

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(ORIGINAL WRIT JURISDICTION)

W.P.(PIL) NO. 636 OF 2020.

In the matter of:

1. Rajiv Pandey
2. Ravikant Sharma .....Petitioners.

-Versus-

1. Union of India
2. State of Jharkhand .....Respondents.

SUBJECT: -CHALLENGING THE CONSTITUTIONALITY OF SECTION 64 OF  
THE CODE OF CRIMINAL PROCEDURE, 1973.

INDEX

S.NO.		PARTICULARS	PAGE NOS.
1.	SYNOPSIS	SYNOPSIS	
2.	PETITION	WRIT PETITION ALONG WITH AFFIDAVIT	
3.	ANNEXURE I	PHOTOCOPY OF THE SECTION 70, CHAPTER VI OF OLD CODE OF CRIMINAL PROCEDURE, 1898.	
4.	ANNEXURE II	PHOTOCOPY OF THE CODE OF SECTION 62-64 OF CHAPTER VI OF CRIMINAL	

		PROCEDURE, 1973	
5.	ANNEXURE III	PHOTOCOPY OF THE ORDER V RULE 12 AND 15 OF THE CODE OF CIVIL PROCEDURE	
6.	ANNEXURE IV	PHOTOCOPY OF THE PAGE 61 OF THE 37 <sup>TH</sup> LAW COMMISSION REPORT	
7.	ANNEXURE V	PHOTOCOPY OF THE JUDGEMENT OF RELLIANCE PETROCHEMICALS LTD. V. INDIAN EXPRESS NEWSPAPERS BOMBAY (P) LTD. PRONOUNCED BY HON'BLE SUPREME COURT ON INDIA	

SYNOPSIS

The present petition is about the inequality which the Section 64 of the Code of Criminal Procedure creates upon the women of the country by not letting them to accept the summon on behalf of the person so summoned. It is a clear violation of the Articles 14, 15, 19 and 21 of the Constitution. It violates the right to equality guaranteed by Articles 14 and 15, the right to know guaranteed under Article 19 clause 1 sub-clause a, and Article 21, and the right to speedy trial under Article 21.

IN THE HIGH COURT OF JHARKHAND AT RANCHI  
(ORIGINAL WRIT JURISDICTION)

W.P.(PIL) NO. 636 OF 2020.

In the matter of:

An application under Article 226 of  
the Constitution of India

In the matter of:

1. Rajiv Pandey,

2. Ravikant Sharma,

.....Petitioners.

-Versus-

1. Union of India, through the Secretary, Ministry of Law And Justice, 4th Floor, A-Wing, Shastri Bhawan New Delhi-110001.
2. State of Jharkhand, through the Secretary, Project Bhawan, P.O., P.S. – Dhurwa, District – Ranchi-834004.

.....Respondents.

TO

THE HON'BLE JUSTICE DR. RAVI RANJAN, CHIEF  
JUSTICE OF THE HIGH COURT OF JHARKHAND AT  
RANCHI AND HIS OTHER COMPANION JUDGES OF THE  
SAID HON'BLE COURT.

This humble petition on behalf of the above named petitioners challenging Constitutional validity of Section 64 of Code of Criminal Procedure Code on the following grounds.

**MOST RESPECTFULLY SHEWETH:**

1. That in this writ application, the petitioners pray for the issuance of an appropriate writ/order/direction particularly: -

(i) To declare the violating part of the Section 64 of the Code of Criminal Procedure, 1973 which is not in line with the fundamental rights to be unconstitutional. By the perusal of the section 64 of the CrPC prima facie it appears that it is violation of Doctrine of equality. On the following ground:

(a) As Section 64 states that:

**“SERVICE WHEN THE PERSON SUMMONED CANNOT BE FOUND:**

Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family residing with him, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

**Explanation.-** A servant is not a member of the family within the meaning of this section.”

In the Section 62, a summon can be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant.[ATTACHED IN ANNEXURE II]

