution of India: Bare Act

https://judis.nic.in

**Prahalad Prasad**
Men's Rights Activist
Founding member SIF-Jharkhand

**पुरुष कमाता है**

**पुरुष बनाता है**

**पुरुष बचाता है**

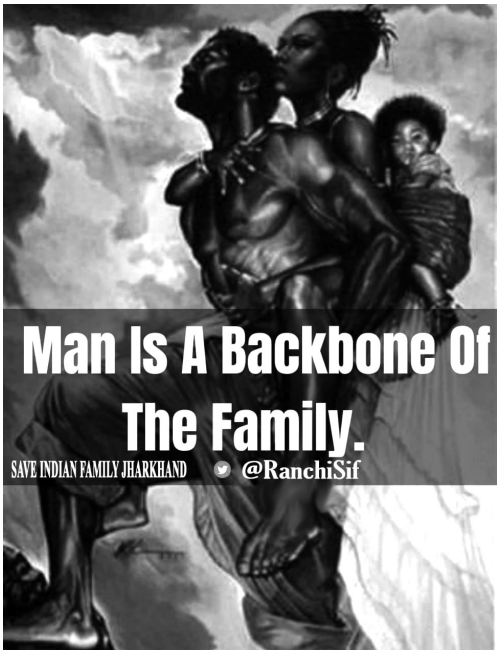
**पुरुष बोझ उठाता है**

**पुरुष आविष्कार करता है**

**पुरुष समाज और परिवार**

**को जोड़े रखता है**

**इसीलिए देश तोड़ने के लिए**
**पुरुष को तोड़ा जा रहा है**



# Bail Reforms and Time Bound Disposal of Bail Applications Especially in Matrimonial Matters.

It is pertinent to state that there is immediate need of bail reforms and time bound disposal of bail applications (both Regular & Anticipatory) especially in cases pertaining to Section 498A IPC, matrimonial matters.

It is manifest in Article 21 of the Constitution that Right to life & liberty of a person is one of the basic fundamental rights bestowed upon the citizens of this country. In all its manifestations & connotations human liberty is a priceless treasure for a human being. Honourable Supreme Court has stated that liberty is founded on the bedrock of the constitutional right and accentuated further on the human rights principle. It is in fact grammar of life. It is most prized thing. The sanctity of liberty is the fulcrum of any civilized society. It is cardinal value on which the civilization rests. It cannot be allowed to be paralyzed and immobilized. Deprivation of liberty of person has enormous impact on his mind as well as body. A democratic body polity which is wedded to the rule of law, anxiously guards' liberty.

The administration of criminal justice is to protect the rights enshrined in the Constitution of the country. People languish in jails for years for need of bail. Poor prisoners have no surety to pay for their bail bond; hence they stay in prisons for longer period than they are supposed to stay. There must be more compassion to administration of justice in the country and humanistic approach in criminal justice system is need of the time. The prisons in India are overcrowded with under trials. The under trials in most prisons comprise more than fifty percent of the prison population, in some prisons the percentage is even more than seventy percent. The most dreadful aspect of criminal justice system in the country is long incarceration of prisoners in jail pre-trial. The pertinent question that crops up why prisoners languish in jails for so long, is there no law to help them.

The Competent Courts allowing bail either regular or anticipatory under Cr.PC passes discretionary order to its satisfaction and also as to value of surety required to execute bail bond from case-to-case basis. The courts exercise full discretionary power to grant bail from cases to case basis as there is not clear-cut guideline in Cr.PC as to when to grant bail & when not. The Code does not either mention the amount of security that is required to be executed by the accused to secure his release. It is the discretion of the courts to order the value of the bail bond to be executed. Ironically courts are mostly not sensitive to the social & monetary status of the accused. Whenever any person arrested by Police approaches the court to release him on bail, it becomes bounden duty of court to decide his bail application at the earliest by a reasoned order. But in most cases, the bail applications are kept pending for long and are finally disposed in mechanical manner not being sensitive to the right of the accused. The Courts in most cases demand high value of bail bonds to be executed to secure release as a result of which most prisoners are unable to furnish such high value bail bonds and languish in jails for years.

In Bhim Singh v. Union of India, the Honourable Supreme Court observed that Central Government must take steps in consultation with the State Governments in fast tracking all types of criminal cases so that criminal justice is delivered timely & expeditiously. In the same case in a further order it was noticed that more than 50% of the prisoners in various jails are under trial prisoners. In spite of incorporation

of Section 436A in Cr.PC under trial prisoners continue to remain in prisons in violation of the mandate of the said section. Accordingly, the Court directed jurisdictional Magistrate/Chief Judicial Magistrate/Session judge to hold one sitting in a week in each jail/prison for 2 months for effective implementation of Section 436A. It was noted that 67% of the prisoners in the jails were undertrial prisoners.

In Hussainara Khatoon v. State of Bihar 1979, the Honourable Supreme Court said "It is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek his liberation through the court's process that he should have legal services available to him. The Court also held that detention in jail of the under-trial prisoners for periods longer than the maximum term for which they would have been sentenced, if convicted, is totally unjustified and in violation of the fundamental right to personal liberty under Article 21."

It is to accentuate on the fact that a very terrible aspect of the system of criminal justice is long pre-trial incarceration of the accused persons. The poor prisoners have to stay in jail awaiting trial because there is no one to post bail for them. It is big shame for the law which keeps people in jail for years on end without trial. Any procedure which keeps large number of people behind bars without trial cannot be said to be just and fair and is violative of Article 21. **Bail not jail is dominant principle of criminal law practiced by any mature democracy and in India often in its breach**. There are times when despite long pretrial jail, the case may end with an acquittal. The need for arrest is to secure presence of the accused for investigation, prevent further crimes and escape, make the community safer if the accused is prone to violence and witness tampering, when these factors are absent bail should be automatic. Bail cannot be denied to teach a lesson to accused where offence is yet to be proved. **Legally, bail is right. Liberty is guaranteed as a fundamental right. Under the right to life, liberty cannot be denied without adequate reasons. Except when justified in heinous crimes such as rape, murder, dacoity, etc.** It well known fact that most of the matrimonial cases are false and law is being used as a tool to exhort money from the innocent accused husband.

It is pertinent need that amendment is required in Cr.PC. to bring in some checks on indiscriminate and liberal arrests without warrant by police. Honourable Supreme Court in Arnesh Kumar v. State of Bihar 2014 stated, "power to arrest greatly contributes to its arrogance so also the failure of magistracy to check it. Not only this, the power to arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become handy tool to the police officers who lack sensitivity or act with oblique motive." Every offence classified as non-bailable does not justify an arrest. The object of bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and found guilty.

The major development of criminal justice would be to reform the bail system. In Moti Ram &Ors v. State of MP 1978, the Bench said, "An after word we leave it to Parliament to consider whether in our socialist republic, with social justice as its hallmark, monetary superstition, not other relevant considerations like family ties, roots in the community, membership of stable organizations, should prevail for bail bonds to ensure that the bailee does not flee justice. The best guarantee of presence in court is the

reach of the law, not the money tag. A parting thought. If the indigents are not to be betrayed by the law including bail law re-writing of may processual laws is in urgent desideratum; and the judiciary will do well to remember that the geo-legal frontiers of the Central Codes cannot be disfigured by cartographic dissection in the name of language of province."

Over the years, it has become common tendency to falsely implicate husband and his family members in false cases of Section 498A of I.P.C. & Sections 3,4 of Dowry Prohibition Act to wreck personal vendetta and unleash harassment against husband. Even old aged parents, un-married sisters and brothers of the husband are roped in false cases, resulting in loss of job of husband & social respect which brings immense suffering and mental agony to him and his family even leading to suicides. It is relevant to state that the misuse of Section 498A in many cases has been judicially noticed in plethora of judgments and has been termed as legal terrorism by Honourable Apex Court. This has also been taken note by Parliamentary Committee on Petitions (RajyaSabha). That when misuse of Section 498A is so blatant and there is common tendency to rope in entire innocent family members, it becomes bounden duty on judiciary to deal with matrimonial cases with sensitivity and gender neutral approach and grant of bail should be the norm.

It is pertinent to state that non-granting of bail even to family members increases the burden on the Honourable High Court and is also a drain on valuable resources. Honourable Supreme Court in **Siddharam Satlingappa Mhetre Vs State AIR 2011 SC 312** has ruled that judges with good track record only to be entrusted with such work. It is also the duty of the Principal District Judge to see that the judge with proper knowledge of bail should be assigned the work of bail matters.

Following solutions and necessary reform are required:

I. Judges with only good track record should be entrusted to hear bail matters. Bail not jail is dominant principle of criminal law practiced by any mature democracy and in India often in its breach. Proper training is required to be imparted to District judiciary. Honourable Supreme Court in **Siddharam Satlingappa Mhetre Vs State AIR 2011 SC 312** has ruled that judges with good track record only to be entrusted with such work.

II. Bail applications arising out of matrimonial cases such as Section 498A IPC may please be heard with sensitivity and gender-neutral approach, considering the rampant misuse of Section 498A IPC which has also been judicially noticed by Honourable Supreme Court and various High Courts in the country. It is observed that there is remarkable difference in discretion being exercised in bail matters while granting orders between different states for same criminal charges which is quite concerning. Hence, a uniform approach is required to be taken so that innocent persons are not left languished in jail for long.

III. Courts should be discouraged to impose monetary conditions while granting bail in Section 498A IPC matters when provisions of Section 125 Cr.PC., DV Act is already available. Imposition of monetary condition, if any, should be decided only after going through the merit of the case and not at premature stage else it may promote abuse of the process of law.

IV. There is need of separate Bail Act.

**Akshay Agrawal**

Member, SIF Jharkhand

# विवाह बना चक्रव्यूह

नमस्कार दोस्तों!

जैसा की हम सब जानते है किसी भी इंसान के लिए सबसे बड़ी और पहली पूँजी उसकी इज्जत होती है। सदियों से यह चलता आया है। किसी भी लड़के के युवावस्था में प्रवेश होने के बाद घर परिवार की जिम्मेदारियों को उसके सर पर डाल दिया जाता है। इसलिए हर पुरुष को घर–परिवार चलाने के लिए उसे नौकरी, व्यवसाय या मजदूरी कर आय अर्जित करना जरूरी हो जाता है। समयानुसार पुरुष की विवाह कर दी जाती है। उसपर घर बसाने की जिम्मेदारी के साथ–साथ अपने पूरे परिवार को खुश रखना पहली प्राथमिकता बन जाती है। इस कारण से वह परिवार को खुश रखने के लिए दिन–रात अविश्वसनीय रूप से मेहनत करता है, लेकिन एक गलत जीवनसाथी पूरे परिवार की जिंदगी को नारकीय बना देती है।

साथियों, मेरा नाम बिगन कांत है और आज मैं इस पत्रांक के माध्यम से अपने जीवन की आपबीती बताने जा रहा हूँ, जो ,क सच्ची घटना है। मैं टेरपा, पतरातू, रामगढ़, झारखंड का रहने वाला हूँ। मेरी शादी दिनांक 14/03/2019 को कुमारी ..... (पिता .....) हिंदू रीति रिवाज के अनुसार सर्व सहमति से हुई थी। मेरा ससुराल तिबाब, चौपे, सिमरिया, चतरा, झारखंड है। शादी के कुछ दिन पश्चात, मेरी पत्नी हमेशा फोन पर बीजी रहती थी, घर का काम ठीक से नहीं करती थी। मेरे द्वारा मना करने के बावजूद वह हमेशा फोन पर लगी रहती।

