



SECTION 498 A: IS THERE ANY VIOLATION OF NATURAL JUSTICE?

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Paper Received On: 25 NOV 2022

Peer Reviewed On: 30 NOV 2022

Published On: 1 DEC 2022

Abstract

Natural Justice (rule of Fair hearing and rule against bias) is every person's intrinsic right irrespective of caste, creed, religion, race, sex and nationality. It hasn't been defined anywhere under Constitution of India. But its glimpse can be seen under Article 14,19, and 21 i.e. right to equality, right to freedom of speech and expression, and right to life and personal liberty. When we relate Natural Justice to Section 498 A of Indi Penal Code we see there is been lot of misuse of this section by the Indian woman only for whom this section was actually made. This section was initially added in the IPC for the protection of women against harassment and cruelty made by their own husbands and in laws. When these women just run towards getting justice for the frivolous fights in the heat of a moment and complaint against their family they don't even think about the further consequences. They simply complaint and the whole family including husband have to stay in jail they don't even provided a fair chance of hearing and notice before arresting. We know how police in our country reacts over such cases. They simply put everyone behind the bar without even thinking for a minute that it can affect their image and status in the society. They should atleast done a preliminary enquiry before doing so. This is pure violation of the natural rights of the accused and his family about whom nobody thinks. This is a high time to think about the validity of this section I'll try to find out the possible results in my paper through some case laws.



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1. Natural Justice: An Introduction

The words 'Natural Justice' has been derived from the Roman word 'Jus Naturale' which means principle of natural law, justice, equity and good conscience. There is no particular definition of Natural justice worldwide. Natural Justice implies fairness and equality. Justice is a moral concept rather than a legal one. Law in India has been established since twentieth century. The concept of Natural Justice and its application in Justice Delivery System is not new. Natural Justice is moreover a public law. These laws are generally the

outcome of Judicial thinking and an important concept of Administrative Law. Its not codified anywhere. Natural justice basically depends on the fair hearing and no biasness. The rule of natural justice is not the straight jacket formula it has to be applied according to the circumstances of the case law, these rules are quite flexible. Natural justice is not only for the citizens but also for the non-citizens as well. In the case of **Maneka Gandhi v. Union of India**¹, Maneka Gandhi received a letter from Regional Passport Office on 04/07/1977 asking to submit her passport within 7 days and before 11/07/1977. The letter stated that it was the decision of the Government to impound her passport under section 10(3)(c) of the passport Act,1967 in the ‘public interest’. She immediately sent a letter to the Regional Office asking the grounds on which her passport had been impounded. She also requested for a copy of ‘Statement of Reasons’ for passing such order. The reply sent by the Ministry of External affairs stating that it was the decision of the Government to impound her passport in the interest of General public and also, the copy of Statement of reason will not be provided to her. Therefore, Mrs. Gandhi filed a writ petition regarding this matter. Article-14 of Indian Constitution talks about equality and equal protection in the eyes of law. This section gives the equal right to every citizen of India. Section 10(3)(c)of Passport Act,1967 has given immense power to the passport authorities which leaves lot of scope with the executives to interpret the wordings of this section in the way they want and they can easily misuse it. Section 10(3)(c) of the Passports Act 1967 – “if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;” The word ‘deems necessary’ gives lot of authority and powers to the passport officers to use this section according to them. Therefore, there is no reasonableness found in the actions of the Administrative authorities. It was also found in this case that Article 19(1)(a) Right to freedom of speech and Article 21 Right to Life and personal liberty was violated in the given case. This case was considered as the Landmark judgment given to increase the Horizon of Article 21 of the Indian Constitution especially. .

2. Importance of Natural Justice

The principles of Natural Justice have enriched law and constitutions the world over. Though the word Natural justice hasn’t been used anywhere in the Indian Constitution. The concept of social and economic justice given under the preamble of Indian Constitution talks

¹ Maneka Gandhi v. Union of India,AIR 1978 SC 597, 1978 SCR (2) 621

about the fairness in social and economic activities in India which is the basis of the principle of Natural Justice. Article 311 has many elements of the Indian Constitution without explicitly using the word. Even Article 14, 19 and 21 contains many elements of Natural Justice like fair procedure. Natural justice saves the natural right of the persons (including citizen and non-citizen). The two important doctrines of Natural justice are given following:

- a) ***Audi alteram partem***:- It means every person should be given a fair chance of hearing. A fair and proper right of hearing has to be given both the parties to a case which is going through the controversy. Before finalizing a case both parties should be given equal chance of hearing. The disclosure of opposing case must be made within reasonable time limit so that other party(affected one) will get proper time to prepare the case for its defence.
- b) ***Nemo in propria causa judex, esse debet*** :- It's a Latin phrase which means no one should be made judge in his own cause, it's a rule against bias. In simple words a person cannot be made judge in a case in which he himself is one of the party. Any legal order/decision given against this doctrine should be quashed. If a Magistrate or prosecutor has some personal interest than he cannot become a part of this case

