



# **Analytical study of rule of law with special reference to Lalita Kumari and others, verses state of Uttar Pradesh 2013, Which deal with article 21 Constitution of India (protect the right of victim) and Arnesh Kumar verses state of Bihar 2 July 2014. Article 21(a) Which protect the right of accused.**

**Dr Pradeep Kumar Tiwari**

Assistant -professor

Madhav university

Raul of law

**Abstract-** The concept of Raul of law immersed from France after historical revolution of France. On that Time Kairo was the king of France. He kept his citizen like a slave people were struggling for bread and batter they have no sufficient means for living hood. Kairo became negligence. And he did not pay attention towards his citizen although he used to busy with enjoyment. Having seen all these things, the citizen of France became annoyed and they announced revolution against Kiron. Citizen of France won the revolution and kiro overruled from his position and citizen of France became owner of the country. On that movement constitution has required for governing the country. constitution committee member advert dicey has given the concept of rule of law which has been followed by all democratic country. That research paper based on that concept. In this research paper outhter try to discuss rule of law according to Indian scenario. In Indian constitution concept of rule of law has given al in the form of fundamental right. Other try to discuss all the manger issue related rule of law with latest judgment on the light of Lalita Kumari verses state of Uttar Pradesh. And Arnesh Kumar Concept of rule of law

Concept of rule of law is component of natural law which means every Which deal with article 21 Constitution of India humans are equal before the law' and law is equal for all. nature cannot discriminate any body whether it is animal, or Human (men, and women) nature also cannot thing that some body is poor or rich. If any body come before the river get water without any discrimination. Same natural law concept has been adopted by legal system "every body equal before the law and law is equal for all". First time Mr Salmond has given the concept of natural law later on Mr decay elaborate the legacy of Natural law in the form of Raul of law. In Constitution of France fundamental Right has been adopted for protecting the right of citizen and if government try to breach the fundamental right of citizen the constitution provide remedy. Same Concept has been adopted by all democratic Country. Whether it is America or Australia. After independence in India same concept has been adapted by the Indian constitution that "everybody is equal

before the law and law is equal for all. And provision of fundamental right has been made for all Indian citizen and also provide constitution remedy for protecting the fundamental right. Dr B.R. Ambedkar said that constitution remedies are soul of Indian constitution. Which given in the form right jurisdiction. According to that if anybody whether it is a government or common people breach the fundamental right of Indian citizen. Aggrieved person can file writ petition before honourable high court under article 226 and 227 before the supreme court under article 32 and 35 constitution of India. is there is locus standby. Rule of law means protect the legal right of people whether he is belonging any cast and creed male or female Transgender rich or poor, . Before discussing the concept of rule of law we have to think one major incident which Happened in epic era of Indian history. Travancore is district of kerala where king of Travancore passed the order that women who belongs to lower cast, they had to pay tax than they wear blouse for covering chest. That tax call breast tax. Now question arises in our mind that is rule of law because king order used to be follow every one but in yeas of law that is not rule of law because that is discriminating people Rule of law Talk about equality .second incident which I am going to discuss related Gujarat its very exclusive where Testa Sita wadi falsely implicated in sedation case section 124 (a) I.P.C. read with another section of I.P.C. without doing proper investigation police has filed Charged sheet without doing proper investigation. The accused Testa sitewide moved toward supreme court for granting bail. During the time of argument honourable supreme court asked serious question from solicitor general of India regarding how serious allegation has been imposed against her without any authentic evidence. The honourable supreme court put serious remark on the investigation of Prosecution and said that that is against Rule of law. Nobody can be arrested without any proper evidence against him. Article 21 (a) protect the right of accused same as article 21 protect the right of victim .In present article we are discussing the concept of rule of law with the light of two land mark judgment which has been passed by honourable supreme court constitution bench recently one is Lalita Kumari verses state of Uttar Pradesh(2013) which protect the right of accused under article 21 and another one is Arun Kumar verses state of Bihar( 2014)8 SSC 273 which protect the right of victim under article 21(a). Here we are discussing the concept of rule of law analytically. First, we are discussing about Lalita Kumari verses state of Uttar Pradesh judgment which passed 2014.