- (b) By the perusal of the above sections it is reflected that a summon can only be served to the adult male member of the family and excludes the female member to receive summon when the person so summoned cannot be found.
- (c) That prohibition made by statute of receiving the summon to any specific gender violates the basic principles of the fundamental right of equality under Articles 14 and 15 of the Constitution.
- (d) That the above provision also violates the right to know under Article 19. The ambit of Article 19 also protects right to know, right to communication, right to information.
- (e) That, the right to speedy trial protected under Article 21 is also violated.
- (f) That right to life includes right to live with dignity and it is only possible by involving the participation of women in every field, institution, workplace, institution, etc.

AND

For issuance of any other appropriate writ(s) or order(s) or direction(s) as Your Lordships may deem fit and proper in view of the facts & circumstances of the case.

2. The petitioners have no personal interest in the litigation. The petition is not guided by self-gain or for gain of any other person/institution/body and that there is no motive other than of public interest in filing the present writ petition. Further, the petitioners are approaching this Hon'ble court with clean hands and sole intention of addressing the public concern of violation of

fundamental rights of the citizens of India as enshrined under Article 14, 19 and 21 of the Constitution of India.

3. That the petitioners have not moved before this Hon'ble Court or the Hon'ble Supreme Court earlier for the reliefs as prayed for in the instant writ application.
4. That the Code of Criminal procedure is the matter of concurrent list (**List 3 entry no. 2**) hence the Hon'ble High Court of Jharkhand has the jurisdiction over it. And this matter comes within the territorial jurisdiction of this Hon'ble court.
5. That the main points of law involved in this writ application for consideration before this Hon'ble Court are as follows:
  - (i) Whether Section 64 of Code of Criminal Procedure violates Articles 14, 15, 19 and 21 of the Constitution?
  - (ii) Whether Section 64 of the Code of Criminal Procedure which prohibits the women to receive summon on behalf of the person summoned is rational and in line with the present notions of the status of the women in society?
6. That the Petitioner Number 1, namely Rajiv Pandey is a 3<sup>rd</sup> year BA LLB (Hons.) student of National University of Study and Research in Law, Ranchi and is having a sound academic history and also having good understanding of law.
7. That the Petitioner Number 2, namely Ravikant Sharma is a 2<sup>nd</sup> Semester LLM student of National University of Study and Research in Law, Ranchi and is having a sound academic history and also having good understanding of law.
8. That the issue referred in this petition emerged before the Petitioner No. 1 and the Petitioner No. 2, as and when they, collected and compiled data, notes, and reports on the basis of research and investigations conducted on the subject matter of this

petition, and thus resolved to seek justice from the Hon'ble High Court for the appropriate remedies and reliefs.

9. That, the Law Commission in its 37<sup>th</sup> report while considering the new enactment of the Code of Criminal Procedure, 1973 compared the Section 70 of the Code of Criminal Procedure, 1898 [PHOTOCOPY OF SEC. 70 CRPC, 1898 REFFERAL ANNEXURE I] which dealt with "Service when person summoned cannot be found" with the Order V Rule 15 of the Code of Civil Procedure, 1908 to recommend that the servant is not a member of the family and law commission recommended that in their opinion as the social conditions had changed the provision should not be continued (**Page on. 61, 37<sup>th</sup> Law Commission Report**). Consequently, the changes were made in the new Code of Criminal Procedure, 1973 and added an explanation to exclude the servant as the member of the family. [PHOTOCOPY OF RELEVANT PART ATTACHED IN ANNEXURE IV]
10. That, Your Lordship as the social condition now has changed much rapidly as what it was in the year 1973 and now it more desirable to strike out the gender specific part of the Section 64 of the Code of Criminal Procedure, 1973 and declare it to be applicable to all adult members of the family.
11. That, though the Law Commission compared the above said in para no. 9 but missed the point that in the same provision of the Civil Procedure Code, 1908 states that the summon can be served to any adult member of the family whether male or female who resides with him.
12. That, in the code of Civil Procedure, 1908, Order V Rule 15 states that:

“WHERE SERVICE MAY BE ON AN ADULT MEMBER OF DEFENDANT'S FAMILY

Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on his at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.

