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CRIMINAL LAW

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I INTRODUCTION

CRIMINAL LAW is an instrument of the state to maintain peace in society by preventing the commission of crime and punishing the guilty. And for the prevention of crimes, the first step is to declare certain acts or omissions as offences and then to prescribe punishment for them. A person who deliberately or without lawful justification commits an offence is liable to be prosecuted, and, if found guilty, convicted and sentenced. In the Indian context, the criminal liability as regards the general crimes is operationalized by the Indian Penal Code, 1860 (IPC). An analysis of some of the important decisions of the Supreme Court on various offences under IPC reported during 2010 is the subject matter of the present survey.

II OFFENCES AGAINST PERSON

Murder

Media trial was put to test in *Manu Sharma* v. *State (NCT of Delhi*).[1] The prime accused in the case, Manu Sharma, on the fateful day, accompanied by his friends visited "Tamarind Café" and asked for drinks at 2.00 a.m. The same was refused and Jessica Lal, the bartender at that café and Malini Ramani, the owner's daughter, tried to explain to him that the party was over and there was no liquor left to serve him. Manu, who belonged to a wealthy industrial family and probably not in the habit of hearing refusals, took out his licensed pistol and fired one shot at the roof and another at Jessica Lal which hit near her left eye. She was declared brought dead by the Apollo Hospital. The appellant-accused was charged under sections 302/201 and 120-B, IPC and under section 27 of the Arms Act, 1959. His friends were charged under sections 201/120 B(2), IPC and his one more friend under section 201/212, IPC.

The trial court acquitted all the nine accused including Manu Sharma resulting in huge outcry both by the public and the media. Candle light vigils and protest processions were organized. The media, both electronic and print, declared him guilty. In appeal by the state, the High Court reversed the verdict

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1 (2010) 6 SCC 1.

of innocence passed by the trial court and held him guilty of the offence of murder under section 302, IPC. Before the Supreme Court in appeal, the case was marked by twists and turns. One main contention of the appellant-accused before the apex court was that his fundamental right to a free and fair trial guaranteed under article 21 of the Constitution of India had been denied. Another was that the cardinal principle of criminal law that the accused is presumed innocent unless proved guilty was blatantly flouted inasmuch as both the print and the electronic media had declared him guilty without a fair trial. It was also alleged that the function of the court had almost been usurped by the media which was a dangerous tendency which the members of the civil-society must resist. The court in a detailed judgment, relying on a reappraisal of evidence, commented on all these aspects.[2] Sathasivam J, on media trial, observed:[3]

> There is danger of serious risk of prejudice if the media exercises an unrestricted and unregulated freedom such that it publishes photographs of the suspects or the accused before the identification parades are constituted or if the media publishes statements which outrightly hold the suspect or the accused guilty even before such an order has been passed by the court.

Deprecating such practices, the judge observed:[4]

> Presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending. In that event, it will be opposed to the very basic rule of law and would impinge upon the protection granted to an accused under Article 21 of the Constitution. It is essential for the maintenance of dignity of the courts and is one of the cardinal principles of the rule of law in a free democratic country, that the criticism or even the reporting particularly, in subjudice matters must be subjected to checks and balances so as not to interfere with the administration of justice.

The concern expressed by the court is a cause for worry for the members of a civilized society. Notwithstanding these concerns, in the final result, the court upheld the judgment of the High Court sentencing Manu Sharma to life imprisonment for the murder of Jessica Lal. The civil society got the much-awaited reprieve but was perhaps oblivious of the danger lurking in the guise of media trial. It must be appreciated that it has only been through concerted effort of decades that the rights of the accused have now being considered

2 For procedural aspects of trial, see survey on "Criminal Procedure" in this volume.
3 *Supra* note 1 at 110.
4 *Id.* at 111.

sacrosanct. But with the kind of media trial that was witnessed in the instant case, the fear that we are inadvertently being pushed to pre-civilized era when concept of fair trial had hardly developed, is not misplaced.

Satni Bai v. *State of M.P.*[5] is an unusual case where a mother was found guilty of having murdered her son. There was no direct evidence and considering the unusual nature of the case, the apex court decided to reappraise the evidence which was only circumstantial. The court looked primarily at three circumstances, namely the testimony of the witnesses which was unimpeachable, the recovery of a blood stained axe and blood stained sari from the accused. The *postmortem* report clearly showed presence of the axe wounds on the body of the deceased son. These three circumstances, in the opinion of the court, formed a cogent chain. Besides, the accused being the mother, would ideally have clutched the body of her son and cried. Instead, as per the testimony of the witnesses, she tried to run away. Moreover, in her statement under section 313, Cr PC, she did not try to explain the circumstances. Instead, she was in total denial. In these circumstances, the court upheld the conviction of mother for the murder of her son. However, no motive was established whereas, in a case of circumstantial evidence, motive must be established at least to a certain extent. The case seems to be wanting on that aspect.

In *Babu* v. *State of Kerala*,[6] the husband was accused of having poisoned his newly wed wife. The evidence was purely circumstantial. The trial court, after a careful appraisal of the evidence and assessment of the behaviour of the prosecution witnesses, acquitted the accused. The High Court, rather perfunctorily, reversing the finding, not only convicted the appellant under section 302 but also imposed a fine of Rs. 1 lac. In appeal, the primary contention of the accused was regarding the approach of the High Court in dealing with his case of acquittal by the trial court. Despite the presumption in favour of the accused being doubly reinforced after the acquittal, the High Court convicted the accused without a reasoned order reversing the trial court's finding. The second issue was the absence of motive for the crime. No motive to murder his wife was proved. It is a well-established principle of criminal law that in cases of circumstantial evidence, the proof of motive is important. The observation made by the High Court that "no circumstance has been brought to our notice which is inconsistent with his guilt" was criticized by the apex court. The Supreme Court clarified that the onus for proving circumstantial evidence lies solely on the prosecution. The circumstances have to be proved beyond reasonable doubt which was not done. The High Court order was, therefore, set aside by the apex court and the order of acquittal of the trial court was restored.

Sunder Singh v. *State of Uttaranchal*[7] dealt with a ghastly case of

5 (2010) 2 SCC 646.
6 (2010) 9 SCC 189.
7 (2010) 10 SCC 611.

murder. In this case, the accused Sunder Singh allegedly came to the house of the victim with jerry cans of petrol and a burning torch; poured the petrol in the room where all members were having dinner, set it on fire and closed the door from outside to maximize casualities. The entire family was burnt to death and one of the members who tried to escape was almost beheaded. The accused then went absconding for 12 years and the trial commenced only after his arrest. The trial court convicted the accused under sections 302, 307 and 436, IPC and sentenced him to death, which was confirmed by the High Court. In appeal against the conviction, the apex court on a detailed examination of the case, criticized the procedure adopted by the trial judge, in particular, for not having put relevant questions to the accused while taking his statement under section 313, Cr PC. The court also came down heavily on the police mechanism in the State of Uttaranchal. After discussing the relevant case law on "rarest of rare" category, the court upheld the death penalty imposed on the accused as the murder was committed in a cruel grotesque and diabolical manner.

Culpable homicide not amounting to murder

In *Arun Raj* v. *Union of India*,[8] the accused was an army officer who was provoked by some abusive language used by the victim. The next day, the accused armed with a knife went to the victim while he was sleeping and stabbed him on the right side of the chest leading to his death. In his criminal trial under section 302, IPC, he pleaded that there was no pre-meditation and the case was of grave and sudden provocation. His case was that the case could at best be one of culpable homicide not amounting to murder under section 304, part II. The court held that although there was no evidence on record that the appellant intended to cause death outrightly but the fact that he waited for a day after the abusive words were hurled at him to commit the act showed that he had an intention to kill and hence the act was not within the ambit of grave and sudden provocaton as contemplated in exception 1 to section 300[8a]. Secondly, he brought a weapon along and inflicted multiple stab wounds on the chest of the victim which proved that intention to kill was definite. Hence, his conviction under section 302, IPC was upheld.