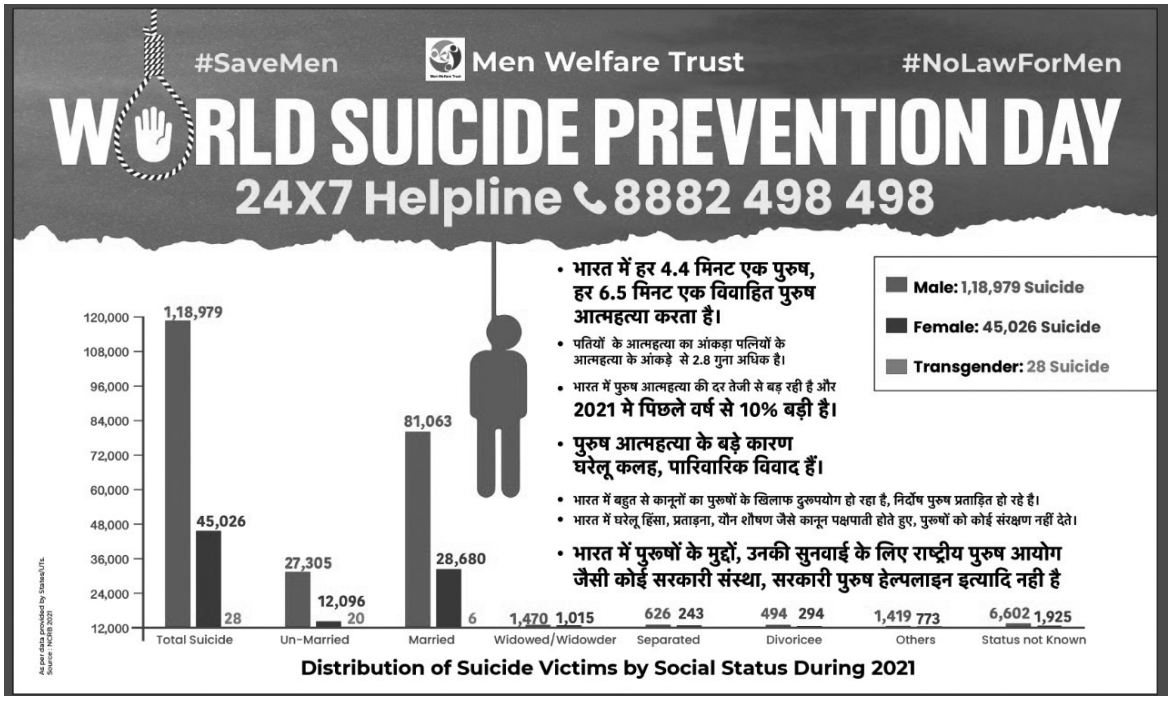
कुछ महीनों के बाद मैं अपनी पत्नी को उसके प्रेमी से बात करते पकड़ा तो मैंने उसे प्रेमी से बात करने के लिए मना किया, तब मेरी पत्नी ने अपने पिता को फोन कर झूठा आरोप लगा दिया कि बिगन अपने परिवार के बहकावे में आकर मुझे मार–पिट कर रहा है, साथ ही प्रताड़ित कर रहा है। बार–बार यह कहती कि मुझे यहाँ से ले चलो नहीं तो ये लोग हमें मार देंगे, और उसके पिता बिना सोचे समझे सिर्फ बेटी की बातों में आकर फोन पर ही मुझे गाली–गलौज और तरह–तरह का धमकी देने लगे। मैंने उन्हें सच्चाई बताना चाहा पर उन्होंने कभी भी मेरी बात नहीं सुनी और अचानक एक दिन सुबह–सुबह वे मेरे घर पुलिस लेकर आ गए और थाने में झूठ बोलकर मुझे और मेरे परिवार को गाली गलौज करने लगे, साथ ही मुझे पुलिस के द्वारा मार भी खिलवाया। मेरे बार–बार आग्रह पर पतरातू थाना ने हमारी बात सुनी और जब उन्हें पंचायत की बातें बताई और उनके सामने सच्चाई आई तो महिला थाना के प्रभारी और अन्य सदस्य ने तो मेरी पत्नी और उसके परिवार वालों को समझाने की कोशिश कि सही से रहने के लिए कहा, परन्तु कुछ दिन बाद मेरी पत्नी मेरे घर से लडाई झगड़ा कर अपने माँ–भाई के साथ मायके चली गई। मेरे पत्नी के मायके चले जाने के बाद मैंने उसे वापस लाने का बहुत प्रयास किया परन्तु मेरे ससुर ने मुझे मेरे माता–पिता से अलग रहने की हिदायत देने लगे और सारी कमाई अपने पत्नी के हाथ में देने को कहा। मेरे द्वारा मना करने के बाद धमकी दे अंजाम भुगतने की बात करने लगे। मेरे द्वारा अथक प्रयास के बावजूद मेरी बातें नहीं माने और अंत में मेरी पत्नी अपने मायके परिवार के बहकावे में आकर मुझपर और मेरे परिवार (माता–पिता, भाई, बहन–जीजा) के ऊपर 26 सितंबर, 2021 को सदर महिला थाना, चतरा में झूठा और मनगढंत आरोप जैसे की दहेज की माँग, मार–पीट करना, जानलेवा हमला करना और घर से बार–बार बाहर निकाल देना इत्यादि जैसे आरोप लगाकर धारा 498(A) और अन्य धाराएं के प्रावधानों के तहत केस दर्ज करवा दिया। इस मामले में मेरी पत्नी के झूठी शिकायत मात्र से, बिना सबूत और चश्मदीद गवाह के मुझे 6 मार्च 2022 को मुझे गिरफ्तार कर चतरा जेल में 5 महीने तक (31 जुलाई 2022) तक रखा गया और यह सिर्फ इसलिए था क्योंकि मैं एक पुरुष हूँ और मैंने शादी की थी। सच्चाई यह है कि मैं अपनी पत्नी को बहुत चाहता था, लेकिन मेरी पत्नी ने उसके अवैध संबंध के कारण मुझे कभी भी पसंद नहीं किया। मेरे पत्नी के पिता उसकी शादी उसके मन मुताबिक ना कराकर अपनी इज्जत बचाने के लिए धोखे से मुझसे शादी करवा दी। मेरी पत्नी बार–बार

मुझ पर और मेरी माँ पर हाथ उठा देती थी।

अंततः मुझे गिरफ्तार कर जेल भेज दिया गया जिस कारण से मेरा और मेरे परिवार की प्रतिष्ठा, मान सम्मान खो गया है। मुझे आज तक यह समझ में नहीं आया की मेरी गलती क्या है! क्या मेरी गलती यह है कि मैं पुरुष हूँ। एक महिला के झूठे आरोप लगा देने मात्र से सिर्फ एक व्यक्ति ही नहीं परन्तु वर पक्ष का परिवार पूरी तरह से बर्बाद हो जाता है। मेरा सवाल आखिर इस समाज के प्रतिनिधि से है! क्या यह महिलाओं के उत्पीड़न से बचाव के बने कानून का दुरूपयोग नहीं है, जहाँ महिला के मात्र कह देने से बिना सबूत या चश्मदीद गवाह के पुरुष पक्ष पर आरोप लगा दिया जाता है। साथ ही महिला पक्ष की गलती होने के बावजूद भी महिला की ही बात सुनी जाती है और उसी का बचाव किया जाता है। पुरुषों को अपने बचाव के लिए एक भी कोई कानून नहीं है। जिस कारण कुछ महिलाएँ एकतरफा कानून का फायदा उठाकर पुरुषों को झूठे मुकदमे में फसांती हैं और सालों साल झूठे मुकदमे में वर पक्ष को परेशान करती है। आज ज्यादातर जितने भी दहेज प्रताड़ना / घरेलु हिंसा प्रताड़ना के नाम पर महिलाएँ कोर्ट या थाने जाती हैं, सबका कंटेंट लगभग एक जैसा ही रहता है। ऐसा लगता है कि यह सिर्फ पति और उसके परिवार को परेशान करने और मोटी रकम वसूल करने के लिए किया जाता है।

जो कानून महिलाओं के हित के लिए बनाई गई थी, कुछ महिला, आज उन्हीं का गलत इस्तेमाल पुरुषों को डराने, धमकाने और पैसों के उगाही के लिए कर रहीं हैं तथा कानून को ठेंगा दिखा रहीं हैं। अब समय आ गया है कि 498–ए / दहेज प्रताड़ना जैसी पुरुष एवं परिवार विरोधी धाराओं को खत्म कर भारतीय परंपरा और भारतिय संस्कृति में परिवार नाम के शब्द को बचाया जा सके। साथ ही पुरुषों के हितों की रक्षा के लिए, भी कुछ कदम उठाया जाए।

**बिगन कांत**
(सदस्य SIF Jharkhand)



# Child Custody under the "Guardians and Wards Act, 1890".

Legal issue of Child custody is typically offshoots of cases like divorces, annulments, and legal actions that involve children. However, the issues involving the custody of the child should be determined on what the courts see as the most positive for the child's interest.

The natural guardian of the child has the right to custody of the child, but the right is not absolute, and courts are expected to consider the welfare of the minor child.

Child custody proceedings should be child-centered, and the standards are designed for the protection of the child.

According to Section 4 (b) of the Minority and Guardianship Act, a guardian is defined as a person who has attained the age of 18 and is adequately caring for a minor and minor's property and as well as his own.

As long as there is no evidence of misbehavior on the part of either parent, their rights to child custody are considered equal. For this reason, the parent's history, mental state, financial competency, and relationship with his or her child will be considered when the Court has to decide on custody.

Also, the court may consider that a parent is unfit to have custody of his or her child, including use of alcohol, drugs, and illegal substances, mental disorder, unwillingness, or inefficacy to participate in the child's care, and family abuse.

The welfare of the child depends upon a pleasant home, comfortable standard of living, security, understanding, loving guidance, and a warm relationship.

The Court can make interim orders from time to time, as it might deem just and proper for custody, maintenance, and education of minor children. The Court can modify the order. Modification is a rule rather than an exception even if divorce has been by mutual consent.

## Custody of Child by Hindus

Hindus are governed by Hindu Minority and Guardianship Act 1956, which follows homogeneous considerations as the Guardians and Wards Act, 1890. As per the law laid down, the father is the natural guardian and has preferential rights but paramount consideration for custody is the welfare of a child.

The courts in India have, therefore, tended to give custody of young children to the mother, on the ground that "children of tender years" cannot manage themselves without maternal affection.

The custody of a child who is below five years old is given to the mother, while a child above this age can be consulted by the court regarding his preference for the parent he wants to stay with. For older boys, typically fathers are made the custodians and for older girls, mothers are chosen custodians by the court though there is no law mandating this.

As per law, there are various types of custodies granted to parents, which can include the following:

a) Physical custody: This implies that one of the parent acts as a primary guardian and the child stays with him, while the other parent is granted visitation rights and can meet and spend time with the child.

b) Joint custody: Here both the parents get the child's custody in rotation. This implies that

the child stays with each parent for a fixed duration.

c) Legal custody: This means that one or both the parent get the right to take all major life decisions for the child, including those for his education, finances, religious preferences or medical needs, till he turns 18.

d) Sole custody: If one parent is considered unfit to take care of the child, the other parent is given full custody of the child.

e) Third-party custody: If both the parents are either deceased, or are unfit to take care of the child, or are abusive, then the court provides custody of the child to a third party such as grandparents or a relative.

## Custody of Child by Muslims

The Muslim Law of maintenance which is enforceable in India is based on the Muslim Personal Law laid down by the Courts and laws incorporated in the enactments such as the Criminal Procedure Code, 1973, and the Muslim Women (Protection of Rights on Divorce) Act, 1986.

As per Muslim Personal Law, minor children are given to mothers. But after the age of seven years, the mother's right over the son ends. Girls are given to mothers until they attain puberty.

One important aspect of this law is that the conduct of the mother is of supreme importance, and if that is found 'objectionable', she may not be given custody rights.

The father has the right to custody after the end of the mother's term. In case of the absence of both parents, the grandparents are awarded custody of the child. Also, as per 'Shia law', if a person ceases to be a Muslim, the child's custody cannot be permitted to him/her. But in matters relating to the property of a minor, the only relations who are legal guardians of the property of a minor are:

(i) Father, and

(ii) Father's father

## Custody of Child by Christians

There is no law which specifically mentions about the child custody rights under the Christian law. However, the Indian Divorce Act 1869 and the Guardians and Wards Act 1890 is applicable for all the matters that are related to the Christian children and their Guardianship. According to the Section 41, 42, 43, 44 of the Indian Divorce Act 1869, the Courts have the power to pass an order relating to the Custody, Education and Maintenance of the Christian children

According to Section 41 of the Indian Divorce Act 1869, the Courts have the power to pass orders relating to the Custody, Education and Maintenance of the children in the suit of separation. Section 42 of the Indian Divorce Act 1869 deals with the power of the Court to pass an order for custody after a decree of Judicial Separation. Section 43 of the Indian Divorce Act 1869 deals with the power of the Court to make an order for custody of children in suits for dissolution/nullity. Section 44 of the Indian Divorce Act 1869 deals with the power to make an order of custody of children after decree or confirmation of dissolution/nullity. Also, the Guardians and Wards Act 1890 is applicable for all the matters that are related to the Christian children and their Guardianship.

However, it is important to note that irrespective of the personal laws, any parent who wants custody of a child and cannot reach a settlement has to seek custody separately from the Court. There is never any automatic assignment of a child's custody to a specific parent.

Children's preferences are usually considered after attainment of 9 years of age.

## Visitation Rights

It is a child's right to have a relationship with both of his parents. The court usually orders that the spouse who does not have custody of the children will be able to visit the children. This is called an Access Order. Access means visiting rights. Access is a right of the child and not a right of the parent.

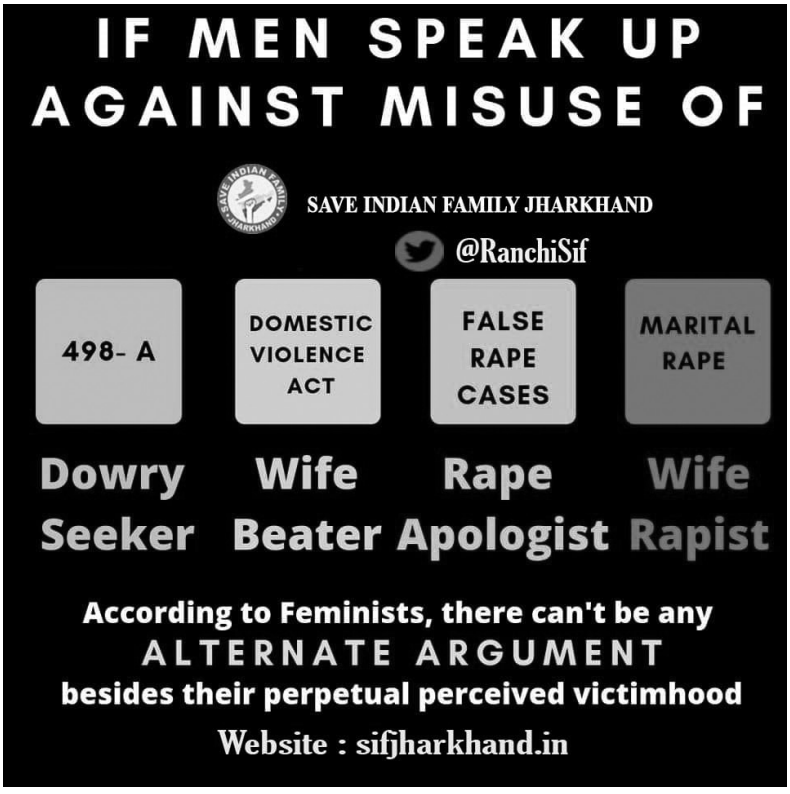
A parent with custody cannot decline access to the other parent unless there is a court order stating that.

## Conclusion

Custody in India is not a hard and fast concern, and judges decide on a case-to-case basis. The welfare of the child is of paramount relevance in matters relating to child custody. A child is not a chattel nor is he/she an article of personal property to be split in equal halves.

Principles laid down under Guardians and Wards Act, 1890 are equally applicable in dealing with custody of the child under Section 26 of Hindu Marriage Act, 1955, since in both situations two things are common, the first being orders relating to custody of growing child, and secondly, the predominant consideration of the welfare of the child. The Court is entitled to transform the orders in the interest of the minor child, even if the orders are based on consent.

