Courts straying into the Legislative Sphere

Why in news?

The Allahabad High Court's directions in the context of marital discord, though noble in intent seem to be flawed.

What is the issue?

- The Allahabad High Court, while allowing two criminal revisions pertaining to a dowry case, took cognisance of the misuse of Section 498A of the Indian Penal Code (IPC).
- The High Court expressed its concern over the growing tendency of dowry victims to rope in the husband and all his family members.
- The Court also issued directions such as the
    - constitution of a family welfare committee in each district under District Legal Services Authority (DLSA)
    - handing over the first information report to such a committee immediately after its registration
    - no arrest to be made by the police during this cooling period of two months
- The High Court took guidance from the judgment of *Social Action Forum for Manav Adhikar vs Union of India* (2018) and *Rajesh Sharma vs The State of U.P.*, 2017) that dealt with the misuse of dowry provisions.

What are the concerns regarding the judgement?

- **Role of police**- The HC's directions shall apply to the cases involving Section 498A IPC along with no injury, Section 307 (attempt to murder) and other sections in which the imprisonment is less than 10 years.
- Even if a woman is injured by her husband during the course of a matrimonial fight, the police shall not effect arrest, as the maximum imprisonment for such cases is 7 years.
- The judgment is also silent about the role of the police if a repeat offence is committed during such a 'cooling-period" of two months.
- **Sphere of legislature**- The constitutionality of dowry provisions has already been established.
- The misuse of Section 498A IPC by itself cannot be a ground to dilute it and issue directions which do not flow from any provision of the Code.
- **Victim rights**- These directions might curtail the rights of a genuine victim of dowry harassment.
- **Jurisdictional limit**- The moot question is whether the High Court was well within its jurisdiction to issue such directions when the scheme of investigation under the CrPC was clearly laid down.
- In case of Social Action Forum for Manav Adhikar, the Court held that a third agency (family welfare committee) had nothing to do with CrPC and in stopping arrest till a report is submitted by the committee.
- Judicial activism is the use of judicial power to articulate and enforce what is beneficial for

society.

Judicial overreach is when the judiciary starts interfering with the proper functioning of the legislative and executive, thereby encroaching upon the legislature and executive's domains.

What are the possible solutions to check false cases?

- **Role of police**- The police must strictly enforce the SC's direction in *Arnesh Kumar vs State of Bihar (2014)* and ensure that there is sufficient reason and credible material against the accused to necessitate arrest.
- The investigating officers must be imparted rigorous training with regard to the principles stated by the Court relating to arrest.
- At the same time, wrong-doers need to be punished departmentally.
- **Role of legislature**- The legislature may deliberate upon and make Section 498A IPC bailable.
- The legislature can amend and make the offence under Section 498A IPC compoundable so that a compromise could be arrived at with or without the permission of the competent court.
- Once the Mediation Bill, 2021 is enacted, the institutional mediation mechanism may help in settling the matrimonial dispute through the civil route.

References

1. https://www.thehindu.com/opinion/op-ed/a-case-of-the-court-straying-into-the-legislative-sphere/article65545842.ece
2. https://www.thehindubusinessline.com/business-laws/judicial-adventurism-time-to-introspect/article34465686.ece

SHANKAR IAS PARLIAMENT
Information is Empowering