Corpus delicti

The expression *corpus delicti*, when applied to any particular offence, generally means the actual commission by someone of the particular offence

8 (2010) 6 SCC 457.

8a As far as culpable homicide not amounting to murder is concerned, Exception 1 to s. 300 states: "Culpable homicide is not murder, if the offender, whilst deprived of the power of self control by grave and sudden provocation causes the death of the person who gave the provocation...." In this context, see *K.M. Nanavati* v. *State of Maharashtra,* 1962 AIR 605 wherein it was held that the time of three hours should have been sufficient to gain self-control.

9 (2010) 8 SCC 536.

charged. It is a sound principle of criminal jurisprudence that one does not begin to inquire whether the prisoner is guilty of a crime until it has established that a crime has been committed. In a murder case, *corpus delicti* consists of proof of death of the person alleged to have been murdered and that such death has been caused by commission of the crime by someone. In *Pirthi* v. *State of Haryana*,[9] the fact based on evidence established the commission of the crime but the dead body was not found. According to the prosecution witnesses, the guilty party had taken it in a jeep because of which it remained untraceable thereafter. The court held the appellant guilty and took support from *Sevaka Perumal* v. *State of Tamil Nadu*[10] wherein it was held that in a trial for murder it is not an absolute necessity or an essential ingredient to establish *corpus delicti*. The fact of the death of the deceased has to be established like any other fact. *Corpus delicti* in some cases may not be possible to be traced or recovered. It may be destroyed in many cases but that cannot be the basis of acquittal of the accused when there are incriminating facts available in evidence.

Motive

In *Dharnidhar* v. *State of U.P.*,[11] the court held that motive for a crime attains greater significance in cases which hinge purely on circumstantial evidence. At the same time it has also to be borne in mind that when positive evidence is clearly available proving the guilt of the accused, the motive holds no relevance.

Kidnapping

In *Vikas Choudhary* v. *State of NCT, Delhi*,[12] the accused was convicted for abducting a young boy for the purpose of extracting ransom thereby attracting the provisions of section 364-A, IPC. On the date of abduction, the accused was a minor. He sought protection under the provisions of the Juvenile Justice Act, 2000. In this case, the accused continued to make ransom calls to the father of the deceased even after the boy was killed. On the date of the last recorded ransom call, the accused had ceased to be a minor. The question for consideration of the court was whether the making of the ransom calls, even after the death of the victim, made the offence a continuing one (as per section 472, Cr PC) so as to attract section 364-A, IPC.

It was contended by the accused that the offence under section 364-A came to an end on the death of the victim and all that remained, at best, would be the offence of demanding ransom. It was also contended that the relevant date for calculating the age of the accused was the date of abduction and not the date of the last phone call. The court, rejecting the contention, clarified the provision contained in section 364-A and stated thus:[13]

10 (1991) 3 SCC 471.
11 (2010) 7 SCC 759.
12 (2010) 8 SCC 508.
13 *Id*. at 514.

> Section 364A IPC states that apart from keeping a person in detention after kidnapping or abducting him or threatening to cause death or hurt to such person or by his conduct giving rise to a reasonable apprehension that such person may be put to death or hurt, and also that if the person involved in the kidnapping or abduction, actually causes hurt or death to such person for a ransom, he shall be punishable with death or imprisonment for life and shall be liable to fine. Section 364 A, therefore, contemplates even the death of the abducted person for the purpose of demanding ransom.

The court, on a conjoint reading of section 364A, IPC and section 472, Cr PC,[14] held that even after the death of the victim every time a fresh ransom call was made, a fresh period of limitation commenced. Also, on the date of making the last phone call, the petitioner was a major and, accordingly, the beneficial provisions of the Juvenile Justice Act were not applicable to him.

III GENERAL DEFENCES

The primacy of general defences is reflected in section 6, IPC which mandates that every penal provision and every illustration of such definition, shall be understood subject to the exceptions contained in the chapter entitled 'General Exceptions'. This chapter negates the culpability in cases of matters falling under general defences, which may be excusable or justifiable but the burden of proof for the applicability of any of the provisions of general defence is on the accused.[15]

Insanity

Mens rea or guilty mind is one of the essential requirements for fixing criminal liability. Section 84 exempts criminal liability in cases where the accused at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act or that what he is doing is either wrong or contrary to law.

In *Sudhakaran* v. *State of Kerala*[16] the appellant had murdered his wife by cutting her neck with a chopper in her bedroom. On being charged under section 302, IPC, he took the defence of insanity under section 84. The facts of the case revealed that he had taken care not to harm the eight month old

14 S. 472, Cr PC states: "In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues."

15 S. 105 of the Evidence Act states: "When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Penal Code (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

16 (2010) 10 SCC 582.

child who was with his mother and the appellant's conduct at that relevant time did not betray any signs of insanity. The apex court agreed with the view of the High Court that the factual matrix established that the conduct of the appellant just before and after the incident was sufficient to negate any notion that he was mentally insane. Hence the apex court held that the High Court was right in holding that he was not incapable of forming *mens rea* for committing the murder of his wife.[17]

Right of private defence

Self help, in the absence of help from the state, is the first rule of criminal law. The right of private defence is given to an individual as state functionaries cannot be available for the protection of his person or property at all times and at all places. Hence, every individual is granted a very valuable right to defend the person or property against aggression. But the point of importance is that the right is preventive, and not punitive, in nature. It extends only to protecting the person or property but does not extend to retaliatory or punitive methods being adopted. Hence, each case is to be determined based on its own facts whether a person had acted in the exercise of the right of private defence or went beyond it.[18]

The right of private defence has been pleaded especially in cases relating to property disputes.[19] The courts have time and again reiterated that protection must not extend beyond the necessities of the case, otherwise it will encourage a spirit of lawlessness and disorder. At the same time the court acknowledges that it is not possible to weigh the force with which the right is exercised as it were in 'golden scales'. The apex court after scrutiny of various cases came forth with the following principles:[20]

(i) Self preservation is the basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defence within certain reasonable limits.

(ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self creation.

(iii) A mere reasonable apprehension is enough to put the right of self defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to

17 *Id.* at 594.

18 See Hari Singh Gour, *Penal Law of India* (1998-99), quoted in *Darshan Singh* v. *State of Punjab* (2010) 2 SCC 333.

19 See also *Narender Kumar* v. *State of J & K* (2010) 9 SCC 259.

20 *Darshan Singh*, *supra* note 18 at 35.

be committed if the right to private defence is not exercised.

(iv) The right of private defence commences as soon as a reasonable apprehension arises and is conterminous with the duration of such apprehension.

(v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.

(vi) In private defence the force used by the accused ought not to be wholly disproportionate or greater than necessary for the protection of the person or property.

(vii) It is well settled that even if the accused does not plead self defence, it is open to consider such a plea if the same arises from the material on record.

(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.

(ix) The Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self defence inflict any harm extending to death on his assailant either when the assault be attempted or threatened.

In *Narinder Kumar* v. *State of J & K*,[21] there was no evidence on record to suggest that the deceased had either assaulted the appellant or caused any injury to him to justify infliction of gunshot injury. The right of private defence was pleaded in desperation as a last resort which was not accepted by the court. The right of private defence is often pleaded by the accused to escape criminal liability and the courts have to carefully sift through the evidence to decide whether the case falls within the parameters of excusable defences.