**Henry Sailash Simon**
Member, SIF Jharkhand



# Rights of Arrested Persons

Constitution of India has provided certain rights to citizen of the country. Knowledge of these Rights is very important especially when a person is falsely implicated in cases. It helps accused/arrested person to defend his case strongly and may prevent misuse of position by certain class of people/officers. It is rightly said that "Knowledge is Power" which can help in overcoming difficult situations with great ease.

Enumerated below are some of the Rights which a person must know when arrested/chances of getting arrested are high:

1. Right to know about the accusations and charges: Under the Criminal Procedure Code (Cr.PC), 1973, the rights of an arrested person is to know the details of the offence and the charges filed against him/her.

   Right to know the grounds of Arrest:

   **Section 50 of CrPC** says that every police officer or any other person who is authorised to arrest a person without a warrant should inform the arrested person about the offence for which he is arrested and other grounds for such an arrest. It is the duty of the police officer and he cannot refuse it.

   **Section 50A of CrPC** obligates a person making an arrest to inform of the arrest to any of his friends or relative or any other person in his interest. The police officer should inform the arrested person that he has a right to information about his arrest to the nominated person as soon as he is put under custody.

   **Section 55 of CrPC** states that whenever a police officer has authorised his subordinate to arrest any person without a warrant, the subordinate officer needs to notify the person arrested of the substance of written order that is given, specifying the offence and other grounds of arrest.

   **Section 75 of Cr.PC** says that the police officer (or any other officer) executing the warrant should notify the substance to the person arrested and show him a warrant if it required.

   **Section 41-B Cr.PC:** The right to have the arrest memo prepared as per Section 41-B Cr. PC and scrutinized by the Magistrate.

   Article 22(1) of the Constitution of India also states that no police officer should arrest any person without informing the ground of arrest.

   The right to medical examination by a medical by a medical officer/registered medical practitioner soon after arrest, by a female medical practitioner in the case of a female accused as per Section 54 Cr.PC.

   The right to be produced before a competent magistrate within 24 hours, excluding the time taken for the journey to the Magistrate Section 56, 57 Cr.PC.

2. Right to a lawyer: The right to a lawyer on being arrested (Article22(1) and Section 41-D Cr.PC.

3. Right to accused of privacy and protection against unlawful searches: The police officials cannot violate the privacy of the accused on a mere presumption of an offence. As per right of accused in India, his/her property cannot be searched by the police without a search warrant.

4. Right against self-incrimination: A person cannot be compelled to be a witness against

himself as per Article 20(3) of the Indian Constitution.

5. Right against double jeopardy: A person cannot be prosecuted and punished for the same offence more than once as per Article 20(2) of the Constitution.

6. The Right against the ex-post facto law: An act that was not a crime on the day when it was done, cannot be considered as an offence.

7. Bail as the rights of accused in India: The right of an accused person allows them to file a bail application to be released from jail custody. There are three kinds of bail under Indian law- anticipatory bail, interim bail and bail by a bond. A bail application for normal bail can be filed only in case of bailable offences. However, a person can also file an anticipatory bail through his criminal lawyer, before his arrest.

8. Right to legal aid: In this, the rights of an accused person allow him/her to hire a lawyer to defend them and in case, he is not able to afford a lawyer, the State has to provide free legal aid to him for his representation in court.

9. Right to a free and expeditious trial: The rights of accused in India has the right to fair trial in India and an expeditious trial, which is free of any bias or prejudice.

**Chandeshwar Singh**
Member, SIF Jharkhand

***Better late then never***

***Lets not ignore***

***The forgotten gender***

***We want Men's welfare ministry and National Commission for men***

***Even Animals and Forest have rights but in India men don't.***

***Population- 140 Crores***
***Taxpayers - 5.95 Crores***
***Male Taxpayers-80%***
***Budget for men ZERO***

# Second FIR: Maintainability

## Second FIR: Legality

The impermissibility of registering the second FIR is to protect the fundamental right of an accused against double jeopardy, to maintain the rule of fair investigation and to not allow the police to abuse their investigative powers under Cr. PC. These three-fold safeguards prevent registration of the second FIR as has been held in Anju Chaudhary v. the State of UP (2012) by the Apex Court.

The legality of the second FIR had been extensively discussed in T.T. Antony v. State of Kerala (2001) by Honourable Supreme Court. The Apex Court established the test of sameness which means that unless in both the two cases, where the first and second FIR is registered respectively, the FIRs appear to be substantially different from each other such as in facts and circumstances, the second FIR cannot be filed. This means that the facts and circumstances giving rise to the two FIRs must be different, or the offence committed in the two must be different, or the person accused of committing the offence is different. Only then, the second FIR is permissible.

The court further observed, that the scheme of provisions starting from Section 154 of CrPC to Section 173 CrPC, which is from the starting to the end of an investigation, relates to the earliest or the first information given in the commission of a cognizable offence. This is what satisfies the requirement of Section 154 CrPC.

Thus, there is no scope to start an afresh investigation on receipt of every subsequent information received in respect of the same cognizable offence.

## Test of Sameness

The court can apply the test of sameness when:

- It has to examine the facts and circumstances that are giving rise to two FIRs.
- In trying to find out whether it relates to the same incident, the court has to either look at the occurrence of the two incidents and their relationship with each other or the transactions of the occurrence if it has occurred in parts.
- If it finds out that the occurrence of the offence is the same or the different transaction forms the part of the same occurrence, the second FIR is liable to be quashed.
- But if the two occurrences are based on different versions and two different crimes, the second FIR shall sustain.
- This will also cover those situations where the police get subsequent information through practice, convenience, and preponderance in further investigation allowed under Section 173(8) of Cr. PC.

Hence, at the end of the further investigation, if both the gravamen of charges in the two FIR is in substance and truth the same, the second FIR cannot be filed. It will be liable to be quashed under Article 32 and Article 226 of the Indian Constitution. The test of sameness is meant to balance the rights of an accused Article 19, Article 20(2) and Article 21 of the Indian Constitution.

## Test of sameness: Same offence versus same kind of offence

While the test of sameness was consistently adopted by various courts since the 2001

judgment, a contention on its applicability came up in the State of Jharkhand v. Lalu Prasad (2017) from a different perspective.

The Apex court in this case was faced with an issue of whether the test of sameness can be applied in the commission of the 'same kind of offence.'

The Apex court firstly acknowledged the difference between the commission of the same offence and the same kind of offence. Both are two different situations.

In cases where the second FIR is filed in the commission of the same offence, the second FIR is liable to be quashed through the test of sameness. This situation will lead to a case of double jeopardy under Article 20(2) of the Constitution which prohibits the prosecution of a person twice for the same offence.

Whereas, the test of sameness is not applicable where similar kinds of offences are committed. It's because the offence in itself can be different in this scenario. However, they may be of a similar nature.

For instance, murder and culpable homicide are similar in nature but are two different offences under the Indian Penal Code, 1860. Another example is housebreaking and trespass. Both are similar in nature but are two different offences. The police in such cases are supposed to register an FIR every single time.

Where the offence registered under the second F.I.R occurs as a consequence of the offence alleged to have occurred in the first FIR the 'test of consequence' is to be applied. In the case of C. Muniappan v. The State of T.N (2010), the Apex court held that the offences alleged to have occurred in both the FIR are the same and thus, the second FIR will not be permissible. This test of consequence has been reiterated by the Apex court in Amitbhai Anilchandra Shah v. CBI (2013).

## Test of consequence

The test of consequence is also to be applied in cases where the offence disclosed in the first FIR is not the same as the offence disclosed in the second FIR. In this case, a second FIR is permissible. This may also include a situation where the second FIR is lodged by different persons and in different police stations. In Chirag M. Pathak v. Dollyben Kantilal Patel (2018), this issue came up where six FIRs were lodged based on identical facts but in different police stations by six different cooperative societies. The Supreme Court accepted all the FIRs based on the reasoning that they are lodged by different persons and the totality of factual allegations constitutes the commission of different offences. Hence, the FIRs were not overlapping.

FIRs with the same cause of action is prevented by double jeopardy.

In Arnab Ranjan Goswami v. UOI (2020), the issue before the Apex court was whether multiple FIRs can be filed in different states based on the same cause of action. The Supreme court held that lodging multiple FIRs is not permissible to stifle the right of the journalistic freedoms under Article 19(1)(a) of the Indian Constitution. The court was conscious of the fact that there is a need to ensure that the criminal process does not assume the character of a vexatious exercise by registering multiple FIRs and thus fair treatment should be ensured through the parameters of Article 14. There must thus be a balance in the exercise of journalistic freedoms and the power to investigate under CrPC.

# अंतरमन की कोलाहल

क्यों हलचल सी मची है मेरे अंदर,
मानो खुद से ही अलग हो रहा हूँ।
आज जीत कर भी मानो हार रहा हूँ,
नही जानता, मैं खुद से क्या चाह रहा हूँ।
खुद के अंदर ही नही झांक पा रहा हूँ।
दर्पण में खुद को ही नही जान पा रहा हूँ।
असल मे टूट कर ही बिखर रहा हूँ।
क्यों मैं अपनो से और अपने आप से लड़ रहा हूँ।
समझ नही आता, मैं क्या कर रहा हूँ।
खुद के ही हारने की ब्याख्या लिख रहा हूँ।
किस कदर मैं अपने आप से लड़ रहा हूँ।
जीते जी खुदखुशी कर रहा हूँ।
शांति की तलाश में सैलाब की और बढ़ रहा हूँ।
न जाने बेटी की नजरों में क्या बन रहा हूँ।
हर रोज जीतने की चाह रखे रहा।
समय जब आया तो न जाने क्यों डर रहा हूँ।

ये पंक्तियां तब की हैं जब मैं पहली बार अपनी बेटी को कोर्ट परिसर में देखा था। उस समय जो मेरी स्थिति थी उसे शब्दो मे बयाँ नहीं कर सकता।

**गोबिंद प्रसाद**
सदस्य SIF-Jharkhand

- ***He opens a school door, closes a prison.***
- ***The end of law is not to abolish or restrain, but to preserve and enlarge freedom.***
- ***Indigence should never be argument for denying fair trial or equal justice.***
- ***Every man is a feminist until he meets a women at court.***
- ***The process of justice is never finished but reproduces itself generation after generation.***

# Marriage - A Trap …..!

Yes, I am another victim who is suffering (after getting falsely implicated) from the packages of available false cases, namely Section 498A, Dowry Prohibition Act, CrPC 125, DV etc, which are easily available with any married woman in this country.

Yes, I am very young (in this specific group of people who are also falsely implicated in false cases of Section 498A) and got recently caught in these rattraps set by a married woman.

Yes, I belong to a middle class family and always believed in being a helping hand to my parents, so to have a stable life in future. This is completely vanished & ruined, the moment when I got married.

Yes, I literally cried in front of my mother, when I received my first legal notice under Section 498A IPC from my wife.

Yes, I was one of those people who eagerly waited to get married and dreamt of happy martial life ahead.

Yes, I was a caring husband who believed in giving space. I never wanted her to be unhappy for any reason.

Yes, sometimes I was tolerant, whenever she misbehaved with me or the family members, just because of petty issues.

Yes, you will find funny but she used to argue and pick up fights over small issues like which dal is to be served, which rice is to be made- moti Rice or Patla Rice. She never liked the food which my mother cooked for all of us.

Yes, it was her mother who ruined our relationship because they were talking throughout the day, not less than 15 hrs a day on some occasions.

Yes, I have been alleged baselessly, that I did not treat her well.

Yes, I had always been comprising in nature and never wanted to have litigations in my relationship.

Being an introvert, I was never interested in roaming here and there and always looked ways to live peacefully but she has forced me to come to the courts every now and then, by implicating me & my family members in false, fabricated & frivolous cases. Thanks to her, I am transitioning from an Introvert to an Extrovert.

Right from my childhood days, I have always believed in saving money for the unpredictable future and utilize it for good things. But, due to her false cases, I have started spending all my life earnings, towards defending these false cases and saving my family from false cases of Section 498A.

From my story above, you might think that I am a confused soul as I still have some affection left in me.

There is a huge scam happening at a grand level in which married women are misled to ruin their marital relationship and ask for a huge alimony in return as a one-time deal or a life time maintenance.

Yes, I am employed in a corporate Job and been working in the 09:00 am to 05:00 pm shift which always extends and then I switch from work to learn how to fight the false cases.

Yes, I never wanted to leave my old parents just because of my wife but she always forced to leave and stay away from my parents.

Yes, I have prepared one notebook on the entire

proceedings which happened just like the notes from my school days.

This is a bitter truth of the modern society and has laid the foundation of Old aged homes.

False Section 498A cases are very common in the society although a lot of steps have been taken by Hon'ble Apex court to prevent its misuse.

These days, it is normal trend to implicate all the relatives: father, mother, sister or even distant relatives, who might not be staying in the matrimonial home but they still become accused in Section 498A cases.

Taking Anticipatory Bail (ABP) and going through the complete process to get acquittal is itself a punishment to all who are being indulged in the false litigations. It brings lot of pain and suffering.

Feminism and Gender biasness is still available across the society at such a level that innocent people are being dragged into instant harassment for marrying a wrong lady. It is also becoming a hurdle to get a relief to the actual neglected women in the society.

Let's unite and raise the voice to have the amendments to this heavily misused Section 498A, Domestic Violence Act & Dowry Prohibition Act.

**Jasbir Singh**
Member SIF-Jharkhand

# सिर्फ मजे मत लीजिए

## पढ़ने के बाद समाज की स्थिति के बारे में सोचिए।।।

# बर्बाद होने के लिए ये जरूर नहीं कि.....
शराब या जुआ ही किया जाय.....!
आप अपनी पत्नी को पढ़ा लिखा कर मुकदमा करने के काबिल भी बना सकते है....!

