

## 8. Judicial Experimentalism – Polity

The Supreme Court has endorsed guidelines for Section 498A IPC, introducing a two-month "cooling period" and Family Welfare Committees to prevent the law's misuse. This instance of "judicial experimentalism" is controversial as it may delay justice for victims and contradicts a prior Supreme Court ruling that had struck down a similar mechanism.

### Supreme Court Endorses Allahabad HC Guidelines on Section 498A

In the recent case of Shivangi Bansal vs Sahib Bansal (2025), the Supreme Court of India has endorsed a set of guidelines issued by the Allahabad High Court in Mukesh Bansal vs State of U.P. (2022). These guidelines are aimed at preventing the alleged misuse of Section 498A of the Indian Penal Code (IPC), which has now been replaced by Section 85 of the Bharatiya Nyaya Sanhita (BNS).

#### About Section 498A and Existing Safeguards

**Purpose of the Law** – Section 498A was enacted in 1983 with the specific legislative intent to protect women from cruelty by their husbands or relatives, particularly in the context of dowry-related harassment.

**Concerns of Misuse** – Over the years, various courts have observed that the provision has been misused by filing frivolous First Information Reports (FIRs), leading to the harassment and immediate arrest of husbands and their families.

**Existing Safeguards Already in Place** – Before the new guidelines, the judiciary and legislature had already established several safeguards to prevent arbitrary arrests and misuse –

**Lalita Kumari vs Govt. of U.P. (2013)** – The Supreme Court allowed for a preliminary inquiry by the police before the registration of an FIR in matrimonial disputes.

**CrPC Amendment (2008)** – Introduced the principle of necessity for arrest under Section 41, meaning an arrest should not be made routinely if it is not required.

**Arnesh Kumar vs State of Bihar (2014)** – The Supreme Court mandated a checklist for police officers to follow before making an arrest in such cases and introduced the concept of a "notice for appearance."

**Satender Kumar Antil vs CBI (2022)** – The Supreme Court further strengthened bail rights, stating that if arrest directions are ignored, the accused is entitled to be released on bail.

**Impact of these Safeguards (According to NCRB Data)** – Data from the National Crime Records Bureau (NCRB) shows that these safeguards have been effective. Despite an increase in registered offences under Section 498A from 1,13,403 in 2015 to 1,40,019 in 2022, the number of arrests declined from 1,87,067 to 1,45,095 during the same period. This indicates that the existing measures were already reducing misuse without denying victims access to justice.

#### The New Allahabad High Court Guidelines (2022)

The guidelines endorsed by the Supreme Court introduce a new, pre-investigative mechanism.

**Introduction of a "Cooling Period"** – The High Court directed a mandatory two-month 'cooling period' after an FIR or complaint is registered. During this time, no coercive action (like arrest) can be taken against the accused.

**Role of the Family Welfare Committee (FWC)** – During this two-month period, every complaint under Section 498A is to be referred to a Family Welfare Committee (FWC). This committee, an extra-legal body, is tasked with attempting reconciliation between the parties.

**Reigniting Debate** – This has sparked a debate on judicial experimentalism, as these court-devised measures, while well-intentioned, may end up delaying a victim's right to prompt justice and undermine established statutory processes.

#### Understanding Judicial Experimentalism

Judicial experimentalism refers to the judiciary's proactive role in creating novel mechanisms to address perceived gaps in the law, often venturing into policy-making.

**Key Features** –

**Innovative Remedies** – Courts issue directions that are not explicitly found in statutes, such as creating cooling-off periods or extra-legal committees.

**Policy Influence** – The judiciary sometimes assumes a **quasi-legislative role**, creating rules and procedures that are typically the domain of the legislature or the executive.

**Trial-and-Error Approach** – Such experiments are often tested and may be rolled back or modified if they are found to be impractical or unconstitutional, as seen in previous cases.

#### **Notable Examples –**

1. **Vishaka Guidelines (1997)** – The Supreme Court laid down binding guidelines on workplace harassment, filling a legislative vacuum until the **POSH Act of 2013** was enacted.
2. **Prakash Singh Case (2006)** – The Court issued seven binding directives for police reforms, which the executive is still struggling to implement.
3. **Rajesh Sharma (2017)** – The Supreme Court introduced FWCs for 498A cases, a move that was later struck down by a larger bench.

#### **Implications of the New Guidelines for Section 498A**

The introduction of the "cooling period" and FWCs presents both positive and negative implications.

<b>Positive Aspects</b>	<b>Negative Aspects</b>
Protects potentially innocent husbands and their families from the trauma of wrongful and immediate arrest.	Denies victims timely redressal and access to immediate protection from abuse, as they must wait two months for any action.
Creates a window for reconciliation and mediation in matrimonial disputes before the criminal justice process takes over.	Weakens established criminal justice institutions by sidelining the statutory roles of the police and magistrates in favor of an extra-legal committee.
Aims to reduce the burden on the judicial system by filtering out frivolous or exaggerated complaints.	Risks repeating the failed experiment of the <i>Rajesh Sharma</i> guidelines, which were found to be regressive and were struck down by the Supreme Court itself.

#### **Key Challenges Posed by This Judicial Experiment**

**Delay in Justice** – The mandatory two-month waiting period inserts an extra step that can worsen a victim's situation, particularly if they are facing ongoing abuse.

**Contradiction of Precedent** – The new guidelines appear to contradict the Supreme Court's own ruling in *Social Action Forum vs Union of India* (2018). In that case, the Court struck down the *Rajesh Sharma* guidelines (which also created FWCs), stating they were regressive and restored the victim's right to prompt justice.

**Jurisdictional Overreach** – The creation of FWCs, which lack any statutory backing, leads to ambiguity regarding their powers, composition, and accountability.

**Undermining Criminal Justice Agencies** – By imposing non-statutory checks, the courts limit the professional discretion of the police and magistrates, who are the designated authorities for investigation and oversight.

**Psychological and Social Impact** – For genuine victims, the delay can lead to prolonged harassment, a lack of immediate protection, and an erosion of trust in the justice system.

#### **The Way Forward**

**Revisit the Ruling** – The Supreme Court should reconsider its endorsement in light of the binding precedent set by the larger bench in the *Social Action Forum* (2018) case.

**Legislative Clarity** – If reconciliation mechanisms are deemed necessary, they should be introduced through a proper legislative process, not by judicial imposition.

**Strengthen Existing Safeguards** – The focus should be on the effective implementation of the *Arush Kumar* guidelines through better training and sensitization of police forces.

**Encourage Voluntary Mediation** – Pre-litigation mediation can be promoted, but it must remain a voluntary **option** for both parties, not a mandatory compulsion.

**Rely on Data-Driven Policy** – With NCRB data already showing a decline in arrests, the justification for adding further procedural hurdles for victims is weak.

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