3. Status in the Constitution:

- i) *“Article 14 of the Indian Constitution provides for equality before the law and equal protection of law within the territory of India and prohibits discrimination on the grounds of religion, race, caste, sex or place of birth or any of them.”*
- ii) *“Article 19 of the Indian Constitution provides Protection of certain rights regarding freedom of speech etc*

(1) All citizens shall have the right

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(f) omitted

(g) to practice any profession, or to carry on any occupation, trade or business”

- iii) *“Article 21 of the Indian Constitution provides protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.”*

- iv) *“Article 311 of the Indian Constitution no person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.”*

The above given articles of the Indian Constitution constitute the elements of Natural Justice but the expression hasn't used anywhere explicitly. Right to equality, right to life and right to freedom are the person's intrinsic or natural rights which can't be taken away from him. Whenever such rights of a person are violated by any other person they are known as violation of Natural Justice.

4. Section 498 A of IPC: Meaning and Its Nature

“According to Article 498 A of the Indian Constitution,1950 Husband or relative of husband of a woman subjecting her to cruelty.-Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.-For the purpose of this section, “cruelty” means-

- a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*
- b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”*

The above given section of Indian Penal Code,1860 confers the right to the Indian women against the cruelty done with them by their husbands or husband's relatives. The elements of this section are following:

- Woman must be married
- She must be a sufferer of some cruelty or harassment
- Such cruelty or harassment must be shown by the husband or the husband's relative

The word 'Cruelty' includes:

- Any 'wilful' conduct which is of such a nature as is likely to drive the woman to commit suicide,
- any 'wilful' conduct which is likely to cause grave injury to the woman, or

- any 'wilful' act which is likely to cause danger to life, limb or health whether physical or mental of the woman

Harassment will be punishable in the following given circumstances:

- ❖ Where the harassment of the woman is done with a view to coercing a) her or b) any person related to her to meet any unlawful demand for any property or valuable security or
- ❖ Where the harassment is on account of failure by a) her or, b) any persons related to her to meet such demand.

Under this section conviction can be given to the accused only for three years and fine can also be charged.

Nature of 498A

- **Cognizable:** Offences are divided into cognizable and non-cognizable. By law, the police are duty bound to register and investigate a cognizable offence. 498A is a cognizable offence.
- **Non-Bailable:** There are two kinds of offences, bailable and non-bailable. 498A is non bailable. This means that the magistrate has the power to refuse bail and remand a person to judicial or police custody.
- **Non-Compoundable:** A non-compoundable case, e.g. Rape, 498A etc, cannot be withdrawn by the petitioner. The exception is in the state of Andhra Pradesh, where 498A was made compoundable.²

5. Issue arises by section 498A

Is section 498 A of IPC is violative of Natural Justice?

The women filing complaints under the section of 498 A of IPC are often seeking revenge from their husband on the advise of their lawyers. Women are using this section as a weapon to extract money from their husbands and in laws. It is said that police officer of SP rank should enquire and order for arrest. Everyone knows what is Police and how they actually act. According to the principle of Natural Justice accused should serve a proper notice, should get a proper chance to defend himself and deserves a fair hearing and trial. Just because one lady quoting the name of in laws and her husband, police simply puts them behind the bars without any fair enquiry or prior notice here the principles of Natural Justice doesn't look so fair. Isn't it ?

² Understanding Section 498A of Indian Penal Code on Domestic Violence, blogpleaders, available at <https://blog.ipleaders.in/understand-section-498a-domestic-violence/>, last seen on 24/12/2022.

6. Case Studies:

(i). Rajesh Sharma v State of up³

In this case the complainant, wife of the appellant i.e. Mr. Rajesh Sharma, she married her husband on 28 November 2012 her father gave enough dowry in the marriage as per his capacity but the appellants were not satisfied. They started abusing the complainant and further demanded dowry of Rs. 3,00,000 and a car which her father couldn't arrange. On 10th November the appellant dropped his wife at her matrimonial house as she was pregnant she felt pain in the process and then lost her baby. Complainant's stridhan was also retained by the appellant so he was summoned under section 498 A and 323 of IPC. But here the complainant wanted that other respondents(family of Mr. Rajesh Sharm i.e. Vijay Sharma, Jaywati Sharma, Praveen Sharma and Priyanka Sharma) should also be summoned. This petition was allowed by Additional Session judge and remaining respondents were also summoned. Then appellants approached the High Court under section 482 of CrPC against the order of summoning. Even the mediation was failed. High Court dismissed the petition as it found no grounds to allow it. Main contention raised in support of this appeal is that there is need to check the tendency to rope in all family members to settle a matrimonial dispute. After that appellant appealed in the Supreme Court through Special Leave Petition under Article 136 of the Constitution of India,1950. ASG accepted that there is a growing tendency to abuse the said provision to rope in all the relatives including parents of advanced age, minor children, siblings, grand-parents and uncles. At many times this result into the harassment and arrest of innocent family members including women and senior citizen. Many directions were given by the court in this case for the benefit of the both the parties.