### **Lalita Kumari vs Govt. of up and others on 12 November, 2013**

Lalita Kumari, a minor girl has been kidnapped; her father filed a writ petition of habeas corpus under article 32 of Indian constitution in the supreme court of India for the protection of his daughter.

The petitioner on 11.01.2008, made his grievances to officer in-charge of the police station who did not make any action or efforts on the same. Afterwards, an FIR was lodged by the SP and yet, no steps were taken for apprehending the accused or for the recovery of the minor girl, Lalita.

### **In The Supreme Court of India**

### **Criminal Original Jurisdiction**

### **Writ Petition (Criminal) No. 68 OF 2008**

**Bench : P Sathasivam, B.S. Chauhan, Ranjana Prakash Desai, Ranjan Gogoi, S.A. Bobde**

The FIR registration is mandatory in case of a cognizable offence.

The landmark judgment delivered by the Constitutional Bench of the Supreme Court in Lalita Kumari v. Govt. of U.P in which the court ruled that registration of First Information Report is mandatory under Section 154 of the Code of Criminal Procedure if the received information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be initiated only to ascertain whether the cognizable offence is disclosed or not.

In this case, the court held that if the police received the information which discloses commission of a cognizable offence, then there is the registration of F.I.R is mandatory in the concerned Police Station.

No Preliminary inquiry is permissible in such a situation. Police officials cannot avoid his duty of registering offence if a cognizable offence happens and which is disclosed through the received information.

If cognizable Offence is related to modesty of women Which mention in I.P.C. under section 354(a), 354(b), 354(c), 376, Women trafficking etc, If first information report come to police station related to Those offence station officer must register the F.I.R. without any delay. And start investigation.as soon as possible.

If offence is related P.A.C.S.O act. Station officer must inform non-government organisation and family members of prosecutrices before taking her statement.

After registering F.I.R. Police start Investigation. if police found That no offence had happened after investigation police filed closure report before the magistrate according to the jurisdiction.

2- If Offence is related to 498(a) ,304(b), and anty corruption act before registering F.I.R Police start investigation .After investigation police officer found that case is fit for registering the F.I.R they registered F.I.R Otherwise filed closer report Before the magistrate .

3- If any body give information to police related to cognizable offence related to its jurisdiction area. In writing if Station officer not register the F.I.R , than complainant give application to superintendent of police . After that if F.I.R not registered. The Complainant file compliant. Case before megastar in jurisdiction area.

### **ARNESH KUMAR V. STATE OF BIHAR**

**NAME OF THE CASE \_ Arnesh Kumar v. State of Bihar**

**CITATION -(2014) 8 SCC 273**

**DATE OF THE CASE - 2 July, 2014**

**APPELANT - Aneesh Kumar**

**RESPONDENT State of Bihar Sweta Kiran**

**BENCH/JUDGE Hon'ble Justice Chandrakala Kr. Prasad and Hon'ble Justice**

**Pinaki Chandra Ghose** LEGAL PROVISIONS - The Indian Penal Code, 1860: Section 498-A The Dowry Prohibition Act, 1961: Section-4 The Code of Criminal Procedure, 1973: Section 41, 41A, 57,167 Constitution of India: Article 22(2)

### **INTRODUCTION**

Dowry system was started in the ancient times as a gift to the bride during marriage. In Ramayana holly scripture of Hindu religion has written that farewell of Sita ji rajajanak gave so many gift not only ram ji , but also Sita ji, but there were no demand kept by any party .That was holly act which has been done in free consent. but nowadays dowry and business are two peas in a pod. The bride parents are burdened to give more money and even properties as dowry and if the demands are not fulfilled the marriage is abruptly axed or the bride is tormented after the marriage. In Asia, especially in India it is widely practiced. Therefore, the Indian Government has made many legislations such as The Dowry Prohibition Act 1961 which prohibits the dowry system.

However, every coin has two sides. The laws and legislations which proves to be propitious to the women is on the other hand squandered by them. The present case put forward the same issue. In this case, the petitioner's wife alleged that his parents demanded dowry and the petitioner was arrested. The petitioner denied all the claims and applied for the anticipatory bail which was rejected. Then he appealed to the Supreme Court by the way of Special Leave Petition. The Special Leave Petition was accepted by the Supreme Court of India.