IV INCHOATE OFFENCES

Abetment of suicide

Instigation is to goad, urge forward, provoke, incite or encourage the doing of an 'an act'. Clear cut instigation or goading with necessary *mens rea* is an essential requirement to penalize a person under section 306, IPC. In *Gangula Mohan Reddy* v. *State of A.P.*[22] a farm servant committed suicide. The allegations leveled against the master - the appellant - were that he accused the servant of stealing gold ornaments and demanded the sum of money that was advanced when the deceased was kept in employment. The court reiterated the hitherto established *dicta* that abetment involves a mental process of instigating a person or intentionally aiding a person for doing a

21 *Supra* note 19.
22 (2010) 1 SCC 750.

thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, the conviction cannot be sustained.

In *Madan Mohan Singh* v. *State of Gujarat*,[23] the court emphasized the need to prove specific 'abetment' thus:

> In order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with the intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC.

Attempt

Actus reus and *mens rea* must concur to fasten criminal liability. Guilty mind alone cannot be penalized for, the devil himself knows not the mind of man. Thus, the purpose of *actus reus* requirement is to preclude punishment for thoughts. And that requirement is satisfied by "any external state of affairs" that testifies to the execution of a criminal plan in the external world.[24] The criminal plan becomes actionable when it leaves the realm of preparation and crosses the threshold of attempt. The purpose of criminal law is not only to punish the offenders guilty of crime but to deter potential offenders and also to take care of the sense of alarm that is caused in cases of attempted crimes.

In *Satyavir Singh* v. *State of U.P.*,[25] the trial court had acquitted the accused on a finding that the gunshots that were fired resulting in injury could have been accidental. The High Court, on a re-appreciation of the facts, was of the view that the accused fired the gun shots with the knowledge that it may result in death. The defence contended that, despite the short distance between the two, the shots were not aimed at the vital organs. The Supreme Court, while affirming the conviction under section 307, IPC, held that it was just a matter of coincidence that the gunshots did not hit any of the vital organs of the injured person but it nonetheless was a case of attempted murder.

Conspiracy

Conspiracy is one of the crimes which is very difficult to confine within the boundaries of a definitive statement. It is a heavily intent loaded crime inasmuch as mere agreement to commit a crime falls within the realm of conspiracy. Nothing further needs to be proved. It is a different matter altogether that conspiracies are hatched in secrecy and hence difficult to prove. It is only after some act in furtherance of the conspiracy takes place

23 (2010) 8 SCC 628 at 632.

24 See George Fletcher, "Constructing a Theory of Impossible Attempts", 5 *Crim Just Ethics* 56 (1986) quoting from Glanville Williams' *A Textbook of Criminal Law*.

25 (2010) 3 SCC 174.

that the conspiracy comes to light. In *S. Arul Raja* v. *State of T.N.*,[26] the appellant was charged under section 302 read with section 120B, IPC. The trial court acquitted the accused but the High Court declared him guilty on both counts .The apex court on a reappraisal of evidence concluded that there was only circumstantial evidence to prove the involvement of the appellant in a criminal conspiracy. In cases of criminal conspiracy "a meeting of minds to form a criminal conspiracy has to be proved by placing substantive evidence."[27] In the instant case, no such substantive evidence was produced. The High Court had strung some events together to hold the charge which was struck down by the apex court. The decision of the High Court was reversed and the accused was acquitted on being given the benefit of doubt.

V CHEATING

Actus non facit reum nisi mens sit rea is one of the fundamental principles of criminal law. It means that the "act does not make a man guilty unless the mind is guilty." In *U.P. Shrivastava* v. *Indian Explosives Ltd.,*[28] the contention of the complainant Indian Explosives Ltd. (IEL) was that the accused, the present appellant, and A.K. Mukherjee, now deceased, had deliberately suppressed the fact that FCIL (Fertilizer Corporation of India Ltd., where they were employed) had already been referred to BIFR (Board of Industrial and Financial Reconstruction) after the erosion of its net worth and was likely to be declared a "sick company" which resulted in IEL giving a large amount of money. The metropolitan magistrate took cognizance of the complaint and issued summons. The appellant gave a petition under section 482, Cr PC for quashing of the order summoning them to stand trial. The High Court dismissed the petition, *inter alia,* observing that if the fact that FCIL, of which the accused were senior functionaries, had become sick and the question of its winding up was under consideration by BIFR was made known to the complainant company, it would not have probably agreed to the proposal of the accused persons. The appellants then moved the Supreme Court by way of special leave petition. Discussing the ingredients of offences of criminal breach of trust under section 405 and cheating under section 415, IPC, the apex court also took note of the fact that on a bare reading of the complaint it revealed that IEL was fully conscious of the precarious financial health of FCIL. Hence, the Supreme Court, allowing the appeal, set aside the order of the High Court and of the magistrate taking cognizance of the case and observed:[29]

26 (2010) 8 SCC 233.
27 *Id.* at 242.
28 (2010) 10 SCC 361.
29 *Id.* at 371.

> [A] mere mention of the words "defraud" and "cheat" in para 12 of the complaint, in the setting that these have been used, is not sufficient to infer that the appellants had dishonest intention right at the beginning when, demonstrably, after due deliberations a tripartite agreement was signed, which under the given circumstances, at that juncture, was considered to be in the interest of all the three parties to the agreement. …
>
> [T]he present case, at best, it was a case of breach of contract on the part of FCIL, for which the said company is already defending a civil suit filed by IEC.

Since the criminal law impinges on the personal liberty of a person, the courts have to be very cautious in using this remedy. Hence, what has to be kept in mind is that the criminal law should not be used to enforce contracts.[30]

VI OFFENCES AGAINST WOMEN

Media trial has been able to secure convictions in certain cases where the trial court and in some cases the High Courts have shown callous disregard for the evidence in hand. It is of course a contentious issue whether the trial by media should at all be encouraged as it may lead to miscarriage of justice in many cases. Nevertheless, in *Santosh Kumar Singh* v. *State,*[31] the higher judiciary did set the record right and media did play a big role in getting justice to the deceased and her family. In the instant case, the appellant was attracted towards the deceased and kept stalking her with his overtures. She made several complaints in various police stations and was even provided with a security officer by the state. On the fateful day, the appellant was seen in front of her house with his helmet when she was alone. The evidence showed that she was mercilessly beaten, raped and murdered. Since there was no eye-witness, the case was based on circumstantial evidence. Motive, as well established, is not an essential ingredient of a crime but gains relevance in cases of circumstantial evidence. It helps in forging links in the chain of evidence and becomes relevant. The appellant's motive in the instant case to get her at all costs furnished that crucial link in the evidence. The High Court overturned the verdict of acquittal by the trial court, convicted the accused and awarded death sentence to him. The apex court, on appeal, upheld the verdict of guilt but commuted the death sentence to life imprisonment.

30 See also *S.P. Gupta* v. *Ashutosh Gupta* (2010) 6 SCC 562, wherein the apex court reiterated this well established principle of law on cheating under s. 415, IPC that if at the very initiation of the negotiations, it was evident that there was no intention to cheat, the dispute would be of a civil nature and not fit for a criminal complaint.

31 (2010) 9 SCC 747; see also *Manu Sharma* v. *State (NCT of Delhi), supra* note 1.

Rape

In *Vijay* v. *State of M.P.*,[32] the accused faced the charge of gang rape under section 376/34, IPC. The factual matrix revealed that the prosecutrix was gang raped. There were no physical signs of struggle and, as in most cases of rape, the testimony of the prosecutrix was the sole testimony available. The court, relying on a catena of cases, held that a prosecutrix of a sex offence is not an accomplice but a victim of crime. If her evidence inspires confidence, no further corroboration is required. Minor contradictions or insignificant discrepancies should not be taken into consideration. In the instant case, the prosecutrix had given different statements as to the dress she was wearing and that she was raped for two hours by one of the accused and for one hour by the other. The court found that she was a rustic child labourer who had no inkling about span of time and other related things, hence, thought it fit to ignore these trivialities since the case otherwise stood on firm ground. She maintained all through that there was no consent on her part and she was raped at knife point. She submitted that showing no resistance was for fear of her life. The court opined that since FIR was lodged immediately, even if there were certain infirmities in the case, those were attributable to the investigating authorities. Hence conviction was upheld by the court.