# मुजरिम बनने के लिए जरूरी नहीं कि.....
हत्या या चोरी ही किया जाए.....।
बीवी की मनमानी रोक, आप बिना दहेज लिए झुठे 498A/दहेज कानून में अपराधी भी बन सकते हैं।।

# हंसने हंसाने के लिए जरूरी नहीं कि.....
कोई चुटकुला ही सुना जाए.....।
आप न्यायलय से न्याय की उम्मीद रख कर, अपना मजाक खुद उड़वा सकते है ।।

# लड़की को जरूरी नहीं कि..
पढ़ाई लिखाई और मेहनत करके ही पैसे कमाए जाए.।
शादी पश्चात् एक दहेज का झूठा मुकदमा करके लाखों की मालकिन आराम से बन सकती है ।।

महिलावादी, एक तरफा कानून की वजह से आज हमारा समाज एक गहरी खाई की तरफ बढ़ रहा है। शादी जैसे पवित्र बंधन अब कुछ नहीं, बस पैसे के लिए व्यापार बन गया है।

दहेज का झूठा केस न केवल लड़के को, बल्कि उसके पूरे परिवार को खत्म कर देता है तथा पूरे समाज को शादी ब्याह से दूर रहने की चेतावनी भी देता है।।

**विजय भास्कर**
सदस्य SIF-Jharkhand

# ACTIVISM & LEGAL AWARENESS





# ACTIVISM & LEGAL AWARENESS







**SIF National Meet Vadodara 2022**

# Application Under Section 156(3) Cr.PC.

The Hon'ble Supreme Court has, in Babu Venkatesh vs. State of Karnataka held that a magistrate cannot entertain an application under section 156(3) of CrPC unless the same has been accompanied by the affidavit of the complainant.

The benefit of such a requirement would be that people would be deterred from casually invoking the authority of the magistrate under section 156(3), since if the complaint is found to be false then the complainant would be liable to be prosecuted in accordance with law.

In Babu Venkatesh vs. State of Karnataka case, the allegations were that the accused had obtained black stamp papers from the complainants and had created an Agreement for Sale by misusing the same blank stamp papers. He had thus committed forgery and cheated them and was hence liable for an offence under section 420, 464, 468 and 120B of the IPC.

The ACJM had directed an investigation under section 156(3) of Cr.PC and directed police to register an FIR. The accused then approached the HC contending that the order passed for the registration of the FIR was done in a mechanical manner. The HC, however, dismissed the petitions. Aggrieved, an appeal was filed before the SC.

It was contended before the SC that the Magistrate should have applied his mind before ordering the registration of the FIR. It was also contended that unless the application under section 156(3) was accompanied by an affidavit of the complainant, the Magistrate could not have passed the said order. It was also submitted by the accused that the complaint had been made solely with the intention of harassing him and the dispute was of a purely civil nature.

The Hon'ble SC relied upon its judgement in State of Haryana vs. Bhajan Lal and ors. wherein it was held that the power to quash proceedings under section 482 of CrPC was a power which should be exercised sparingly and in the rarest of rare cases. There were a few instances which were laid down in this case that offered an example of instances where the proceedings can be quashed, one of them being when the court feels that the criminal case has been instituted with a malafide intent only to exact vengeance upon the accused for private and personal reasons. The Court felt that the instant case appears to fall into this category.

The Apex Court also relied upon its decision in the case of Priyanka Srivastava vs. State of UP and ors. (2015) SCC and observed that the time has come when applications under section 156(3) of Cr.PC have to be accompanied by a sworn affidavit of the complainant who seeks to invoke the jurisdiction of the Court under section 156(3).

The Court also observed that in appropriate cases, the learned Magistrate ought to verify the veracity of the allegations as applications under the impugned provisions are filed without any fear of consequence only to harass certain people. The Apex Court thus observed that the Lower Court had failed to apply any law which had been laid down by the SC. The Court also felt that the continuation of the proceedings would amount to an abuse of the process of law.

Thus, the Apex Court quashed the proceedings and set aside the orders of the lower Court.

**Chandeshwar Singh**
Member, SIF Jharkhand

# Misuse of Dowry Prohibition Act & Burden of Proof Under Dowry Prohibition Act

"A happy marriage is a harbour in the tempest of life, an unhappy marriage is a tempest in the harbour of life."

The Parliament of India enacted the Dowry Prohibition Act in 1961 which has made the giving and taking of dowry illegal in India. It applies to all persons irrespective of their religion. But sadly, Dowry Prohibition Act has now become most misused law in the country. The biggest challenge that has come up is the increased number of false cases that are being filed by women against their husband and in-laws for malicious purposes under the guise of Dowry prohibition Act.

## Dowry Prohibition law: Extortion tool.

Unfortunately in India, laws that are extremely biased in favour of women which have led to un-explainable harassment, suffering and systematic torture of lakhs of innocents men and their families. Arrests without an iota of investigation, absolute disregard to evidence of innocence presented by the accused, decades of criminal trial sans any evidence apart from verbal allegations by a woman, innumerable instances are available on record in our courts where unscrupulous women, with the aid of lawyers and police who have no regard to law, have destroyed lives of many. False cases have been filed with impunity on men and their families and even after they prove their innocence, hardly any recourse or compensation have been provided to these people for their losses. A law that tops the list of such provisions is Dowry Prohibition Act. The laws that have been made for the protection of women in India are victim-biased. The commonly followed principle of 'innocent until proven guilty' gets reversed in the dowry-related cases, such that the principle followed in these cases is 'guilty until proven innocent'. By shifting the burden of proof it becomes comparatively easy for the victim to prove that her rights were violated than for the accused to prove that he was innocent. As soon as the complaint is filed against the husband and the in-laws, they are no longer considered innocent in the eyes of law until they prove that their innocence which is again a very difficult task in the country. Many false complaints have been filed to pressurize the accused to give a share from their properties. Even in the cases of acquittal the accused suffer a huge loss of time, loss of reputation and litigation expenses. To make 'out of court' settlements, the accused agree to any demand by the complainant. This results in grave injustice as the complainants can extract hefty amounts maliciously from innocent people. Dowry Prohibition law has become extortion tool.

The guidelines that have been laid down in anti- dowry laws are so strict that these are non-bailable and non-compoundable. Due to such nature of these laws, women misuse them on a large scale as a means to annoy and get undue influence over their partners. Whenever there is a tussle between husband and wife, the woman tries to take advantage of anti-dowry laws to trouble her husband and in-laws. The stringent nature of anti-dowry laws leaves no scope of reconciliation since the punishment in dowry cases is usually non-bailable and non-compoundable. A simple complaint by the bride, allows the police to arrest the accused without any warrant. Police treat them as criminals and inflict inhuman torture upon the accused family. The grave custodial brutality in these cases leads

to immense injustice when the false charges are put on innocent people.

The resultant social stigma also leads to loss of jobs and reputation in the professional life of the innocent accused. This badly affects their financial stability and brings a permanent stain on their career. Families are left without any support during such financial strain because even the close relatives are not willing to help them. The old aged in-laws are the worst hit due to their frail mental and physical health.

The courts in India, have also realized that a large number of cases that allege dowry harassment are not bona fide complaints. That is why the Honourable Supreme Court has laid down some guidelines to prevent the misuse of these laws.

In its 243rd report, the Law Commission laid down some important guidelines and measures for police and courts to minimize the misuse of Dowry Prohibition laws: The power of arrest should be used very diligently. There should not be any arrest without a warrant until a reasonable satisfaction is reached regarding the genuineness and bonafides of a complaint. It is always not necessary to use the power of arrest; the police should first try to resolve the matter through other mechanisms like conciliation, mediation, and counselling. The Court should not direct the depositing of the passport as a condition for granting bail in all cases mechanically as it will cause irreversible damage to the accused because he will be exposed to the risk of losing his job and his visa being terminated.

## Burden of proof under Dowry Act

Burden of proof under Dowry Act in entailed in Section 8A of the Act.

Section 3 of the Act makes giving and taking of dowry as punishable offence.

Section 4 of the Act makes demanding dowry as punishable offence.

It becomes clear that when an accused is charged of an offence of giving or taking or abetting in giving or taking any dowry, under Section 3, the following ingredients of the offence will have to be established before a competent Criminal Court before which the accused is prosecuted.

i) any property or valuable security must be proved to have been given or taken by the accused pursuant to an agreement or otherwise; or

ii) the accused must be shown to have abetted such giving or taking of any property or valuable security;

iii) such giving or taking of any property or valuable security either directly or indirectly or its abetment must be done by any party to the marriage vis-a-vis the other party to the marriage; or;

iv) such giving or taking of any property or valuable security either directly or indirectly or its abetment is done by the parents of either party to a marriage or by any other person, for the benefit of either party to the marriage or any other person;

v) such property or valuable security is given or taken at or before or at any time after the marriage;

vi) such property or valuable security must be given in connection with the marriage

It is obvious that before any offence can be brought home to the accused under Section 3 read with Section 2 of the Act, the aforesaid ingredients have to be established. So far as Section 8A is concerned, all that it mandates is that the burden of proof that he has not committed such an offence is on the accused.

Meaning thereby, that it will be for the accused, to show that he had not taken or given or abetted in giving or taking any property or valuable security, in connection with the marriage of the said parties. He will have to show that last ingredient of the offence being ingredient No. (vi) is not established. The only burden cast on the accused is to prove that he had not committed offence of giving or taking or abetting the giving or taking of dowry as contemplated by Section 3 of the Act. It is not as if he has also to prove that he has not taken or given or abetted in giving or taking any property or valuable security or that he has not taken or given or abetted in giving or taking any property or valuable security or that he has to disprove all the ingredients (i) to (vi). As per Section 8A, once prosecution establishes beyond reasonable doubt the basic ingredients (i) to (v), burden shifts on the accused to prove that the last one is not established viz., that he had not taken or given or abetted in giving or taking any property or valuable security in connection with the marriage of the said parties.

Similarly, for the purpose of proving an offence under Section 4, Section 8A will have to be read with Sections 4 and 2 of the Act. On a conjoint reading of these provisions, it becomes clear that before any offence under Section 4 is brought home to an accused, the following facts will have to be established:

(1) The accused must be shown to have demanded directly or indirectly from the parents or other relatives or guardian of a bride or bridegroom, as the case may be;

(2) Any property or valuable security to be given by one party to the marriage to the other party to the marriage; or

(3) Any property or valuable security to be given by parents of either party to the marriage or by any other person, to either party to the marriage or to any other person;

(4) Such demand should be made at or before or any time after the marriage;

(5) Such demand for any property or valuable security must be in connection with the marriage of the said parties.

Before any offence under Section 4 is brought home to the accused, all the aforesaid ingredients must be established. So far as the first four ingredients are concerned, they will have to be established as basic facts by the prosecution and only then the burden would shift to the accused to show that he had not demanded directly or indirectly any property or valuable security in connection with the marriage of the said parties. The burden of proving non-existence of last ingredient rests on the accused as per Section 8A of the Act. But the initial burden to establish beyond reasonable doubt the aforesaid ingredients (1) to (4) will rest on the prosecution. Once these basic ingredients are established by the prosecution, the burden would shift on the accused to show that such demand if any by him was not in connection with the marriage of the said parties. Meaning thereby, that he had not demanded any dowry from the parents or other relatives or guardian of a bride or bridegroom, as the case may be. Thus burden will shift on him only to establish that the last ingredient is not proved. Section 8-A, in its operation, will have to be read down in the light of Sections 2, 3 and 4 of the Act.

Therefore, it becomes obvious that once an accused is charge-sheeted for offence under Section 3 or Section 4 of the Act, he gets prosecuted before competent Criminal Court. At that stage, the relevant provisions of the Code of Criminal Procedure would squarely get attracted.

Relying on the aforesaid provisions, it is manifest

that in all criminal trials, the initial burden is on the prosecution to prove its case beyond reasonable doubt. That this procedure is seen to be given a complete go by, if Section 8A of the Act is read as it stands, and if it is held that the entire burden of proving all the ingredients of offences is on the accused. If Section 8A is so literally read, then even framing of charge would be enough to put the accused to proof and the prosecution need not prove anything. If that happens, the Section would be rendered totally arbitrary and unreasonable and would be hit by Article 14 of the Constitution of India.

The prosecution will have to lead in the first instance evidence to prove the basic ingredients of the offences under Sections 3 and 4. Once the prosecution proves them beyond reasonable doubt, then only the burden is shifted on the accused under Section 8A of the Act. Thus, the initial burden will rest on the prosecution to bring home the basic ingredients of the Sections and that will never shift on the accused under Section 8A of the Act. The Section so read down, would represent only a rule of evidence and nothing more.

## Rule of evidence

The Honourable Supreme Court has time and again reiterated the importance of legal evidence and has held that in absence of legal evidence, the Court cannot reach at a particular conclusion. In Ghuran Yadav vs. State of Bihar (1971) 1 SCC 311, the Supreme Court observed as under: "Normally this Court, of course, does not examine for appraisal under Article 136 of the Constitution the evidence on questions of fact decided by the courts below. But when there are reasons to think that the conclusions may be based on no evidence, then this Court is not only entitled but it has an obligation in the larger interests of justice to examine the evidence to see if there is legal evidence on which those conclusions can be sustained. In this case we find that there is no legal evidence on which the courts below could base their conclusions. The appeal accordingly succeeds and allowing the same we acquit the appellant.".

In Shrawan Singh vs. State of Punjab AIR 1957 SC 637, the Hon'ble Supreme Court observed: "In a criminal case, mere suspicions however, strong cannot take the place of proof". The Supreme Court further in the said case in para 12 observed: ".... considered as a whole, the prosecution story may be true; but between "may be true" and "must be true" there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence before an accused can be convicted".

In Narendra Kumar vs. NCT of Delhi (2012) 7 SCC 171, the Hon'ble Supreme Court observed: ".... However great the suspicion against the accused and however strong the moral belief and conviction of the court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence....".

Eminent English Jurist William Blackstone:"It is better that ten guilty persons escape, than one innocent suffer."

In Paramjeet Singh vs. State of Uttarakhand, (2010) 10 SCC 439, the Honourable Supreme Court observed "The burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence."

In fact, it is a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof required, since a higher degree of assurance is required to

convict the accused. The first and foremost duty and responsibility is to safeguard the rights of the accused and interests of the public in the administration of criminal justice during trial. The very object of criminal trial is to determine whether the prosecution has established the guilt of the accused or not. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent.