The Court stated that: “Arrest brings humiliation, curtails freedom and cast scars forever.”[1] Therefore, the Court issued the guidelines directing all the states to truncate the misuse of Section 498A of the Indian Penal Code, 1860. The Court also beseech the police officers to investigate while arresting a person for cognizable offense and follow Section 41 of CrPC.

## BACKGROUND

In India dowry is labelled as ‘Streedhan’ which means money, property, or gifts exclusively for the bride bequeath by the parents. Although the original meaning of the custom is dismantled and the bride is now considered as a pot of gold who brings riches to the groom’s family. With the increase in dowry deaths the government has enacted laws such as the Dowry Prohibition Act, 1961 which prohibits ‘giving, taking or demanding of dowry.’[2] The brutality which is evident in the dowry cases were criminalized by the Indian Parliament by amending the Indian Penal Code.

Nevertheless, these laws and legislations are used by the women as a weapon for their personal vengeance. Women resort to false dowry demands and aggravation. Moreover, the husband and relatives are arrested and harassed by the police officers. In the case of *Dr. N.G. Dastane v. Mrs. S. Dastan*, 1975 the cruelty towards the husband was evident and the law was misused by the wife to torment the husband. In yet another case *Preeti Gupta v. State of Jharkhand*[4], the Supreme Court repudiated the criminal proceeding against married sister-in-law and unmarried brother-in-law on the ground that there was no specific allegation against them in the complaint and they resided in separate States.

In the case of *Arnesh Kumar v. the State of Bihar* also the Court gave its landmark judgment on Arrest and the misuse of dowry laws. The marriage of Arnesh Kumar and Sweta Kiran was solemnized on July 1, 2007. The wife accused her in-laws of demanding eight lakh rupees, a Maruti Car, AC, etc., and the husband also supported his family and threatened to marry another woman. She also alleged that she was driven out of the matrimonial house because of the non-fulfilment of the demand. The husband denied all the accusations and filed for anticipatory bail which was rejected by the Session Court and the High Court. Therefore, he knocked on the gate of the Supreme Court through Special Leave Petition which was accepted by the Court.

## FACTS OF THE CASE

The marriage of Arnesh Kumar and Sweta Kiran was commemorated on 1st July 2007. After years of marriage Sweta Kiran alleged that her in-laws demanded eight lakh rupees, a Maruti Car, an Air Conditioner, a television set, etc., and when the issue was put in front of her husband, he too supported his family and brow-beat to marry another woman. Further, she also accused that she was thrown out of the house due to the non-fulfilment of the demand of the dowry.

The husband, Arnesh Kumar was arrested under Section 498A of the Indian Penal Code, 1860 which states that “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.”[5] He was also apprehended under Section 4 of the Dowry Prohibition Act, 1961 which states that “Penalty for demanding dowry: If any person demands, directly or indirectly, from the parents or other relatives or guardian of a

bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees. Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of fewer than six months.”[6]

Arnesh Kumar denied all the complaints lodged against him by his wife and applied for anticipatory bail. The bail was rejected by the Session Court and the High Court. He was not satisfied by the decision of the Courts and appealed to the Supreme Court of India by the way of a Special Leave Petition which was accepted by the Court.

## ISSUES RAISED BEFORE THE COURT

Whether Section 498-A of the Indian penal Code, 1860 can be rectified?

What are the remedies if the provisions of section 4 of the Dowry Prohibition Act, 1961 is misused by a woman?

Whether the Petitioner should be granted the anticipatory bail?

What are the rights of the accused before and after the arrest?

## CONTENTIONS

### Arguments from the Appellant Side:

The petitioner argued against the complaints lodged by his wife for the dowry demands.

The petitioner also contended that Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act was misused by his wife in order to accuse him and his family.

He believed that he has been arrested on the accusation of committing a non-bailable offence. Therefore, he moved to the Session Court and the High Court for the anticipatory bail where his bail was rejected.

The petitioner then appealed to the Supreme Court through Special Leave Petition as he was not satisfied with the decision of the Session Court and the High Court.

### Arguments from the Respondent Side:

The respondent accused the petitioner and his family for demanding dowry.