There has been a concerted effort to tackle the pendency of cases and alternate dispute resolution mechanisms have been suggested from time to time to circumvent the problem. In criminal law, plea bargaining was introduced to reduce pendency to some extent. However, it is worthwhile to note that since the offence is against the state as much as it is against the victim, it is the state that takes up the criminal prosecution. And, grievous offences, which include offences against women and children, are even kept out of the purview of plea-bargaining. In this setting, *Satpal Singh* v. *State of Haryana*[33] provides an interesting case study. The prosecutrix was raped in the fields by the appellant when she had gone there to collect cattle fodder. When she raised alarm, her brother who was near by, came to her rescue, but by then the accused had fled from the scene of crime. The complainant, who is the father of the victim, went to lodge FIR but was asked to come on the next day. When he reached the police station the next day, the village *panchayat* had already assembled there and he was dissuaded from launching criminal proceedings to which after much persuasion he agreed provided the appellant was fined Rs.5000 and be 'taken in procession after blackening his face and be paraded in the village'. The village *panchayat*, however, imposed a fine of Rs.1100 and no other penalty was imposed. After about four months, the complainant lodged FIR against the appellant and the ASI, who had supposedly forced the matter to be compromised in order to protect the appellant from the crime, under sections 376, 201 and 217, IPC. The trial court acquitted the ASI but

32 (2010) 8 SCC 191; see also *Utpal Das* v. *State of W.B.* (2010) 6 SCC 493.
33 (2010) 8 SCC 714.

sentenced the accused under section 376 to seven years imprisonment. The High Court on appeal reduced the imprisonment to five years in view of the mitigating circumstances. On appeal, the Supreme Court, after a perusal of the facts and evidence on record came to the conclusion that the delay in lodging an FIR was justified since evidence on the record showed that the village *panchayat* had intervened. Further, the honour of a girl being at stake, the parents or other close relatives, especially in rural settings may have got tempted to settle the matter out of court so that the victim was saved further humiliation. The court, accordingly, upheld the conviction and the sentence of five years imprisonment. What is surprising, and indeed deplorable here, is that no strictures were passed against the police officer who was all along aware that a heinous crime like rape was being tried to be dealt very casually by a village *panchayat*.[34] The police, being a functionary of the state, must not be allowed to be a party (in whatever way) to a crime, which is against the state, and if he does so, he must be held accountable.

In *Aftab Ahmad Ansari* v. *State of Uttaranchal*,[35] a girl child aged five went missing from outside her house. She was last seen playing there. After two days, her naked body was recovered. The *post-mortem* confirmed rape and homicidal death. The appellant was nailed down on the basis of circumstantial evidence which revealed, *inter alia,* that he was seen hurrying from the place of recovery of the dead body and entered his sister's house which was nearby. A blood stained frock and underwear were recovered on the basis of the appellant's disclosure statement to the investigating officer and there was extra-judicial confession as well. After an examination of the totality of the circumstances, the court was of the view that, within all human probability, the rape and murder of the child were committed by the appellant only. Hence, the appeal against his conviction under sections 302, 376 and 201, IPC was dismissed by the apex court.

In *Ram Singh* v. *State of H.P.*[36] the High Court, on a re-appreciation of evidence, found the appellant guilty of rape. The court reiterated that a married woman who is habitual of sexual intercourse would not have injuries on her private parts. The apex court found no reason to disbelieve the version of the prosecutrix and upheld the judgment of the High Court.

In *Santhosh Moolya* v. *State of Karnataka*,[37] the delay of 42 days in lodging FIR was not considered an infirmity since the victim sisters had no male member in the family and they had been threatened with dire consequences if they complained about the act. As such, the injury on private parts could also not be established since immediate medical examination was

34 See *Paramjeet Singh* v. *State of Uttarakhand* (2010) 10 SCC 439, wherein the court observed that "the crime has been committed against the society/state and not only against the family and therefore the pardon accorded by the family and *panchayat* has no significance in such a heinous crime.

35 (2010) 2 SCC 583.

36 (2010) 2 SCC 445.

37 (2010) 5 SCC 445.

not done. Otherwise, in the evidence of prosecution witnesses and the victim-sisters, there were no discrepancies (almost negligible) and, hence, the apex court concurred with the findings of the trial court and the High Court holding the accused guilty of the offence. Resultantly, the Supreme Court dismissed the appeal.

Section 498A

Section 498A, IPC has proved to be a very contentious provision in its working. While it is necessary to protect women who may be harassed for dowry, *etc.* since such cases abound in India, experience shows that women have rampantly misused the provision by wrongly implicating the in-laws for no fault of theirs. The court in *Preeti Gupta* v. *State of Jharkhand*,[38] sharing its agony, exhorted the legislature to take into consideration the every day realities and make suitable changes in the existing law. In the instant case, the persons named in the complaint and the appellant were not even present in the city where they allegedly subjected the complainant to cruelty. And hence, one of the issues before the apex court was whether the High Court was justified in not exercising its inherent powers under section 482, Cr PC. The court's observation on this issue is worth noting:[39]

> The power possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution but the *Court's failing to use the power for advancement of justice can also lead to grave injustice.*

The court quashed the complaint against the appellant and the impugned judgment of the High Court was set aside. It is felt and echoed by the apex court also that there is an immediate need to relook section 498A, by the legislature, so that the law is not misused

In *Sunita Jha* v. *State of Jharkhand*,[40] the court had to deal with the overreach of section 498A. The trial court as well as the single judge of the High Court sought to expand the ambit of section 498A by including the appellant who was in a live-in relationship with the husband of the complainant in the category of "relatives of husband". The apex court, disagreeing with the courts below, held that section 498A, being a penal provision, deserved strict construction and by no stretch of imagination would a girl friend or even a concubine be a relative, which status could be conferred either by blood connection or marriage or adoption and set aside of the order

38 (2010) 7 SCC 667.
39 *Id*. at 672. [Emphasis supplied].
40 (2010) 10 SCC 190.

of the High Court. It is submitted that the wife has a remedy against the woman in live in relationship under the Domestic Violence Act, 2005, where this relationship has been recognized by the said Act.

Section 304B, IPC

It is a national shame that despite having enacted stringent laws against the perpetrators of crimes against women, heinous crimes like bride burning continue unabated. One of the purposes of criminal law is to have deterrent effect on potential criminals and individuals who have proclivity for crime. But the case law suggests that it has had no such impact. What is actually required is a change in the mindset of people. The patriarchal attitude adopted by the society is one of the reasons for reducing the status of women to a chattel in certain circumstances. The civil society should, therefore, take up the cause and bring about attitudinal changes in the minds of young men and women.

In *Uday Chakraborty* v. *State of West Bengal,*[41] the woman died of burn injuries within two years of her marriage. The court elaborating on the expression demand of dowry "soon before her death" observed that it has to be given its due meaning as the legislature has not specified any time which would be the period prior to death that would attract the provisions of section 304B, IPC. The court was of the view that since the marriage did not survive even for a period of two years, the entire period would be considered as 'soon before death'. It is submitted that this seems to be the right approach because if a very literal interpretation is given to this expression, it would, in most of the cases, be very difficult to prove that the incident occurred soon before death and the accused persons would go scot-free on technical grounds. However, it is to be kept in mind that it is not a question of two years or three years but is a question of fact rather than duration of marriage. The court also rejected the argument of the accused that he should be released on the basis of sentence already undergone as the family had been behind the bars for a considerable time. May be the courts should come up with some out of the box thinking to reduce delays and pendency to counter such frivolous arguments.