The stringent nature of these dowry-prohibition laws has led women to take undue advantage of these laws from their husbands by blackmailing and demanding compensation from her in-laws or husband. The irony is that laws designed to protect some women (read wives) often bring suffering to other women (Read mothers and sisters). There is immediate need to amend Dowry Prohibition Act so as to stop its misuse and protect innocent men and their families.

**Prahalad Prasad**
Men's Rights Activist
Founding member SIF-Jharkhand

माँ–बाप जिसने जन्म दिया, उनकी आँख का तारा था।
मेरी शादी के परिवर्तन से, उनके जीवन में अंधियारा था।।
अब रोज सास–बहू में किट–किट होती है।
मेरी माँ भी सिसक–सिसक कर रोती है।।
सासु माँ भी अब धमका रही।
बात–बात पर दहेज प्रथा लगवा रही।।
अब बूढ़ी माँ भी जीवन से घबरा रही है।
नई नवेली दुल्हन घर में दो–दो चूल्हे जलवा रही है।।
मेरी पत्नी को अब भी विश्वास न आ रहा।
उसको लगा कि ये बुड्ढा हमको ही बदनाम कर रहा।।
अब मैं उस बुजुर्ग माँ–बाप से दूर जा रहा।
जिसने मुझको पाला पोसा, जिनकी रोटी अब तक खा रहा।।
यदि मैं बोलूँ माता पिता से, तो मुझको धिक्कारती।
ज्यादा कहने से खुद को जान से मारने को धमकाती।।
अब ये सारा दर्द मुझसे सहा नहीं जाता।
क्या करूँ, क्या न करूँ, मुझसे कुछ कहा नहीं जाता।।
माँ–बाप चलने में अब समर्थ नहीं, उनको अब यहाँ से निपटाओ।
इन बुड्ढी–बुड्ढों को, ओल्ड एज होम में शिफ्ट करवाओ।।
जब से माँ–बाप को शिफ्ट किया, तब से हम रोते रहते।
सास–ससुर भी सिर्फ मुझको ही केवल धिक्कारते रहते।।
इक दिन तेरी भी होगी बहू, तब तुम भी पछताओगी।
बेटा–बेटी क्या होता है, इस बात का फर्क तुम जान पाओगी।।
बेटी अगर दुर्गा है तो बेटा भी है विष्णु महेश।
अगर बेटी को संस्कार दिये, तो उसके घर में नहीं होगा कलेश।।

# Marriage – A Horror Show of Our Life

A simple & decent gentleman gets trapped in a serious trap namely 'Marriage'.

There was some controversy and cheating from girl's side in initial stage itself but somehow marriage was solemnised.

The boy and his family compromised with what had happened with them during marriage.

It was solemnized without any dowry and it was inter-caste marriage.

The only expectation of the boy & his family was that the girl should be spiritual, calm and understanding but the scene was reverse.

The girl started showing her real face just in couple of weeks and boys family was simply aghast.

They were not able to digest what they heard from girl– "**She was such an abusive & barbaric soul**".

It became her daily business – Just sit, relax, browse, chit chat with family & friends and dump all the household activities starting from cooking, cleaning etc on her mother-in-law who was 70+ years old widow lady.

The girl came from a very simple family but when she landed in a metro city her dreams started building up exponentially.

The girl started making extravagant demands which were totally indigestible for any decent family.

The boy who was from lower middle-class family was totally shocked how to manage such demands of wife. The boy would work tirelessly for hours in office and when he would reach home a new demand & drama each day be it cloth, jewellery, cosmetics etc. even though girl's cupboard was already stack full of those items.

The point here was demands are fine but when all the demands are already fulfilled for comfortable survival then why still further demands. The girl was not at all understanding and was non-cooperative always.

Day by day frustration started building up in husband & family.

There were not a single sign of '**Sanskaari BAHU**' in girl which any family would expect.

Boy came to know after couple of months that she had extra marital affair as well.

The girl used to become violent when her unnecessary demands won't get full filled. In such situations she would damage mobiles, laptops etc.

There was one instance which boy & family won't forget ever– The boy already fulfilled her demands of 8 new dresses in 6 months (no middle-class family would entertain that). But soon after that the girl started demanding 3 new dresses to be ordered again worth 5 thousand bucks. There was delay of just 1 day in placing online order and because of this delay the girl burnt all new dresses in anger.

It was terrible scene for boy and his mother and to live with such a psycho girl was dangerous.

The girl and his father would make unnecessary demand of money for his personal business and in turn do financial extortion.

In reality these guys (girl & father) took dowry (in form of money extortion) from husband and his family for these years.

After each abuse by girl the boy & family

thought let us give one more chance to girl and like that 3.5 years elapsed.

But the situation started degrading day by day.

Father-in-law used to threaten to transfer all the assets of boy in name of her daughter.

The boy & family started realizing the intention of father-in-law was not good.

Since the boy &family did not listen to girl & his father's property transfer demands one fine day father & daughter filed false Section 498A, 323 & ¾ Dowry Prohibition Act case on the boy and his 2 family members.

Husband's family realized later that giving chance to girl was not correct decision. The result is that the boy and his family literally got mentally, physical & financially tortured for 3.5 years and now they are struggling with false Section 498A 323 & 3/4 Dowry Prohibition Act now.

The boy & family are literally broken and shattered now.

Then family got in contact with SIF (Save Indian Family) and getting all possible assistance in their case.

With the support and help from SIF family husband's family feel confident & strong after joining SIF Team.

With broken Heart-

**A tortured husband & family**

# बेख़ौफ़ लिखूंगा

बेख़ौफ़ लिखूंगा, हर रोज़ लिखूंगा
जितने तेरे सबक है, शब्द जोड़ लिखूंगा
हर रोज़ लिखूंगा, बेख़ौफ़ लिखूंगा

तेरी दी खुशी के, हर राग लिखूंगा
तेरे दिए गम की, हर बात लिखूंगा
जिस बारिश में भीगा, उसकी तेज धार लिखूंगा
जिस धूप में चला हूँ, उसकी चमकार लिखूंगा
मैं रोज़ लिखूंगा, बेखौफ लिखूंगा

हर सच्चा हर झूठा, तेरा दिखावा लिखूंगा
जो छूप रहा है परदे में, वा छलावा लिखूंगा
कड़वी लगे सच्ची बात, वहीं बात लिखूंगा
मैं सच को सच और, झूठ को झूठ सौ बार लिखूंगा
बेख़ौफ़ लिखूंगा, हर रोज़ लिखूंगा

टूटा जो मेरा ख़्वाब, उसका मैं सार लिखूंगा
फिर से ख़्वाब लाने, के तरीके हज़ार लिखूंगा
ज़रूर लिखूंगा, हर रोज़ लिखूंगा
बेख़ौफ़ लिखूंगा

# "Alimony/Maintenance for Women, Should not be a Tool for Male Exploitation"

It is shameful for any person to be dependent on someone else for "subsistence allowance"; whereas a self-reliant person lives with self-respect in the society. The ability of a person depends on his need and circumstance. Considering the woman weak, she was given the right to make provisions (schemes) under Article 15(3) of the Constitution to bring her at par in the mainstream of the society and not to harass and extort from the male class. Apart from this, Article 51A (j) of the Constitution gives both men and women equal «responsibility» to work for the interest of the country, not to sit idle for free bread and butter.

Even in 1973, when this law was brought for maintenance of wife, children and parents under Cr.PC 125, it was applicable to «only those wives» who were «incapable» to maintain themselves and not to for all. Being "incapable" and "not earning income" by a capable person are two different words. The same "incapability" is defined in the same Cr.PC 125 (1) (c) as "where such child is unable to maintain itself by reason of any physical or mental abnormality or injury". It means, a person who is not a victim of physical or mental abnormality or injury, he will be considered capable of maintaining himself. On the other hand, the person (male or female) who has "sufficient resources" is considered responsible for the maintenance of the whole family.

At the time of implementation of Cr.PC 125 in 1973, women›s property rights were less, education level was low, job and business opportunities were less. But in the year 2005 itself, a married woman was given birthright equal share to that of her brother in her maternal property. Today women are having "adequate resources", be it education, job, business or property.

In 2005 also, the "Protection from Domestic Violence Act 2005" also came into force in favor of "only women", in which the preamble was put on the first page at the very beginning that "the biggest reason behind not raising voice against domestic violence is that she is financial dependent on other person. Due to fear of financial dependencies on someone and fear of that the other can ask her to get out from the house". But nowhere in this act the woman was asked to become "self-reliant", but keeping the wife/woman a lifelong dependent, a system like harassing the other party in the name of rights was given, which was wrong.

Today in 2022, when a woman has got property rights equal to her brother and her brother is capable, why is the system of «parasite making» exist even after the woman is entitled to «adequate resources»? When there is a dispute between husband and wife and both are having "adequate resources", then why in the 21st century the responsibility of maintenance of a wife/woman rests on the man/husband-family only? Now if a woman donates her property rights to her maternal home, and does not want to work for herself, then why is the blame put on her husband?

The family courts are being used, by women today, to extort money from the husband by merely making allegations like false implication

in Section 498A, Dowry Prohibition laws, etc than to get justice, whereas in the Court, the man comes with a hope for justice. Justice should be decided on merits, but even here during litigation the woman, no matter how educated and with adequate resources, is forcibly considered weak and poor. While the man is by default considered as emotionless and a criminal, whether he is with sufficient resources or not, he is considered guilty only by the fact that he got married.

The situation has become worse now, when the husband is forced to maintain his wife in the name of rites/customs, but the responsibility of the wife is not talked about on the basis of the same rites/ customs. The court there either relieves her of her responsibilities or the court declares itself helpless (even after the decision in favour of the husband in HMA Sec.9 RCR, the Hon'ble Court becomes helpless if the wife does not go to her in-laws' house; But in the case of recovery in Cr.PC 125, the Hon'ble Court gets immense powers). Whether the wife lives in her maternal home or anywhere else, the husband has no say in that. If the wife lives in adultery and the husband prove it in some way, then now the case is left in the name of "Occasional Adultery". Even if the wife is earning and no matter how much she is earning, the burden of the wife's maintenance is put on the husband. Even if the wife is living in her maternal home, the husband is bound to pay her rent for a house. Even if the wife has a child from another man, the husband has to bear the expenses of that child and if the husband somehow gets divorced by proving the torture or wife's adultery, then the husband has to pay maintenance to that "guilty" wife, until that divorced wife is remarried. Even when the guilt of the wife is proved, its punishment/monetary punishment is given to the husband. Husband's life has become even worse than that of slaves. By law, the husband does not even have the legal right to get a cup of tea from his wife. What is the condition of that husband, when his entire family (even married sisters and brothers-in-law living away) is made accused and police extorts money from them as well as their social reputation is tarnished. Whatever the husband earns, even if he does not want to, he must give it to his wife, who, instead of supporting him, is harassing him and his entire family misusing the legal provisions granted to her by law. If the support for the husband's life is children, then in the greed of more alimony, she also takes those children away and that father is left in agony and is unable to do anything.

In this rush to pursue women empowerment, the man is portrayed as totally insensitive human being and his pains are blatantly ignored. Due to the insensitivity of this system towards men, men are left with no other option but to lead a suffocating life or die by suicide. Perhaps getting married is that man's crime. It is also clear from NCRB data that family disputes are the biggest reason for suicide. In these family disputes, more than twice as many men are committing suicide than women and the main reason for all this is the insensitive, rude and abusive behaviour of the society and the system towards men. Even if the woman's allegations are proved false, they are not given any punishment. This is the biggest reason for them blatantly filling these false cases without any fear of any repercussions. There is no punishment for the one who ruins a man's whole life, there is not even any apology also given. If the courts take suo motu cognizance of false cases and in turn take action against those who file these false cases, then there would not exist this environment of anarchy against men.

Not only the poor, but the families of lawyers, doctors, engineers, politicians, MLAs, MPs, IAS, IPS, Judges etc. are coming under the grip of this, but still, it is not clear what is the fear that stops them from acknowledging and speaking about this truth?

Alimony has also now been taken under the purview of luxury, even if the wife's contribution in the husband achieving that status is "NIL"; this is wrong. We cannot compare, a husband who works eight hours in the office to earn for his livelihood, to a woman sitting idle at home and not working, in the name of "Equal to Husband Status".

In the name of gender equality, by relieving women of any responsibility, women are given free alimony throughout their lives sitting at home and the husband is stripped of his children, job, social respect, etc. in the name of this gender equality and women rights. This is the reason why "domestic discord" has emerged as the biggest reason for men's suicides. More than twice the numbers of men are forced to commit suicide than women.

According to the NCRB data of the Government of India also in the year 2021, against 28,680 married women, 81,063 married men were forced to commit suicide. Even after such a big difference, today due to "Legal Terrorism", only the women side is heard in the law and the whole society has been made anti-male, even raising the topic of "male harassment" in any government program, is dubbed as "anti-women". The mentally tortured man is ridiculed from the street to the Parliament by calling him a "wife victim".

Women's alimony should not become a weapon of male exploitation.

Today, "if " there is a need then it is to empower the woman and make them stand on their own feet, not to exploit the man under the guise of maintenance laws.

Normally when a wife falsely sues her husband for dowry and harassment (Section 498A, Dowry Prohibition Act) etc., or on the basis of a dowry-torture suit, she has already made up her mind that her husband will be imprisoned for at least 3 years. That means 3 years alimony will not be available. In such a situation when the husband hurt by false allegations somehow comes out with the help of other people after getting bail etc. In which there is no contribution of the wife then "now" from the hard earned money of that husband, that maiden-sitting wife should not get any alimony or other benefits at least for at least 3 years in the beginning.

Nowadays, more than 73,000 married men commit suicide every year mainly due to domestic discord. As long as the husband is alive, she demands thousands and lakhs of rupees per month in the court and tells that if this amount is not received, she will die of hunger and as long as the husband is alive, he will continue to face cases. But when the husband commits suicide, hardly any of these men's wife has died hungry till date! Now they are covered in a widow pension of Rs. 500/- per month. If the husband is not alive, the same wife no longer has the "entitlement" to file a suit in the same court for alimony.