(ii). Arnesh Kumar vs State of Bihar & Anr⁴

Arnesh Kumar,petitioner is the husband ho Sweta Kiran and she alleged that her husband's mother and father demanded an amount of Rs. 8 lacs, an air conditioner, a tv set and a Maruti car. She also said that when her husband got to know about this information he also supported his family and threatened her to marry another woman. She was driven out of the matrimonial house for the non-fulfillment of his demand.

Complainant filed a complaint against his husband and the husband's family member under section 498 A of IPC and section 4 of Dowry Prohibition Act. His petition of anticipatory bail was rejected in both Trial and High Court and finally the anticipatory bail was granted by the

³ Rajesh Sharma v State of up Criminal Appeal No. 1265 of 2017(Supreme Court)

⁴ Arnesh Kumar vs State Of Bihar & Anr, Criminal Appeal No. 1277 of 2014(Supreme Court)

Supreme Court on some conditions. In this case SC said that there has been seen an increase in Matrimonial cases where in 2012 1,97,762(according to NCRB 2012 Statistics) cases had been registered with a growth of 9.4% more than year 2011. Court noticed that the simplest way of taking revenge from the husband and his relatives to get them arrested under this section in many cases even the bad ridden grand father and grand mother and the daughter in law living in abroad. It constitutes 4.5% of total cases filed under different heads of Penal Code. The Police is misusing section 41 of CrPC, arrest without warrant, even after providing many conditions under this section police simply arrests without hearing the another side and without giving them any prior notice. Even the magistrates allow detention of these people when they are produced before them. Also court directed that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically.

(iii). Preeti Gupta v. State of Jharkhand⁵

Manisha, the complainant, filed a complaint against her husband and other in laws including father in law, mother in law, unmarried brother in law and married daughter in law (Preeti Gupta who is the petitioner in this case) under sections 498 A, 406, 341, 323 and 104 B in 2007. They married at Kanpur after marriage they both left for the Mumbai where her husband used to do job in Tata Consultancy Services and permanent resident of Mumbai later on she also got job in the same company. It was alleged by the Manisha that she was demanded a luxury car by all the appellants and physically assaulted by her husband. The sister in law who lives in Surat Gujarat and the brother in law who lives in Maharashtra never came to Ranchi and they never used to interfere in the internal matter of the couple. Both the appellants brother in law and sister in law never visited to their place and there was no specific allegations against them was found by the High Court. It was also found that both the persons are highly qualified and doing job with company like TCS If because of temperamental incompatibility they cannot live with each other then it is proper that they should jointly get a decree of divorce by mutual consent. It was found by the Supreme Court that both the appellants brother in law and sister in law are innocent and they have been falsely dragged into this case by Manisha Poddar just to harass them. Permitting the complainant to pursue this complaint would be an abuse of the process of law. SC also found that large number of complaints have been filed on the daily basis and courts around the country are flooded with such complaints. These complaints are basically filed in the heat and on trivial issues. One complaint is leading to multiple cases which should not be happened

⁵ Preeti Gupta v. State of Jharkhand , Criminal Appeal No. 1512 of 2010(Supreme Court)

according to the court. At the time of filing the complaint, complainant never think about the future consequences that such complaint may lead to pain and agony to the accused and his close relations. It was also found by the court that if the husband and his close relatives have to stay in the jail even for some days it only leads to bitterness in the relationships, it ruins the chances of coming together in future. Majority of them are not even bona fide complaints. A large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. Finally, The complaint was quashed by the SC.

7. 498 A and violation of rights under Natural Justice

After studying the above cases we can easily understand the need of Judicial activism in this area where the natural justice of the accused and his family is being violated. The right of Audi Alteram Partem (right of fair hearing) is being violated by the Police officers under section 498A without doing any fair enquiry or hearing they simply puts everyone including the family of the accused behind the bars. They don't even think about the pain and agony of a family goes through after this cruel process. Even the last chance of a relationship settlement vanishes away when the members of the family have to stay in jail even for a one day. Article 19 right to freedom of these people is also violated by the police as they cannot go anywhere during the trials even the family have to show appearance in the case. Why the accused and his family doesn't get the fair right of hearing, why the timely notice doesn't provide them, why the behavior of the police always remains bad with them as they have committed some murder, why anticipatory bails are not given to them every time except some of the rare cases? Isn't it violation of natural justice of the accused and his family who may be an innocent one which may include ill and aged father or mother in law.

8. Conclusion

Section 498 A has given rise to the legal terrorism according to the Law Commission Report(2012) the courts around the country are flooded with the complaints under this section. Acquittal rate is the highest under such cases. These cases are generally send for the mediation from which most of the woman take their cases back. But during this whole process of law accused and his family suffers lot of pain and loss to the image about whom nobody thinks. Isn't their right of natural justice is being violated? Indeed yes there rights are being violated by the Police officers, and law which is very strict about the matters of section 498 A. Although there has been seen a lot of cases where many guidelines has been given by the court in the favour of accused and his family so that there right of freedom will not be violated. But still there is lot of scope in this section where improvements can be made.