The factual matrix of *Amar Singh* v. *State of Rajasthan*[42] is indeed interesting. A woman died of burns within one year of marriage. The post-*mortem* report indicated that the deceased suffered 100 per cent burns. The doctor who performed the autopsy opined that the burns on the deceased were after strangulation and throttling inasmuch as there were fractures of larynx, trachea and the larynx was found congested. The High Court upheld the conviction of the appellant for life imprisonment under section 304B. The brother and the mother of the accused were discharged under section 498A for lack of evidence. However, interestingly, the Supreme Court reduced the

41 (2010) 7 SCC 518; see also *G.V. Siddaramesh* v. *State of Karnataka* (2010) 3 SCC 152.

punishment of the accused-husband to ten years on the ostensible reasoning that he was not charged with the offence of murder[43] under section 302, IPC, presumably because during the investigation no materials were available to establish the offence under section 302 against him. It is ironical that section 304B is being made subservient to section 302. In order to meet the ends of justice, the charge in such situations must always be under section 302 and, in the alternative, under section 304B.

In *Vijay Kumar Arora* v. *State Govt. of NCT Delhi,*[44] the victim died of 100 per cent burns. The appellant-husband allegedly burned her and charges were framed under section 302 read with section 34, IPC against the appellant and his mother. In this case also there were charges of physical and mental cruelty for bringing insufficient dowry. No concrete evidence was produced against the mother but the appellant was convicted under section 302. The apex court after a detailed examination came to the conclusion that it was a homicidal death and not accidental .The guilt of the appellant stood proved by circumstantial evidence and the dying declaration (though no formal dying declaration was there as the authorities repeatedly failed to record the same). It is indeed surprising that in *Amar Singh* discussed above more violence was there but the court did not bring it under section 302 and sentenced him to only ten years imprisonment whereas in this case the charges were framed under section 302 and not under section 304B and life imprisonment was awarded.

VII OBSCENITY

Obscenity is used both in legal as well as non-legal contexts. If it is to be maintained as a criminal law concept, it must have a definite definition for the defendant to know precisely what conduct of his would amount to obscenity. In *S. Khushboo* v. *Kanniamat,*[45] the appellant Khushboo had participated in an *India Today* survey regarding pre-marital sex. In that context, she merely referred to the increasing incidence of pre-marital sex and called for its societal acceptance. Twenty-three criminal complaints were filed against her mostly in the State of Tamil Nadu for offences contemplated under sections 499, 500 and 505, IPC and sections 4 and 6 of the Indecent Representation of Women (Prohibition) Act, 1986. The appellant approached the High Court for quashing

42 (2010) 9 SCC 64. In *Sudhir Kumar* v. *State of Punjab* (2010) 3 SCC 239, the woman was found dead in the house and just a few days back, the appellant had threatened her with dire consequences. He was held guilty. See also *Durga Prasad* v. *State of M.P.* (2010) 9 SCC 73, where charge of abetment was not put and harassment of dowry just before the suicide was not proved and, hence, the accused were let free.

43 *Id.* at 71.

44 (2010) 2 SCC 353.

45 (2010) 5 SCC 600.

of these proceedings in exercise of its inherent power under section 482, Cr PC. The court, rejecting her plea, ordered, to avoid inconvenience, the consolidation of all cases to be tried together by the Chief Metropolitan Magistrate, Egmore. Aggrieved by the said order, the appellant approached the apex court which entered into a detailed examination of various sections of the IPC under which she was charged and came to the conclusion that not even a *prima facie* case of any of the statutory offences could be made out and allowed the appeal observing:[46]

> There are numerous decisions both from India and foreign countries which mandate that "obscenity" should be gauged with respect to contemporary community standards that reflect the sensibilities as well as the tolerance levels of an average reasonable person.

It is submitted that the court's observations are very apt as "there is no tangible or verifiable reality corresponding to the label 'obscenity'. It is an expression of opinion rather than of fact. It is a value judgment based on the emotive responses of individuals or groups to stimulation by exposure to tabooed material. The emotions expressed are usually those of disgust, anger and indignation, but the elicitation of these responses is almost relative, subjective and variable."[47] And, it is this subjectivity that the courts have to guard against, and which they did very well in this judgment. It is essential that morality and criminal law should be kept distinct as morality is a variable which keeps changing with times and may be different in the same group in different situations. Only those aspects of morality (for example, portraying women indecently in an advertisement), which are necessary for social survival, should be enforced by criminal law.

VIII JOINT LIABILITY

Under the IPC, a person is not only responsible for his own act but may also be held liable under section 34, IPC for the acts of others if he had a common intention to commit the acts or under section 149, IPC if the offence is committed by any member of the unlawful assembly in prosecution of the common object of that assembly. Since both sections deal with combination of persons who become punishable as sharers in the offence, they have some resemblance with each other and at times overlap. In *Virendra Singh* v. *State of M.P.*,[48] the appellant along with the other accused persons went to the house of the deceased armed with deadly weapons in order to teach him a lesson since the previous day the victim (now deceased) had expressed his

46 *Id*. at 613.
47 Richard G. Fox, "Obscenity" 12 *Alberta LR.* 173 (1974).
48 (2010) 8 SCC 407.

inability to reap their fields because of *lagan* ceremony of his son. The factual matrix reveals a clear common intention and in spite of that the court took the trouble to refer to around 16 decided cases to bring home a comparison between sections 34 and 149.

In *Abdul Sayeed* v. *State of M.P.*[49] a large number of assailants were involved in an attack on two persons of which one died. The whole incident took place within minutes. The motive stood established that the accused party did not like intervention of Chand Khan (the deceased) taking side of Kamla Bai who had been molested by the persons of the accused party. Chand Khan had lodged a complaint in that incident and, several hours later, the accused party came with the common intention to cause injuries with deadly weapons that they were carrying. Chand Khan's son Shabir Khan, who came to his father's rescue was also injured and so was Ashfaq. The contention of the accused party was that there was no charge framed under section 34 IPC by the trial court and the appellants and the other co-accused had been charged under sections 147/148 IPC and have been acquitted of the said charges. Hence, they could not be convicted with the help of section 34, IPC. It was held by the apex court that section 34 does not create a substantive offence but is a rule of evidence. Hence, no real distinction lies in charging for a substantive offence or for charging for a specific offence read with section 34. The court held :[50]

> Section 34 intends to meet a case in which it is not possible to distinguish between the criminal acts of the individual members of a party, who act in furtherance of the common intention of all the members of the party or it is not possible to prove exactly what part was played by each of them.

The injured witness gave the testimony in the instant case. The testimony of the injured witness is accorded a special status in law. This is because, *inter alia,* there is an inbuilt guarantee of his presence at the scene of crime. And, unless it suffers from major discrepancies, it has to be given due weightage. In the instant case, not only was the testimony very sound but was also corroborated by other prosecution witnesses. The apex court upheld the conviction of the appellants and dismissed the appeal.

In *Bengai Mandal* v. *State of W.B,*[51] the appellant was convicted for offences under section 302 read with section 34, IPC, section 326 read with section 34, IPC as well as sections 452 and 324 IPC. The sentences were to run concurrently. The appellant was a co-accused along with accused no. 1 who killed the deceased by throwing acid on her face. From the dying declaration

49 (2010) 10 SCC 259.
50 *Id.* at 279.
51 (2010) 2 SCC 91.

of the victim and other evidence available, it was clear that there was no overt act done by the appellant at the scene of the crime. The acid was purchased, carried and poured by the accused no. 1. There was no proof that the appellant tried to gag her or anything of the sort. In the circumstances, the court held that the appellant shared no common intention with the accused no. 1 to commit an offence under section 302, IPC. At the same time, the sharing of the intention to commit an offence under section 326 could be culled out from the circumstances since there was ample proof that both of them had asked for sexual gratification from the victim and on denial of the same, the acid was purchased by the accused no. 1. The common intention to commit an offence under section 326 was thus manifest and the conviction to that extent was upheld.