The benefit of a man's personal hard work, his work ability, his education and his tireless hard work, without conviction, by imposing a fine, cannot be given to his responsibility shunning wife just because the man has accepted to marry her as a societal norm.

Under CrPC 125, in which the wife is considered unable to sustain herself, in the same CrPC 125, if the parents of the wife file their maintenance suit on their daughter, who has the legal right to resources and property equal to her brother while living in her maternal home; The "concept of minimum wages" will also be fixed on that daughter. Now the same court will have not only to consider the daughter living in the same situation as capable for her own sake, but the same married daughter will also have to pay maintenance amount to her parents (on the basis of adequate resources equal to the adequate brother). Point being that the woman is the same, the basic section of CrPC 125 is also the same, but in the case of maternal home, she is considered fully "capable", while in the case of in-laws, she is considered "in-capable". It has often been found that women talk about the torture on them in the court, but in the end, most of their prayers are focused on the demand for money and as soon as the amount of maintenance allowance is tied, then their demand for justice weakens and shows no interest in proving their charges on the appearances. Whether it is Cr.PC. Section 125 or DV Act or Section 498A.

Article 14 of the Constitution of India does not allow discrimination on the basis of gender. Article 15(3) of the Constitution allows special provisions for the upliftment of women and not for the exploitation of men on the basis of sex discrimination, to parasitize the woman| According to the intention of the government, the woman should be empowered, she should be motivated to become self-reliant for living with self-respect and not make her a permanent parasitic on her husband.

There is no separate "Government institution" to protect the rights and honor of the remaining half of the country's population, i.e. MEN. That is why there are more than 50 men's organizations from across the country, which are fighting against this gender discrimination system. The largest group of these organizations is "Save Indian Family", which is working since the year 2005 and has its own self-operated All India Male Helpline whose number is "8882498498". This helpline receives calls every month from around 5 thousand harassed men who are fed up with this gender discrimination law and order and many have even come to the point of committing suicide. The organization not only saves them, but also teaches them to fight against injustice free and honestly.

In family matters, the courts should not become a means of extorting money on the basis of "unproven", fictitious and false allegations of the woman only, that too by the police to such an extent that the husband has to commit suicide.

If false allegations of dowry etc. are made by the wife on the husband and on this basis the wife gives her sufficient reason to live in the maternal home or elsewhere; later, if these allegations are proved false, then in such a situation, the amount of maintenance from the husband should be recovered by the court from the wife and her witnesses.

In the case of children, if the wife (or her maternal uncle) party demands alimony by showing her inability to maintain the child, then the "custody" of the child / children should be given to their "natural guardian" i.e. the father of the children, and the mother will not be obliged to provide maintenance and at the same time the time of meeting the child should be fixed. Similarly, if the child's mother asks for "custody" of the child, the father will also not be

obliged to provide maintenance and the father should be given time to meet the child.

Children should not be interrupted from meeting their parents. In this way, children will get love from both their parents and they will not become a means of extortion and perhaps these children can make husband and wife one again, there will be a strong possibility. Arrangements should be made to meet the children at a public place.

Gender discrimination laws made in the name of women empowerment, today instead of making women self-reliant, women are making them "parasites" in the name of "subsistence" and 99% of men are subjected to economic, physical and mental harassment. Due to this "domestic strife", the "suicide rate of men" is up to two and a half times higher than that of women. According to the NCRB data of the Government of India also in the year 2021, against 28,680 married women, 81,063 married men were forced to commit suicide. Even after such a big difference, today due to "Legal Terrorism", only the women side is heard in the law and the whole society has been made anti-male, even raising the topic of "male harassment" in any government program, dubbed "anti-women". The mentally tortured man is ridiculed from the street to the Parliament by calling him a "wife victim".

**Munendra Kr**
Member SIF-Jharkhand

## मेरी कहानी मेरी जुबानी

क्या बयां करुं साब?
मैं अपने गुज़रे दौड़ कि
एक वक़्त ये भी गुजरा है।
कभी अपने माँ पर
तो कभी घर के बच्चों पर
नज़र डालता और खुद से पूछता था कि।
क्या सिर्फ मेरे शादी करने से
इतने लोगों का जीवन बर्बाद हो सकता है।
क्या इनके बर्बादी का कारण मैं हि हूँ।
क्या मेरी माँ महिला नहीं है?
जो बहु के झूठे केस करने मात्र से
मेरी माँ को भी सजा हो सकता है?
क्या सिर्फ बहुये हि कानून के नज़र से महिला है।
हमने तो सुना था कि कानून अँधा होता है साब।
पर मेरा अनुभव तो कानून का महिला वादी का रहा है।
बोला जाए तो सिर्फ बहु वादी कानून साब।
जब मेरा जन्म हुआ था।
तो हमने सुना कि सब बहुत खुश हुए थे।
कि। घर में बेटा हुआ।
पर जब मेरे वज़ह से घर वालों पर केस हुआ तो वहीं लोग
मुझे कोसने लगे।
क्या करुँ साब।
अब ता खुद को जीन्दा रखने के लिए नहीं जीता हूँ साब।
बल्कि अब तो
खुद को और घर वालों को।
सही ओर निर्दोष साबित करने के लिए जीता हूँ।

**धनंजय कुमार भगत**
सदस्य SIF-Jharkhand

# Uniform Civil Code and Way Ahead

The cultural & religious diversity of India was readily accepted by our fore fathers who declared India as a Secular Nation. Secularism as one of the basic structure of our Constitution has also been interpreted by the Honourable Supreme Court of India. The Constitution bestows the right to freedom of religion to people residing in this country and it is a fundamental right under Article 25. Also there is Rule of law under Article 14 of the Constitution.

## Constitutional provision pertaining to Uniform Civil Code:

It is manifest that the Constitution makers have kept the provision of Uniform Civil Code (further referred as UCC for the sake of brevity) vide Article 44 which states that the state shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.

However, Article 44 was put in Part IV of the Constitution under Directive Principles of State Policy, which is not enforceable in the court of law. It is pertinent that Article 37 states that the provisions contained in this part shall not be enforceable by any court, but the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

It is crystal clear that though Directive Principles of State Policy are not enforceable in the court of law but the language used is very assertive that these principles as laid down are fundamental in the governance of the country and in policy formulation in furtherance thereof. It is noticeable that word 'shall' has been used in Article 44 i.e. the State shall endeavor.... which is in assertive terms.

But since the adoption of the Constitution on 06th November 1949, Article 44 has always remained as rest in peace and the erstwhile Governments has never taken any effective steps towards implementation of UCC.

## Judicial exposition on Uniform Civil Code:

It would be indubitable to know the considered view of judiciary on UCC i.e. Article 44 of the Constitution and its implementation.

The Honourable Supreme Court in Mohd. Ahmed Khan vs. Shah Bano Begum, 1985 held as under:

"It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. It provides that "The state shall Endeavour to secure for the citizens a uniform civil code throughout the territory of India". There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably, it has the legislative competence to do so. A counsel in the case whispered, somewhat audibly, that legislative competence is one thing, the political courage to use that competence is quite another. We understand the difficulties involved in bringing persons of different faiths and persuasions on a common

platform. But, a beginning has to be made is the Constitution is to have meaning. Inevitably, the role of the reformer has to be assumed by the courts because, it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts of courts to bridge that gap between personal laws cannot take the place of a common Civil Code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case."

Further in Sarla Mudgal v. Union of India, 1995 the Honourable Supreme Court of India stated, "The State shall endeavour to secure for the citizens a uniform civil code through-out the territory of India" is an unequivocal mandate under Article 44 of the Constitution of India which seeks to introduce a uniform personal law- a decisive step towards national consolidation..... It appears that even 41 years thereafter, the Rulers of the day are not in a mood to retrieve Article 44 from the cold storage where it is lying since 1949. The Governments –which have come and gone – have so far failed to make any effort towards "unified personal law for all Indians".

In John Vallamattom v. UOI, 2003, the Apex Court advocated implementation of UCC.

It is manifest that courts in India have advocated legal merits intheimplementation of UCC consistently over the years.

## Whether personal laws of various religious denomination have been codified:

We must also now consider the various religions for whom personal laws have been codified. The population census indicates roughly that around 80% of Indian population are followers of Hinduism.

It is noticeable that major religions in India have undergone some social reforms or the other in their personal laws and practices. The Christians have Indian Christian Marriage Act, 1872, the Indian Divorce Act, 1869 and the Indian Succession Act, 1925. The Parsis have the Parsi Marriage and Divorce Act, 1936.The Hindu civil laws (that apply to the Sikhs, Jains and Buddhists) have been codified by the Parliament through the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956, and the Hindu Adoption and Maintenance Act, 1956.

It is apparent that for Christians, Hindus (also Sikhs, Jains and Buddhists) and Parsi, laws on marriage, divorce, succession, inheritance and maintenance have been well codified.

It is manifest from the above data that apart from Muslims, all other religions' personal laws and practices have been codified with varied provisions.

## Pertinent difference in codified personal laws of various religion:

That in case of Christians, a couple has to live separately for two years for finalizing divorce, there is a waiting period of two years. For Hindus (also Sikhs, Jains and Buddhists) the Hindu Marriage Act stipulate only one year period of separation to file for dissolution of marriage. There are other pertinent differences in the codified personal laws of various religions.

The State has made monogamy, law for Hindus (also for Sikhs, Jains and Buddhists), Christians and Parsis. The Section 494 of IPC makes marrying again during the lifetime of husband or wife a punishable offence whereas the Muslim personal law permits as many as four wives.

## Whether UCC would be violative of Article 25 i.e. Right to freedom of religion:

There is no iota of doubt that Article 25 gives right to freedom of religion to people residing in India. However, Clause 2 makes it clear that

(i) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice.....

It is abundantly clear that the Article 44 of the Constitution does not come in conflict with Article 25 that guarantees freedom of religion, because clause 2 of this Article separates religion from secular laws that removes some regressive religious practices. It is noteworthy that freedom of religion shall not limit the state from making any law providing for social welfare and reform.

Justice Chinnappa Reddy, delivering his Ambedkar Memorial Lecture on 'Indian Constitution and Secularism' has observed that:

"Indian constitutional secularism is not supportive of religion at all but has adopted what may be termed as permissive attitude towards religion out of respect for individual conscience and dignity. There, even while recognizing the right to profess and practice religion, etc., it has excluded all secular activities from the purview of religion and also of practices which are repugnant to public order, morality and health and are abhorrent to human rights and dignity, as embodied in the other fundamental rights guaranteed by the Constitution."

In SR Bommai v. Union of India; 1994, the Honourable Apex Court speaking through Justice Jeevan Reddy held that religion is a matter of individual faith and cannot be mixed with secular activities. Secular activities can be regulated by the State by enacting law.

It is very pertinent that common civil law like the common criminal law, does not infringe on any religion.

Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society. Marriage, succession and like matter are of secular nature and therefore law can regulate them.

Resultantly, it can be very well inferred that UCC would not be violative of Article 25 of the Constitution.

## Need for UCC and the way ahead:

When personal laws governing marriage, divorce, inheritance and adoption for Christians, Hindus (also for Sikhs, Jains and Buddhists) and Parsi have been codified then there is no justification to keep in abeyance UCC for all citizens of the country. A high time has come to introduce UCC when more than 80% of the citizens already have varied codified personal laws. The need for UCC is undisputable & undeniable. The need for law must be based inter-alia need for time and values that ensure equity and gender justice.

For example in Goa, common civil law is prevalent for people of all religion in the state.

UCC will help the cause of national integration by removing disparities/differences in personal laws and as sine-qua-non for stronger India. A far sighted political will is required and a time has come for political parties to rise above from the vote bank politics to appease minorities.

Then Rajiv Gandhi led Govt. overturned the Shah Bano Case decision by way of Muslim women (Right to protection on divorce) Act,1986 which curtailed the right of a Muslim woman for

maintenance under Section 125 Cr.P.C.

The country as one strong nation must have uniform law dealing with marriage, divorce, succession, inheritance and maintenance for its citizens and UCC would be an ideal safeguard of citizen's rights which is unquestionable and necessary now.

In a democratic country, law making power vests with the legislatures, however law is often developed by judges and courts when delivering decisions in individual cases that have precedential effect on future cases. However, judge made law is not conducive for democratic society. The credit goes to the Indian Judiciary which has remained consistent in its observation for the need of UCC in the country.

In order to address discrimination and bring harmony in family laws across different religious denominations and to strengthen the family as the backbone of the society by including a spirit of tolerance between husband and wife and providing for inbuilt safeguard against injustice by one spouse against the other, need for UCC is indubitable.

Pertinently, it would be just to focus on the need of gender neutral approach in codification of family laws in terms of UCC. Family law reforms need not only view women's rights as its corner stone but should also equally weigh men's rights. Few so called pseudo women groups can not be allowed to decide the nature of family laws. A formidable society must be able to harmonize the needs of both men & women rights in equal aspect.

UCC must also include irretrievable breakdown of marriage as ground for dissolution of marriage and maintenance provisions/law must be codified into one and must be gender neutral.

It is settled principle of law that law cannot be allowed to be misused and an innocent person cannot be made to suffer. So while formulating UCC, a proper check must be kept so as to stop its abuse if any. Any law reform must have compassion for healthy growth of future generation and has to be sustainable.

Since, the Constitution does not differentiate on the basis of religion or sect and treats every citizen as equal and there is Rule of Law under Article 14, then why there exist potential difference in varied family laws governingdifferent religion.

To remove this pertinent discrimination, Uniform Civil Code should be formulated and implemented. This is the need of the hour.