Explanation.-- A servant is not a member of the family within the meaning of this rule.”

The above rule was substituted by the Act No. 104 of 1976 (w.e.f. 01/02/1977) and inserted that any member of the family whether male or female can accept the summon on the behalf of the person so summoned.[PHOTOCOPY OF RELEVANT SECTION ATTACHED IN ANNEXURE III]

13. That in a civil law both male and female can receive summon without any discrimination whereas Section 64 of the Code of Criminal Procedure is gender discriminatory in nature where only the adult male member of the family can receive summon when the person summoned cannot be found. In any civilized society discrimination cannot be justified on any ground whatsoever.
14. The above provision of the Code of Criminal Procedure also violates the principle of rule of law. As per Professor A.V. Dicey the following principle of rule of law that is:
  - (i) Absence of arbitrary power
  - (ii) Equality before law
15. It is easy to understand the universal truth that all the people are born equal, that their Creator invests them with some inherent,

indivisible, inalienable, non-negotiable and non-derogatory natural and basic rights and through this we can count the effort to decent life, liberty, freedom, happiness and harmony. The days of yore when women were treated as fragile, feeble, dependent and subordinate to men, should be a matter of history.

16. The Court referred to the Shloka that have been referred in *Nikku Ram*, ((1995) 6 SCC 219)

“भतृभातृपितृजातिश्वश्रूश्वशुरदेवरैः ।  
बन्धुबिश्च स्त्रियः पूज्याः भूषणाच्छादनाशनैः ॥”

[Bhartr bhratr pitrijnati swasruswasuradevaraih]

Bandhubhisca striyah pujoyah bhusnachhadanasnaih]].

A free translation of the aforesaid is as follows: —

“The women are to be respected equally on par with husbands, brothers, fathers, relatives, in-laws and other kith and kin and while respecting, the women gifts like ornaments, garments, etc. should be given as token of honour.’

17. International Conventions and Treaties on Gender Equality

The Covenant on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, is the United Nations' landmark treaty marking the struggle for women's right. It is regarded as the Bill of Rights for women. It graphically puts what constitutes discrimination against women and spells out tools so that women's rights are not violated and they are conferred the same rights.

18. That, the legislative intent which is seen through the Preamble of our Constitution declares the rights and freedoms which the people of India intended to secure to all citizens. The Preamble begins with the words ‘WE, THE PEOPLE OF INDIA.....’ which

includes men and women of all castes, religions, etc. It wishes to render 'EQUALITY of status and or opportunity' to every man and woman. The Preamble again assures 'dignity of individuals' which includes the dignity of women.

19. That, the prohibition to receive summon by the female in a criminal case is one of the causes of delay of justice because a working male person is generally not found at the home during the general office hours which is of 9 AM to 5 PM. And usually the female of the house being the housemaker stays at home. And if in case we restrict women from receiving the summon in the absence of the person being summoned, the serving officers will not be able to summon the person on time it becomes one of the reasons of delay of justice.
20. That, major flaw in the applicability of the Section 64 of CrPC in the modern society is that in case there is no male person in the family the summon cannot be served in the absence of the person being summoned. Which may become a cause of delay of justice which violates the right to speedy trial under Article 21.
21. The best example of the above facts mentioned in the paragraph no. 20 is that of a single parent.
22. That, there is also a probability if a male person commits any criminal offence, the Section 64 of CrPC gives a chance to males to keep the women in dark of the offences committed by him.
23. That, in the case of *S.P.Gupta v. UOI, 1981 Supp SCC 87*, Hon'ble Justice Bhagwati held that the citizens have a right to know. Explaining this in paragraph no. 67 in the above judgement he noted that:

This is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception. The concept of an open Government is the direct emanation from the *right to know* which seems to be *implicit in the right of free speech and expression guaranteed under Article 19(1)(a)*. Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest. It is in the context of this background that we must proceed to interpret Section 123 of the Indian Evidence Act.