In *Raju* v. *State of Haryana*,[52] the appellants were co-accused for the offence under section 302 read with section 34, IPC. The primary contention of the appellants was that since they did not share the common intention to kill the victim, their conviction ought to be set aside. The accused (the two appellants and two others) were incited when the victim made lewd remarks at women of the family at a wedding. Angered by the said behaviour, the accused chased the victim with the intention of teaching him a lesson. It was held by the apex court that the appellants did not possess the knowledge that the other co-accused were carrying knives. Thus, at the best, common intention could be inferred with respect to the crime under section 304, part I read with section 34, IPC.[53]

The apex court in *Balraje @ Trimbak* v. *State of Maharashtra*,[54] made a pertinent observation that merely because the witnesses were inimically disposed towards the accused did not necessarily mean that they would try to implicate the accused. The witnesses in the present case included the wife of the victim who was also an injured witness and her evidence was more credible in the eyes of law. The trial court had convicted the appellant-accused and others for offences under section 302 read with 34, IPC. The High Court dismissed the appeal of the present appellant but allowed the appeal in respect of the other three accused acquitting them of charges under section 302 read with section 34. In appeal by special leave petition, it was contended that conviction could not be sustained on the same evidence on which the other accused were let off. The court held that the acquittal of some of the co-accused on grounds that the charges against them were exaggerated did not necessarily make a ground for acquittal of the remaining accused also. The court found no merit in the contention and dismissed the appeal.

Adalat Pandit v. *State of Bihar*[55] provides an interesting discussion on common object. The two opposing sides were related to each other but had a

52 (2010) 3 SCC 235.
53 See *V. Sreedharan* v. *State of Kerala* (1992) Supp 3 SCC 21.
54 (2010) 6 SCC 673.
55 (2010) 6 SCC 469.

fierce enmity on account of rival claims to the ownership and possession of an orchard. It was in the same orchard that the drama for the case was laid. The accused-appellant, along with others, formed an unlawful assembly and entered the orchard for forcibly plucking mangoes. When the possessor of the orchard reached there with his two sons and objected to the same, his sons were killed in the scuffle and he was let off saying that it was useless to cause the death of an old person like him. The trial court framed charges under sections 147, 148, 302, 302 read with sections 34, 109 and 149, IPC and section 27 of the Arms Act, 1959 against the members of the accused party and eventually convicted them of the offences. In the High Court, the appeal of one of the accused was allowed being a juvenile giving him the benefit of the provisions of the Juvenile Justice Act. The other accused appealed to the apex court, which allowed some of the appeals on a very minute sifting of facts and evidence, but dismissed the appeal of others. It is submitted that in cases of joint liability, the courts have to tread very cautiously as section 149, IPC makes members of an unlawful assembly constructively liable for the act of others who actually do the criminal act with the requisite common object or knowledge. In the instant case, out of the seven persons convicted, the apex court held that three of them could not be said to have had the intention to commit murder and they could not be said to be members of unlawful assembly on account of their mere presence at the place of occurrence and, hence, could not be convicted under section 302 read with section 149.

The court, in a judicial tone similar to the above discussed case, held in *Daya Kishen* v. *State of Haryana*[56] that whenever a court convicts any person of an offence with the aid of section 149, a clear finding regarding the common object of the assembly must be given and the evidence discussed must show not only the nature of the common object but that offence was committed in pursuance of such common object. The facts of the instant case revealed that the appellant-convict Daya Kishen, along with his two sons and two others came armed with pistol, *jelli* and *lathis* to the shop of one Sanjay with whom they wanted to settle scores. One of the sons of the accused-appellant fired a shot and killed Rajesh who was Sanjay's cousin and had a shop just next to Sanjay's. When Sanjay came to his rescue, he too was attacked and injured. The trial court convicted the accused-appellant under section 302 read with section 149, IPC; section 307 read with section 149, IPC; section 323 read with section 149, IPC and section 148, IPC. Other accused jumped bail and were declared proclaimed offenders. The division bench dismissed the appeal. The contention of the appellant was that the act of his son firing a shot at Rajesh and killing him was his individual act and, therefore, he should not have been convicted of murder of Rajesh with the aid of section 149, IPC. The court agreed with the contention that it was not in the contemplation of the unlawful assembly that the deceased would be killed. His conviction under section 302

56 (2010) 5 SCC 81.

read with section 149 was set aside. But his being a member of the unlawful assembly to teach Sanjay a lesson, the conviction under section 307 read with section 149 for attempting to commit murder and under section 323 read with section 149 and under section 148 was upheld. The appeal of the appellant was thus partly allowed.

The decision in *Patai* v. *State of U.P.*[57] relates to murder of a person who after alighting from the train with his son and another person, was dragged away from the platform by the two appellant-accused to a place under a tree and held there, while the two co-accused shot him dead. The appellant-accused pleaded before the court that the allegation against them was that they were holding the deceased and had not fired any shots and hence conviction under section 302 read with section 34 was illegal. The apex court spelt out the provisions of sections 33 and 34 and held that the accused-appellants were not only present at the scene of the offence but also actively participated in the commission of the offence by doing acts in furtherance of the common intention of killing the deceased and, hence, were rightly convicted with the aid of section 34.

In *Eknath Ganpat Aher* v. *State of Maharashtra*,[58] the trial court had convicted 35 of the 36 accused for offence under section 302 read with section 149, IPC. The High Court acquitted 21 of them in view of the vague and omnibus statements made by the witnesses, but sustained the conviction against the remaining 14. The apex court opined that the approach of the trial court and the High Court was erroneous. While expressing sympathy for the precious lives lost, the court nonetheless took note of the fact that not only the members of the complainant party but the accused members were also hurt grievously. Setting aside the conviction, the court held that the finding of the High Court was against the basic canons of the Evidence Act and the penal law. It further observed:[59]

> Unless there is cogent and specific evidence attributing a specific role in the incident to the accused persons, who have themselves been injured and there being no explanation forthcoming as to such injuries, it would be unsafe to pass an order recording conviction and sentence against the appellants, more so when the prosecution has produced, in support of its case, witnesses who are inimical to the accused persons.

It further observed:[60]

57 (2010) 4 SCC 429.
58 (2010) 6 SCC 519.
59 *Id*. at 524.
60 *Id*. at 525.

> It is an accepted proposition that in the case of group rivalries and enmities, there is a general tendency to rope in as many persons as possible as having participated in the assault. In such situations, the courts are called upon to be very cautious and sift the evidence with care. Where after a close scrutiny of the evidence, a reasonable doubt arises in the mind of the court with regard to the participation of any of those who have been roped in, the court would be obliged to give the benefit of doubt to them.

In *Khillan* v. *State of Madhya Pradesh,*[61] the accused party had some land dispute with the deceased and his family. The deceased was assaulted by the accused party and killed. The trial court convicted the persons under section 302 read with section 34, IPC. The High Court, on a re-appreciation of the evidence, put aside the sentence of one of the accused and upheld the conviction of the other three. The apex court was exhorted by the defense counsel to review evidence in exercise of article 136. The court, after a detailed examination of the case, dismissed the appeal and held:[62]

> We have been taken through the evidence in the present case by the learned counsel for the parties. We are unable to conclude that the appellants have been able to establish any exceptional circumstances or any miscarriage of justice which should shock the conscience of this court. It is not possible for this court to convert itself into a court to review evidence for a third time. …[W]e are of the considered opinion that the present case neither raised any exceptional issues nor has resulted in miscarriage of justice.