## Sources:

1. The Constitution of India, Bar Act.

2. https://judis.nic.in

**Views expressed are personal views of the author and has no connection with any institution or organization.**

**Narendra Kr Pathak**
Member SIF-Jharkhand

***The process of justice is never finished but reproduces itself generation after generation.***

**IN THE SUPREME COURT OF INDIA**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.1310 OF 2022**
**[Arising out of SLP (Crl.) No.5762 of 2022]**

**GITESH KUMAR** **Appellant(s)**

**VERSUS**

**THE STATE OF JHARKHAND & ANR.** **Respondent(s)**

**O R D E R**

**1. Leave granted.**

**2. The appeal challenges the order dated 08.03.2022 by which the learned Judge of the High Court of Jharkhand at Ranchi while granting anticipatory bail to the appellant has imposed a condition of depositing an amount of Rs.12,00,000/- as *ad interim* victim compensation without prejudice to his defence in the case.**

**3. Despite being duly served, none appears for the respondent No.2 – the first informant.**

**4. Learned counsel for the State has vehemently opposed the application on the ground that the said dowry is paid by cheque to the appellant and as such no interference is warranted in the condition imposed by the impugned order.**

**5. This Court time and again has condemned the practice of imposing onerous conditions while granting bail or anticipatory bail. The present matter is also not a matter which involves commercial transactions. It arises out of a matrimonial dispute**

**between the appellant and the victim.**

**6. As to whether the anticipatory bail was to be granted or not was within the discretion of the learned Judge of the High Court depending upon the relevant circumstances that are required to be taken into consideration.**

**7. However, we find that the condition as imposed was not warranted in the facts of the present case. As to whether the amount of dowry was paid or not, is the matter to be decided at the stage of the trial and only thereupon the Court could have considered the question of awarding victim compensation.**

**8. In the result, the appeal is allowed. The condition as imposed in the impugned order of depositing an amount of Rs.12,00,000/- by demand draft is quashed and set aside. Needless to state that the other conditions while granting ad interim bail shall continue to operate.**

**Pending applications(s), if any, shall stand disposed of accordingly.**

**.....J.**
**(B.R. GAVAI)**

**.....J.**
**(PAMIDIGHANTAM SRI NARASIMHA)**

**New Delhi;**
**23rd August, 2022.**

**IN THE SUPREME COURT OF INDIA**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 1318 /2022**
**[@ SLP (Crl.) No.3701/2022]**

**SAHAB ALAM @ GUDDU** **Appellant (s)**

**VERSUS**

**THE STATE OF JHARKHAND & ANR.** **Respondent(s)**

**O R D E R**

**Leave granted.**

**Heard learned counsel for the parties.**



**We have a batch of petitions before us, arising from different nature of offences from dowry to Section 420, IPC to Section 376, IPC and POCSO Act. The common aspect in all these cases is that one particular learned Judge of the High Court has granted bail on condition on deposit of substantive sums of money without consideration of the requirements of bail dependent on the nature of offences. It is trite to say that bail cannot *per se* be granted if a person can afford to deposit the money or his capacity to pay. That is what seems to have happened. Since there is no proper consideration, it is also difficult for us to analyze what weighed with the learned Judge while granting bail and it is certainly not the jurisdiction of this Court to be first or a second Court of bail.**

**Learned Amicus has expressed his concern that such an approach gives rise to an impression among the accused that bail is admissible on being able to pay the money to obtain the said bail by seeking deposit of different amounts.**

**We are thus, of the view that in all these matters the impugned orders are liable to be set aside and the matters remitted back for fresh consideration before another learned Judge who would analyze each case keeping in mind the factual scenario, the nature of offence and the settled principles for grant of bail.**

**In view of the fact that the orders were of the nature of anticipatory bail and we had granted interim protection to the extent of the requirement of deposit of the amount, the interim protection granted by this Court would continue till fresh consideration is made by the High Court, making it clear that this interim protection is not a reflection on the merits of the controversy of each of the parties but was necessitated on account of monetary condition imposed for grant of anticipatory bail.**

**Learned counsel for the appellants in Criminal Appeal arising out of SLP [CRL.] NO.6415/2022 and criminal Appeal arising out SLP [CRL.] NO.5884/2022 submitted that though no interim protection has been**

granted by this Court, the same benefit may be extended to them as well, particularly in view of the nature of offence alleged. We accordingly grant interim protection from arrest to these appellants as well, till the conclusion of the bail applications before the High Court.

At the request of learned counsel for the State, we direct that all the appellants before us cooperate with the investigation as interim protection is already enuring in their benefit.

We also clarify that in view of our judgment in ***Dharmesh Alias Dharmendra @ Dhamo Jagdishbhai Alias Jagabhai Bhagubhai Ratadia & Anr. v. State of Gujarat*** (2021) 7 SCC 198 there is no question of victim compensation, as there cannot be such a criteria at the stage of grant of bail.

The appeals are accordingly allowed in the aforesaid terms leaving parties to bear their own costs. We place on record our appreciation for the good assistance rendered by the learned Amicus curiae Dr. Manish Singhvi.

**……...J.**
**[SANJAY KISHAN KAUL]**

**……...J.**
**[M.M. SUNDRESH]**

**NEW DELHI;**
**AUGUST 24, 2022.**

**ITEM NO.15 Court 6 (Video Conferencing) SECTION II**

**S U P R E M E C O U R T O F I N D I A**
**RECORD OF PROCEEDINGS**

**Petition(s) for Special Leave to Appeal (Crl.) No(s). 5191/2021**

**(Arising out of impugned final judgment and order dated 01-07-2021 in CRMABA No. 7598/2021 passed by the High Court Of Judicature At Allahabad)**

**SATENDER KUMAR ANTIL Petitioner(s)**

**VERSUS**

**CENTRAL BUREAU OF INVESTIGATION & ANR. Respondent(s)**

**(IA No. 105098/2021 - EXEMPTION FROM FILING AFFIDAVIT**
**IA No. 105096/2021 - INTERVENTION APPLICATION**
**IA No. 90323/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)**

**Date : 07-10-2021 The matter was called on for hearing today.**

**CORAM :**
**HON'BLE MR. JUSTICE SANJAY KISHAN KAUL**
**HON'BLE MR. JUSTICE M.M. SUNDRESH**

**UPON hearing the counsel the Court made the following**
**O R D E R**

**Application for intervention is allowed.**

**We have been provided assistance both by Mr. S.V. Raju, learned Additional Solicitor General and Mr. Sidharth Luthra, learned senior counsel and there is broad unanimity in terms of the suggestions made by learned ASG. In terms of the suggestions, the offences have been categorized and guidelines are sought to be laid down for grant of bail, without fettering the discretion of the courts**

**concerned and keeping in mind the statutory provisions.**

**We are inclined to accept the guidelines and make them a part of the order of the Court for the benefit of the Courts below. The guidelines are as under :**

**"Categories/Types of Offences**

**A) Offences punishable with imprisonment of 7 years or less not falling in category B & D.**

**B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.**

**C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (S.37), PMLA (S.45), UAPA (S.43D(5), Companies Act, 212(6), etc.**

**D) Economic offences not covered by Special Acts.**

**REQUISITE CONDITIONS**

**1) Not arrested during investigation.**

**2) Cooperated throughout in the investigation including appearing before Investigating Officer whenever called.**

**(No need to forward such an accused along with the chargesheet (Siddharth Vs. State of UP, 2021 SCC online SC 615)**

## CATEGORY A

**After filing of chargesheet/complaint taking of cognizance**

**a) Ordinary summons at the 1st instance/including permitting appearance through Lawyer.**

**b) If such an accused does not appear despite service of summons, then Bailable Warrant for physical appearance may be issued.**

**c) NBW on failure to failure to appear despite issuance of Bailable Warrant.**

**d) NBW may be cancelled or converted into a Bailable Warrant/Summons without insisting physical appearance of accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.**

**e) Bail applications of such accused on appearance may be decided w/o the accused being taken in physical custody or by granting interim bail till the bail application is decided.**

## CATEGORY B/D

**On appearance of the accused in Court pursuant to process issued bail application to be decided on merits.**

## CATEGORY C

**Same as Category B & D with the additional condition of compliance of the provisions of Bail uner NDPS S. 37, 45 PMLA, 212(6) Companies Act 43 d(5) of UAPA, POSCO etc."**

**Needless to say that the category A deals with both police cases and complaint cases.**

**The trial Courts and the High Courts will**

keep in mind the aforesaid guidelines while considering bail applications. The caveat which has been put by learned ASG is that where the accused have not cooperated in the investigation nor appeared before the Investigating Officers, nor answered summons when the Court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with.

We may also notice an aspect submitted by Mr. Luthra that while issuing notice to consider bail, the trial Court is not precluded from granting interim bail taking into consideration the conduct of the accused during the investigation which has not warranted arrest. On this aspect also we would give our imprimatur and naturally the bail application to be ultimately considered, would be guided by the statutory provisions.

The suggestions of learned ASG which we have adopted have categorized a separate set of offences as "economic Offences" not covered by the special Acts. In this behalf, suffice to say on the submission of Mr. Luthra that this Court in ***Sanjay Chandra vs.CBI***, (2012) 1 SCC 40 has observed in para 39 that in determining whether to grant bail both

**aspects have to be taken into account:**

**a) seriousness of the charge and**

**b) severity of punishment.**

**Thus, it is not as if economic offences are completely taken out of the aforesaid guidelines but do form a different nature of offences and thus the seriousness of the charge has to be taken into account but simultaneously, the severity of the punishment imposed by the statute would also be a factor.**

**We appreciate the assistance given by the learned counsels and the positive approach adopted by the learned ASG.**

**The SLP stands disposed of and the matter need not be listed further.**

**A copy of this order be circulated to the Registrars of the different High Courts to be further circulated to the trial Courts so that the unnecessary bail matters do not come up to this Court.**

**This is the only purpose for which we have issued these guidelines, but they are not fettered on the powers of the Courts.**

**Pending applications stand disposed of.**

**[CHARANJEET KAUR]**
**ASTT. REGISTRAR-cum-PS**

**[POONAM VAID]**
**COURT MASTER (NSH)**

**IN THE SUPREME COURT OF INDIA**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO(S). 1803 OF 2022**
**[@ SPECIAL LEAVE PETITION (CRL.) NO. 1771 OF 2022]**

**RAVIKANT SRIVASTAVA @ RAVI KANT SHRIVASTAVA Appellant(s)**

**VERSUS**

**THE STATE OF JHARKHAND & ANR. Respondent(s)**

**O R D E R**

**Leave granted.**

**The present appeal has been filed by the appellant-husband assailing the condition incorporated by the High Court while granting him anticipatory bail under its order dated 15-02-2019 followed with dated 04/05-03-2021, indicating that for pre-arrest bail, he has to deposit a Demand Draft of Rs. 10 Lakhs as ad-interim victim compensation in favour of Respondent No. 2 - wife.**

**It is indeed a matrimonial dispute between the parties and their marriage was solemnized according to the Hindu Rights and Customs on 11.06.2015, but later because of their matrimonial differences, an application was filed by the appellant seeking dissolution of marriage on 08.07.2016 and Respondent No. 2 also instituted a Criminal Complaint against the appellant (husband) No. 2233/2017 on 27.07.2017 before the Chief Judicial Magistrate, which was later converted to FIR No. 3055 of 2018 on 22.02.2018 for**

**offences under Section 498A, 120B, 323, 324 IPC read with Section 3/4 Dowry Prohibition Act.**

**Being the non-cognizable offence, the appellant approached the Court by filing application seeking pre-arrest bail. The High Court granted pre-arrest bail on the premise that the appellant shall resume the conjugal life as stated in para 8 of the of the bail application. But the ground realities are once the parties are into matrimonial discord and instituting *inter se* proceedings to restore conjugal rights, is otherwise not possible.**

**At this point of time, the High Court exercised its powers under Section 482 Cr. P.C. and passed the order directing the appellant to submit a Demand Draft of Rs. 10 Lakhs as ad-interim victim compensation, as revealed from the order dated 04/05-03-2021 to permit the appellant to avail the benefit of pre-arrest bail.**

**After we have heard counsel for the parties, we find no reasonable justification for the High Court to call upon the appellant to submit a demand draft of Rs.10 lakhs in availing the benefit of pre-arrest bail.**

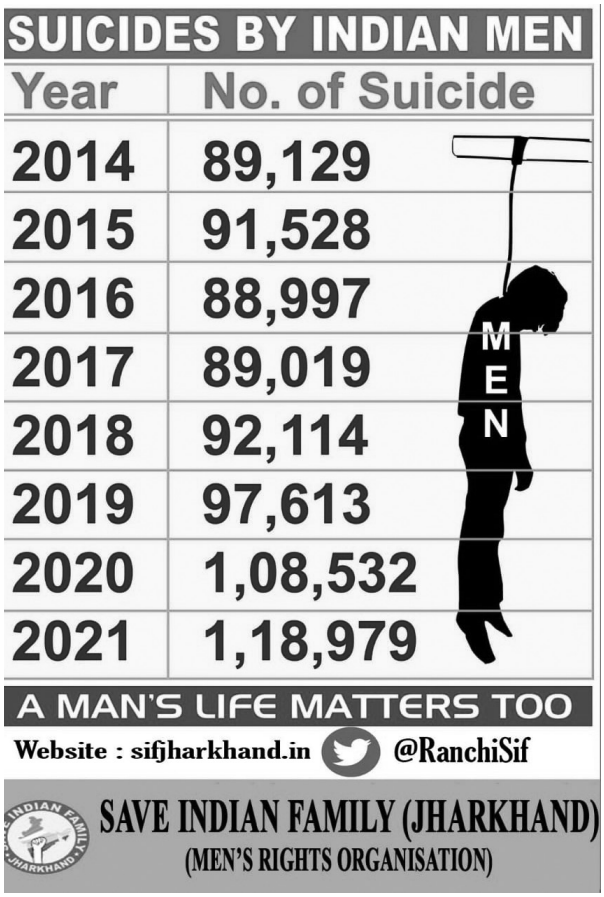
**Consequently, the appeal stands allowed and the order passed by the High Court dated 04/05-03/2022 directing the appellant to deposit a Demand Draft of Rs. 10 Lakhs is hereby set aside.**