It was also reiterated that the petitioner not only demanded eight lakh rupees, a Maruti Car, an Air Conditioner, etc. but also threatened to marry another woman if the demands are not fulfilled.

Furthermore, the respondent argued that she was thrown out of the matrimonial home because of the non-fulfillment of the demands of the dowry.

It was also contended that the petitioner should not be granted anticipatory bail as the case includes Section 498A of the Indian Penal Code, 1860 which is a cognizable and non-bailable offence.

## PROVISIONS RELATED TO THE CASE

### Section 498A in The Indian Penal Code

The section states that “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.”[7]

### Section 4 in the Dowry Prohibition Act, 1961

It states that “If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees.

According to Section 22(2) of the Indian Constitution, “Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

Section 41 of states that “Any police officer- may without an order from a magistrate and without a warrant arrest any person who has committed a cognizable offence, who is in possession of stolen property, or is a state offender, who obstructs a police officer in discharge of his duty, who attempts to escape from lawful custody, who is declared as a deserted from any of the Armed Forces of the Union, who is a released convict and breaches his contract of release etc.

Section 41A defines the notice of appearance before police officer. (1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice

Section 57 states that “Person arrested not to be detained more than twenty- four hours. No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty- four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate’ s Court

### JUDGEMENT

The landmark judgment on arrest in the case of Arnesh Kumar v. the State of Bihar where the petitioner was arrested on the apprehension of committing a cognizable offense under Section 498A of The Indian Penal Code, 1860 and under Section 4 of the Dowry Prohibition Act, 1961. The petitioner, in this case, denied all the complaints of dowry lodged by his wife and in turn appealed for anticipatory bail which was rejected. Then the petitioner approached the gate of the Supreme Court by the way of the Special Leave Petition which was accepted by the Court. Furthermore, the Court laid down the guidelines and rights of the accused before and after the arrest.

The Court recapitulates on the increasing matrimonial altercations. The Court said that Section 498-A of the IPC was set in motion to protect women of India from the evil of the dowry system. The fact that Section 498-A is a cognizable and non-bailable offense has lent it a dubious place of pride amongst the provisions

that are used as weapons rather than shields by disgruntled wives.[13] The wives nowadays harass their husbands and their relatives by getting them arrested under this provision. Therefore, the Court held that 'No arrest can be made in a routine manner on a mere allegation of commission of an offense made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation.'[14] It was also recorded in the case of *M.C Abraham v. State of Maharashtra*[15], the honourable Supreme Court of India reiterated that arrests must be made very cautiously and by following the correct procedure. It is mandatory for the police to make such arrests and is able to justify the accused is likely to commit the further offense, can alter the evidence, etc.

The court further ordered the police to follow some guidelines while arresting a person for cognizable offenses:

The Court concluded its decision on the case by ordering these directions to be followed not only to the cases related to Section 498A of IPC and Section 4 of the Dowry Prohibition Act, 1961 but also to the cases where the offense is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine. Arrest

In the leading case of *Arnesh Kumar v. the State of Bihar*, the petitioner was accused and arrested for a cognizable offense to which he denied. His attempt to secure anticipatory bail was failed and he approached the Supreme Court through SLP which was accepted and the Court elucidate that "Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest

In my opinion, this case is a light of hope as it highlights the malicious side of the Section 498A of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961 which was in fact established for the welfare of the women and to protect women from dowry system. The case also laid down the guidelines for the state government and police officers to be followed in the case of a cognizable and non-bailable offense

### Conclusion-

Hear we are discussing About rule of law with special reference to two famous case one is related to right of victim which come under the article 21 *Lalita Kumari verses state of Uttar Pradesh* case. In this case honourable supreme court gave direction to police officer (station officer of police that ) If any victim Come to Police station and inform about cognizable offence the station officer must written F.I.R and start investigation. Second case deal with right of accused under article 21 (a). In case of *Arnesh kumara verses state of Bihar* case Honourable Supreme court not only protect the right of accused bat also give direction to police what are the major step police should fallow during the time of arrest of accused .Bat unfortunately the Police not fallowing the direction of supreme court. Due to influence of political party police registered false case against the citizens of India and also deprive the right of accused. In this research paper other try to discuss about the right of accused,