In cases involving more than one person, the prosecution invariably tries to rope in as many persons as possible under vicarious liability as is clear from the facts of *Vithal Laxman Chalawadi* v. *State of Karnataka.*[63] In this case, the deceased was engaged to get married to one of the sisters of the appellant-accused. The deceased had taken a loan which he could not repay and that led to some tension between the two families with the result that the deceased refused to marry. To make matters worse for the family, the younger sister fell in love with the deceased and they eloped and got married. The accused-appellant, along with others, went to his place to sort out matters. A heated exchange of words ensued and the accused-appellant assaulted the deceased with a knife. Charge-sheet was filed against six persons under section 302 read with section 149, IPC. The trial court acquitted four but two were convicted for causing injury using a dangerous weapon under section 324. The state

61 (2010) 3 SCC 678.
62 *Id*. at 685.
63 2010 (11) SCALE 65.

appealed against the judgment seeking conviction under section 302, IPC. The High Court, on a reappraisal of evidence, convicted accused 1-4 for the commission of the offence punishable under section 302 read with section 34, IPC and sentenced them to rigorous imprisonment for life. The acquittal of the remaining two persons was upheld. The Supreme Court, in an appeal against the conviction, held two of the accused vicariously liable under section 302 read with section 34, IPC and convicted the other accused who had just given a *chappal* blow under section 323, IPC as the evidence established that he joined the melee only when tempers ran high. The court stressed that not all who are present at the time of the commission of the crime can be roped in under section 34 but only those who share the common intention.

In *State of U.P.* v. *Gurucharan*,[64] in an appeal by the state, the court, after a perusal of the facts and evidence of the case, dismissed the appeal reiterating the hitherto established judicial *dictum* that the scope of interference under article 136 of the Constitution in an appeal against acquittal was rather limited.[65] The court observed that the exceptional circumstances warranting interference were:

(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position.
(ii) The High Court's conclusions are contrary to evidence and documents on record.
(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice.
(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case.
(v) The court must always give proper weight and consideration to the findings of the High Court.
(vi) The court would be extremely reluctant in interfering with a case when both the sessions court and the High Court have recorded an order of acquittal.

IX CORPORATE CRIMINAL LIABILITY

The law relating to corporate criminal liability has developed over a period of time and now it is well settled that the corporations can be held liable even for *mens rea* offences. This legal position was reiterated by the apex court in *Iridium India Telecom Ltd.* v. *Motorola Inc.*,[66] which dealt with a case of cheating, and conspiracy under sections 420 read with 120B IPC. Both the offences charged are heavily mental in their composition. It may, therefore, be

64 (2010) 3 SCC 721.
65 The court referred to its earlier decision in *State of U.P.* v. *Bannea* (2009) 4 SCC 271 at 286 in which these circumstances were elaborately laid down.
66 JT 2010 (1) SC 492.

presumed that a company may be incapable of committing the offence of cheating. The instant case involved seeking investment from strategic investors promising technological advances of providing a wireless communication system through a constellation of 66 satellites in low orbit to provide digital service to mobile phones and other subscriber equipment globally. The project proved to be a complete disaster resulting in loss to many investors who contended that they were duped into investing large amounts of money. The point of law was that whether a company could be held liable for these offences which have 'intent' as *mens rea*. The court, holding the company liable, observed that in all jurisdictions across the world governed by the rule of law, companies and corporate houses can no longer claim immunity from criminal prosecution on the ground that they were incapable of possessing necessary *mens rea* for the commission of criminal offences. The legal position in England and the United States has now crystallized to leave no manner of doubt that a corporate would be liable for crimes of intent.[67]

X MEDICAL NEGLIGENCE

One of the avowed purposes of consumer protection law is to encourage high levels of ethical conduct by those engaged in the production and distribution of goods and services to consumers. The limited question in *V. Kishan Rao* v. *Nikhil Super Specialty Hospital*[68] was whether an opinion of *prima facie* negligence was a pre-condition for the consumer forum (as is for criminal cases)[68a] to proceed with a case. In the instant case, the patient was suffering from intermittent fever and chills and was wrongly treated for typhoid instead of malaria which resulted in her death. A case could have been filed under section 304A but the case was filed in the district consumer disputes redressal forum (district forum) which awarded compensation on the basis that on the fifth day when the patient was shifted to another hospital in critical condition they conducted a widal test for typhoid which was negative whereas test for malarial parasite was positive. The finding of the district forum was appealed against in the state consumer disputes redressal commission (state commission) and then the national consumer disputes redressal commission (national commission), all established under the Consumer Protection Act, 1986. Both these commissions took the view that there was no negligence on the part of the respondent doctor and that no expert opinion was produced by the petitioner to prove that the line of treatment adopted by the hospital was wrong or was due to the negligence of the respondent doctor.

67 The court relied on many cases including *Standard Chartered Bank* v. *Directorate of Enforcement* (2005) 4 SCC 530.

68 (2010) 5 SCC 513.

68a Medical professional's liability can arise not noly under civil law but also under criminal law provided the negligence borders on culpable negligence.

The Supreme Court, keeping in view the interest of the consumers and after a detailed examination of the case law giving primacy to *res ipsa loquitor,* held thus:[69]

> [I]f any of the parties wants to adduce expert evidence, the members of the Fora by applying their mind to the facts and circumstances of the case and the materials on record can allow the party to adduce such evidence if it is appropriate to do so in the facts of the case.

It further elaborated on the precise requirement of the expert evidence and observed:[70]

> When the Fora finds that expert evidence is required, the Fora must keep in mind that an expert witness in a given case normally discharged two functions. The first duty of the expert is to explain the technical issues as clearly as possible so that it can be understood by the common man. The other function is to assist the Fora in deciding whether the acts or omissions of the medical practitioners or the hospital constitute negligence. In doing so, the expert can throw considerable light on the current state of knowledge in medical science at the time when the patient was treated.

It is a welcome decision as it has set aside the *D'Souza*[71] *dictum* which advertently or inadvertently equated a criminal complaint against a doctor or hospital with a complaint against a doctor before a consumer forum and gave a general direction in both cases that before issuing notice against the hospital or doctor, the matter may be referred to a competent doctor or committee of doctors, specializing in the field and only if a *prima facie* case of medical negligence was made out in the report, should notices be served. The judgment in this case has restored the position, which these fora set out to achieve, *i.e.* to provide speedy and efficacious remedy to consumers of service.

Kusum Sharma v. *Batra Hospital*[72] presents a different factual matrix where the doctors had to take the risk of adopting a high-risk procedure. Doctors, in order to save lives, have to take decisions and in the realm of diagnosis and treatment, there is scope for genuine difference of opinion and one professional doctor is definitely not negligent merely because his conclusion differs from that of the other professional doctor. The instant case was a compensation claim for deficiency in service and medical negligence in the treatment of the deceased. The national commission, after a perusal of evidence of eminent doctors, had dismissed the appeal. The apex court upheld

69 *Id.* at 533.
70 *Ibid.*
71 (2009) 3 SCC 1.
72 (2010) 3 SCC 480.

the decision of the national commission and observed that as long as the doctors performed their duty and exercised an ordinary degree of professional skill and competence, they cannot be held guilty of medical negligence. The courts have to tread a very delicate path in cases of medical negligence as they have to keep the interest of the consumers on the one hand and take note of Lord Denning's *dictum* on the other when he said, "we should be doing a disservice to the community at large if we were to impose liability on hospitals and doctors for everything that happens to go wrong. (If that was to happen) the doctors would have to think more of their own safety than that of their patients, initiative would be stifled and confidence shaken."[73] And in this case, the court seemed to have walked through that delicate path.