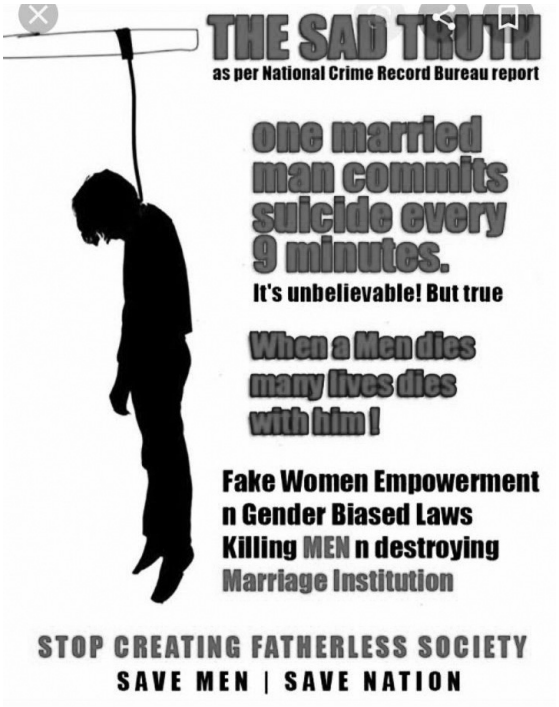
**Pending interlocutory application(s), if any, is/are disposed of.**

**.....J.**
**[ AJAY RASTOGI ]**

**.....J.**
**[ C.T. RAVIKUMAR ]**

**New Delhi;**
**OCTOBER 18, 2022.**



# All India Helpline No. - 8882 498 498

**For any help, counselling and suggestions following numbers can be contacted in Jharkhand : 9931394889, 9334712823, 8084380535**

The Following are indicative list of members :

| SI. No. | Name | Designation | Location | Mobile No. |
|---|---|---|---|---|
| 1 | Mr. Alok Ranjan | President | Ranchi | 9386661436 |
| 2 | Mr. Ramesh Pathak | Vice President | Ranchi | 8084380535 |
| 3 | Mr. Ranjit Singh | General Secretary | Ranchi | 9334880788 |
| 4 | Mr. Akshay Agrawal | Treasurer | Ranchi | 7000372949 |
| 5 | Mr. Narendra Pathak | Joint Secretary | Ranchi | 7903717881 |

## Indicative List of Members

| S.N. | Name (Sh.) | Location | Mobile No. |
|---|---|---|---|
| 1 | Sudhir Kumar | Asansol | 7908112549 |
| 2 | Roshan Agarwal | Aurangabad | 7752945949 |
| 3 | Surya Kumar | Bangalore | 6296649248 |
| 4 | Kislay Keshav | Bhagalpur | 9952670967 |
| 5 | Hrishikesh Tiwary | Bokaro | 8296382370 |
| 6 | Murli Manohar | Bokaro | 6202112863 |
| 7 | Somen Chakravarty | Bokaro | 9600132850 |
| 8 | Ajay Kumar Tiwary | Bokaro | 9748579555 |
| 9 | Mantu Gupta | Daltongunj | 7870029898 |
| 10 | Chandan Malviya | Deoghar | 9999345790 |
| 11 | Roshan Agarwal | Dhanbad | 7204888132 |
| 12 | Ravi Agarwal | Dhanbad | 9740665428 |
| 13 | Niranjan Mandal | Dhanbad | 7683052388 |
| 14 | Subhash Pd Bamwal | Dhanbad | 9471120281 |
| 15 | Ravi Sahankar | Dhanbad | 7680878781 |
| 16 | Alok Srivastav | Jamshedpur | 8789182036 |
| 17 | Deepak Agrawal | Jamshedpur | 7004749173 |
| 18 | Gopal Razak | Jamshedpur | 9931544844 |
| 19 | Inder Virdi | Jamshedpur | 9708590255 |
| 20 | Shailendra Kumar | Jamshedpur | 8757230349 |
| 21 | Praveen Chandra | Jamshedpur | 8709596641 |
| 22 | Raman Jee | Jamshedpur | 7488743073 |
| 23 | Sanju Razak | Jamshedpur | 7979907906 |
| 24 | Vikash Kumar | Jamshedpur | 7979750409 |
| 25 | Vijay Bhaskar | Jamshedpur | 9983226309 |
| 26 | Durjay Sarkar | Jamtara | 7470083081 |

| S.N. | Name (Sh.) | Location | Mobile No. |
|---|---|---|---|
| 27 | Ranjan Kr Barnwal | Jhajha | 9473420807 |
| 28 | Ajit Sachan | Kanpur | 9415184445 |
| 29 | Akash Gupta | Kanpur | 7905294600 |
| 30 | Anupam Dubey | Kanpur | 9889188810 |
| 31 | Rupesh Kumar | Khunti | 8252224851 |
| 32 | Ayush Viveka | Kolkata | 7003373482 |
| 33 | Ashok Sharma | New Delhi | 9599239843 |
| 34 | Chandan Kumar | New Delhi | 9910121291 |
| 35 | Pushkar Srivastav | New Delhi | 9953041026 |
| 36 | Amit Roy | New Delhi | 9971770257 |
| 37 | AnandMahto | New Delhi | 9873371758 |
| 38 | Munendra Kumar | New Delhi | 9599055821 |
| 39 | Sourabh Gandhi | New Delhi | 7022025765 |
| 40 | Sanjeev Kumar | Ramgarh | 9438064410 |
| 41 | Abhishek Prasad | Ranchi | 9434776246 |
| 42 | Abhishek Saha | Ranchi | 9006368623 |
| 43 | Akshay Agrawal | Ranchi | 7000372949 |
| 44 | Alok Ranjan | Ranchi | 9386661436 |
| 45 | Aman Raj | Ranchi | 6202525657 |
| 46 | Bhaskar Trivedi | Ranchi | 9960800222 |
| 47 | Bigan Kant | Ranchi | 9162739542 |
| 48 | Bikash Gupta | Ranchi | 9334658243 |
| 49 | Chandan Malviya | Ranchi | 7763805678 |
| 50 | Chandeshwar Singh | Ranchi | 7654692744 |
| 51 | Deo Kumar Mahto | Ranchi | 9199325930 |
| 52 | Dhananjay Malhotra | Ranchi | 9324059425 |

| S.N. | Name (Sh.) | Location | Mobile No. |
|---|---|---|---|
| 53 | Dr. Alok | Ranchi | 9608112040 |
| 54 | Gautam Sahu | Ranchi | 6299114923 |
| 55 | Kunal | Ranchi | 9955994400 |
| 56 | Manoj Gupta | Ranchi | 8789427732 |
| 57 | Mintu Krishna | Ranchi | 6205913709 |
| 58 | Narendra Pathak | Ranchi | 9304065151 |
| 59 | Nasruddin Ali Haider | Ranchi | 9771484375 |
| 60 | Naveen Jaiswal | Ranchi | 9973937408 |
| 61 | Nimesh Anand | Ranchi | 9934118745 |
| 62 | Niraj Sinha | Ranchi | 8210927092 |
| 63 | Prahalad Prasad | Ranchi | 9931394889 |
| 64 | Rajendra Kumar | Ranchi | 9835939158 |
| 65 | Rajesh Mahto | Ranchi | 7654994500 |
| 66 | Rakesh Kumar | Ranchi | 9958296252 |
| 67 | Ramesh Kr/Rinku | Ranchi | 9905114500 |
| 68 | Ramesh Pathak | Ranchi | 8084380535 |
| 69 | Randhir Jaiswal | Ranchi | 7519532869 |
| 70 | Ranjit Singh | Ranchi | 9334880788 |
| 71 | Sameer Kr. Jha | Ranchi | 8986880203 |
| 72 | Samir Agarwal | Ranchi | 9966871036 |
| 73 | Sapan Singh | Ranchi | 9934152202 |
| 74 | Satyabesh Kumar | Ranchi | 8580204493 |
| 75 | Shakil Ansari | Ranchi | 9868433926 |
| 76 | Srawan Kumar | Ranchi | 9155982299 |

| S.N. | Name (Sh.) | Location | Mobile No. |
|---|---|---|---|
| 77 | Sushil Pandey | Ranchi | 8603665009 |
| 78 | Umesh Mahto | Ranchi | 9435000155 |
| 79 | Vijayanand | Ranchi | 9891097370 |
| 80 | Yogesh Mishra | Ranchi | 9709057087 |
| 81 | Ashutosh Pandey | Ranchi | 9304560763 |
| 82 | Jaidev Kumbhakar | Ranchi | 9534055043 |
| 83 | Arnn Prasad | Ranchi | 6206112076 |
| 84 | Ajay Kumar | UAE | 0971503014392 |
| 85 | Ajay Pandey | Ranchi | 9304033896 |
| 86 | Zeeshan Khan | Jamshedpur | 971504524345 |
| 87 | Vivek Singh | Ranchi | 8709106924 |
| 88 | Chandan Kumar | Dhanbad | 8271090715 |
| 89 | Jasbir Singh | Daltonganj | 7979889012 |
| 90 | Amit Kr Burnwal | Deoghar | 9066335732 |
| 91 | Saurav Kumar | Godda | 9922996912 |
| 92 | Irfan | Vijawada | 9347905069 |
| 93 | Rahul Pujara | Jamshedpur | 9392377879 |
| 94 | Haider Ali | Pune | 9145059910 |
| 95 | Gobind Prasad Modi | Deoghar | 9798354032 |
| 96 | Ashwani Kr Tiwari | Ranchi | 9771567373 |
| 97 | Gautam Rakshit | Ranchi | 8409228801 |
| 98 | Prashant Kr Singh | Ranchi | 9102034444 |
| 99 | Debabrata Dey | Jamshedpur | 9142827372 |
| 100 | Dharmendra Madhukar | Koderma | 8252798668 |

रजि. नं.: 145/2020-21

# SAVE INDIAN FAMILY JHARKHAND

## (MEN'S RIGHT ORGANISATION)

1. आप झूठे पारिवारिक मुकदमों में फसाये जा सकते हैं।
2. आप बिना शादी के भी दहेज प्रथा या घरेलू हिंसा की झूठी शिकायतों के शिकार हो सकते हैं।
3. महिला कानूनों का दुरूपयोग करके निर्दोष पति -परिवार व पुरूषों को जेल भेजने का डर (आतंक) बनाकर सामाजिक, आर्थिक, पारिवारिक व मानसिक शोषण जमकर किया जा रहा है।
4. दहेज कानून के दुरूपयोग को सुप्रीम कोर्ट ने कानूनी आतंकवाद की संज्ञा दी है।
5. संविधान की मूल भावना के विरूद्ध महिला उत्थान के नाम पर लिंग-भेद आधारित कानून बनाकर (पुरूषों को अधिकार रहित करके) पारिवारिक सभ्यता व संस्कृति को नष्ट किया जा रहा है।
6. दहेज आदि के झूठे मुकदमों में जेल गये 98 प्रतिशत व्यक्ति पर समाज द्वारा अपराधी का ठप्पा लगा दिये जाने से बरी हो जाने के बाद भी वह सामान्य जीवन नहीं जी पाता है, और कई लोग तो आत्महत्या तक कर लेते हैं।
7. आत्महत्या करने वाले विवाहित पुरूषों की संख्या, विवाहित महिलाओं की तुलना में लगभग दोगुनी (एन.सी. आर.बी., भारत सरकार के आंकड़ों के अनुसार) है। यही सच्चाई है।
8. संविधान के द्वारा प्रदत्त समानता के अधिकार का उल्लंघन किया जा रहा है।
9. सरकार महिला आयोग की तरह पुरूष आयोग क्यों नहीं बना रही है ?
10. भारत में जानवरों, बच्चों एवं महिलाओं के संरक्षण के लिए कानून है परन्तु पुरूष संरक्षण के लिए कोई कानून क्यों नहीं है ?
11. सविधान में स्त्री और पुरूष को बराबर का अधिकार है तो सिर्फ महिला संरक्षण कानून क्यों ?
12. संविधान तथा कानून में स्त्री-पुरूष बराबर, जो भरण-पोषण सिर्फ पत्नियों के लिए क्यों ?
13. IPC की धारा 498A और दहेज कानून में बदलाव की जरूरत है। ताकि उनका दुरूपयोग बन्द हो।

इसीलिए आप सभी जागरूक नागरिकों से निवेदन है कि महिला सशक्तिकरण के नाम पर बने कानूनों के दुरूपयोग से निर्दोष पति-परिवारों व पुरूषों पर हो रहे कानूनी-आतंकवाद (सामाजिक, मानसिक, पारिवारिक व आर्थिक शोषण) को समाप्त करने के लिए समय-समय पर संस्था द्वारा आयोजित होने वाले कार्यक्रमों में, अपनी उपस्थिति व सहयोग संस्था को प्रदान करें, और पति-परिवारों व पुरूषों को कानूनी-आतंकवाद के कारण आत्महत्या करने से बचाने हेतू समय में जुड़कर इस मुहिम को आगे बढ़ायें।

*हम महिला सशक्तिकरण के खिलाफ नहीं, बल्कि महिला सशक्तिकरण के नाम पर निर्दोष पुरूषों के कानूनी शोषण एवं उनके कानूनी अधिकार छीन लेने के खिलाफ है।*

## सेव इण्डियन फैमिली (झारखण्ड)

साप्ताहिक मीटिंग - प्रत्येक रविवार, सुबह 10 बजे से 1 बजे तक
हमारी संस्था नि:शुल्क कार्य करती है, विस्तृत जानकारी के लिए सम्पर्क करें- ऑक्सीजन पार्क, मोराबादी, राँची

**National Helpline No.: 8882 498 498**

**9931394889, 8986880203, 9386661436, 8084380535, 9334880788, 7000372949**

**We are fighting for Gender Neutral Laws.**

When Injustice Becomes Law Resistance Becomes Duty.

# SIF JHARKHAND

- Men are human too. Men lives do matter.
- Crime has no gender.
- SIF Jharkhand is working for the cause of Justice, Family and Matrimonial Harmony

Price : ₹ 200/-