24. That, in the case of *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay (P) Ltd.*, (1988) 4 SCC 592 at page 613 para. 34 justice Mukharji held that right to know is a part of right to life guaranteed under article 21. In his words:

We must remember that the people at large have a *right to know* in order to be able to

take part in a participatory development in the industrial life and democracy. *Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution.* That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon themselves the responsibility to inform.[PHOTOCOPY OF THE JUDGEMENT ATTACHED IN ANNEXURE V]

25. Recently the Hon'ble Supreme Court has Struck down various provisions of the Indian Penal Code, 1860. Such as Section 497 that is Adultery in the case of **Joseph sine v. Union of India (2019) 3 SCC 39**, consensual unnatural sex in the case of *National Legal Service Authority v. Union of India, 2014 5 SCC 438*.
26. That, in the Civil Procedure Code the service of summons is so liberally interpreted that even the plaintiff can in person serve it to the defendant as it is given in the Order V Rule 12. But in the same proceeding of summon in a criminal case the legislature lacks faith on the police officer, or subject to such rules as the State Government may make in this behalf, the officer of the Court issuing it or other public servant.
27. That this writ application is made bona fide and in the interest of justice.

It is, therefore, most humbly prayed that Your Lordships may graciously be pleased to issue an appropriate writ / order / direction particularly:

To declare the violating part of the Section 64 of the Code of Criminal Procedure, 1973 which is not in line with the fundamental rights to be unconstitutional. By the perusal of the section 64 of the CrPC prima facie it appears that it is violation of Doctrine of equality. On the following ground:

(i) As Section 64 states that:

**SERVICE WHEN THE PERSON SUMMONED CANNOT BE FOUND:**

Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some *adult male member* of his family residing with him, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

**Explanation.-** A servant is not a member of the family within the meaning of this section.

In the Section 62 a summon can be served by a police officer, or subject to such rules as the State

Government may make in this behalf, by an officer of the Court issuing it or other public servant.

- (ii) By the perusal of the above sections it is reflected that a summon can only be served to the adult male member of the family and excludes the female member to receive summon when the person so summoned cannot be found.
- (iii) That prohibition made by statute of receiving the summon to any specific gender violates the basic principles of the fundamental right of equality under Articles 14 and 15 of the Constitution.
- (iv) That the above provision also violates the right to know under Article 19. The ambit of Article 19 also protects right to know, right to communication, right to information.
- (v) That, the right to speedy trial protected under Article 21 is also violated.
- (vi) That right to life include right to live with dignity and it is only possible by taking the participation of women in every field, institution, workplace, institution, etcetera.

AND

For issuance of any other appropriate writ(s) or order(s) or direction(s) as Your Lordships may deem fit and proper in view of the facts & circumstances of the case.

And for that the petitioner shall forever pray.

AFFIDAVIT

I, Ravikant Sharma

hereby solemnly affirm and state as follows :-

1. That I am the Petitioner no. 2 and as such I am well acquainted with the facts and circumstances of this case.
2. That I have been duly authorized by petitioner no. 1 namely Rajiv Pandey, to swear this affidavit on his behalf also.
3. That the contents of this writ application and affidavit have been read over and explained to me which I have fully understood the same.
4. That the statements made in paragraphs \_\_\_\_\_ are true to the best of my knowledge, rest is by way of submission before the Hon'ble Court.
5. That the annexure are photocopies /true copies of their respective originals. Sworn, sign and verified this affidavit on \_\_\_\_ day of February, 2020 in the premises of Hon'ble Jharkhand High Court at Ranchi.