XI SENTENCING

Punishment is a very important facet of criminal law. Prevention of crimes is best assured by deterring offenders and potential offenders, by way of threat or imposition of punishment. Punishment is imposed after fixing criminal liability on a person accused of an offence. And "criminal liability is the strongest formal condemnation that a society can inflict, and it may also result in sentence which amounts to a severe deprivation of the ordinary liberties of the offender".[74]

In *Santosh Kumar Singh* v. *State,*[75] the appellant was given life imprisonment on a balance sheet made between aggravating and mitigating circumstances. It is felt that in offences against women, where extreme depravity is shown by the culprits, no leniency should be shown. This was a case where the culprit who belonged to a well to do family and himself a lawyer by profession, kept stalking the girl for over a period of two years inspite of several warning by the criminal law enforcers. He used his father's power and pelf to his advantage, to the extent of securing an acquittal from the trial court. But the court felt that he having got married after his acquittal and fathering a baby girl was reason enough to give him a reprieve. Strange are the ways of the judiciary as far as their sentencing policy is concerned. In contrast was the case of *Dhananjoy Chatterjee*,[76] a security guard who was executed by hanging for the murder (following a rape) of 18-year-old girl at her apartment residence. Only one inference can be drawn from this contrast: that the rich and the powerful are shown mercy while the poor have to face the brunt of laws!

Incidentally, yet another case of contrast is *Manu Sharma* v. *State*,[77] where the media played a major role and the accused was sentenced to life

73 Lord Denning, *The Disciple of Law* quoted in Marian Boyd & Marie Vincent, "Medical Negligence", *Poly Law Review* 28 (1982).
74 Andrew Ashworth, *Principles of Criminal Law* 1 (2009).
75 *Supra* note 31.
76 *Dhananjoy Chatterjee* v. *State of W.B*. (1994) 2 SCC 220.
77 *Supra* note 1.

imprisonment, the same punishment as was meted out to Santosh Singh. What is indeed baffling is that Santosh Singh was a premeditated one and in spite of the warnings given, he doggedly persued the girl and on the first given opportunity raped and killed her. In contrast is Manu Sharma, who on the spur of the moment shot the girl. It was not a pre-meditated crime. The age factor which was a mitigating factor for the judges in Santosh Singh - "he was only of 25 years old at that time" - should actually have been an aggravating factor since he was no more an adolescent and was well aware of the consequences of his act. What is more, he was a law graduate, well versed with the law of the land. And, in contrast, there was Manu Sharma, a young man from a wealthy background, always used to having his way around (that is the power of money in India) and may be was never checked by his elders on that count. Not that in any way it lessens his crime but the moot question is: does his crime merit the same punishment as was awarded to Santosh Singh?

The court in *C. Muniappan* v. *State of T.N.*,[78] upholding the death sentence, observed:

> [C]riminal law requires strict adherence to the rule of proportionality in providing punishment according to the culpability of each kind of criminal conduct keeping in mind the effect of not awarding just punishment on the society. The "rarest of rare" case comes when a convict would be a menace and threat to the harmonious and peaceful co-existence of the society. Where an accused does not act on any spur of the moment provocation and he indulged himself in a deliberately planned crime and meticulously executed it, the death sentence may be the most appropriate punisnment for such a ghastly crime.

It still remains a fact that a retentionist judge would give weightage to aggravating factors to bring the case in the rarest of rare category and an abolotionist judge would give weightage to mitgating circumstances.

In *Manjappa* v. *State of Karnataka*,[79] a minor girl (*i.e.* below the age of 18 years) was taken to Bombay on the assurance that she would be given a job but was sold for Rs. 5000 and was daily forced into prostitution against her wishes. The accused were given seven years of imprisonment with a fine of Rs 50,000. Surprisingly, for an offence of rape under section 376 the punishment "shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine" but for a case like the instant one, where a girl was forced into prostitution (which may amount to rape on a daily basis), no minimum punishment is prescribed; only maximum of ten years is provided, This seems incongruous. It is

78 (2010) 9 SCC 567 at 599.
79 (2010) 9 SCC 334.

submitted that in cases where hapless girls are forced into prostitution, there must be a provision for a deterrent sentence.

In *Ram Babu* v. *State of U.P.,*[80] the contention of the appellants, who were involved in a dacoity in a temple premises, was that the incident took place in 1980 and they having already undergone half their sentence, the same be reduced to sentence already undergone. The court refused to interfere with the sentence of five years rigorous imprisonment awarded by the trial court and confirmed by the High Court and observed:[81]

> Dacoity is a daredevil act. Most of the time, a serious crime like dacoity is committed by unknown persons and it is very difficult to trace them and still difficult to secure their conviction. As a matter of fact looking at the nature of crime and the manner in which the appellants looted temple properties, graver punishment was warranted.

In *Sunil Kumar* v. *State of U.P.*,[82] the accused were convicted for four years of imprisonment after being found guilty of the offence under section 304 read with sections 149 and 147, IPC. On a reappraisal of evidence, it was observed by the court that the accused deserved punishment under section 302, IPC since a young boy was killed by *dandas* and *lathis* by the five accused persons. However, since the state had not preferred an appeal seeking enhancement of the punishment, the court could not think otherwise. However, the court refused to reduce the punishment despite the fact that 28 years had elapsed after the crime on grounds that the crime was very grave and a very lenient punishment had been given.

XII CONCLUSION

The decisions of the apex court surveyed in the area of general criminal law show the concern of the judiciary to uphold the rule of law but the principles of fair trial did take a beating as some of the cases were ostensibly influenced by media trial. As upholders of justice, the court in *Babu* v. *State of Kerala*[83] rejected the approach of the High Court and held that since the trial court had the advantage to watch the demeanour of the witnesses, it was in a better position to evaluate their credibility and, therefore, the High Court ought not to have reversed the judgment of the trial court. Keeping up the same tenor, the court cautioned the trial court that section 313 should not be dealt in a casual manner. The court also chastised the police force for its shoddy investigation. Such approach from the apex court augurs well for the

80 (2010) 5 SCC 63.
81 *Id.* at 68.
82 (2010) 2 SCC 5.
83 *Supra* note 6.

development of criminal jurisprudence in the country. However, aberrations like *Satpal Singh*[84] continue where the policemen were just let scot free. There is also a visible disturbing trend discernible in decisions rendered in cases of crimes against women. There has been a dangerous tendency, which needs to be checked, to make section 304B subservient to section 302 as was witnessed in *Amar Singh* case.[85] At the same time there is a need to review section 498A so that it is not misused as highlighted in *Preeti Gupta*.[86]

Another very disturbing feature is the sentencing policy of the courts. The sentencing pattern in *Manu Sharma*[87] and *Santosh Kumar*[88] are pointers in that direction. A sentencing policy needs to be evolved which would take care of the grey area between death sentence and life imprisonment. In *Swamy Shraddananda* (2) v. *State of Karnataka*,[89] through judicial ingenuity, the accused was sentenced to life imprisonment with a qualification that he would not be released for life.[90] The three-judge bench held:[91]

> [T]he unsound way in which remission is actually allowed in cases of life imprisonment make out a very strong case to make a special category for the very few cases where death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond the application of remission.

It is high time that the legislature intervenes so that just punishments may be awarded.

84 *Supra* note 33.
85 *Supra* note 42.
86 *Supra* note 38.
87 *Supra* note 1.
88 *Supra* note 31.
89 (2008) 13 SCC 767.
90 See "Criminal Law" XLIV *ASIL 189* (2008).
91 *Supra* note 89 at 804.