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WOMEN AND THE LAW

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I INTRODUCTION

FEMINIST JURISPRUDENCE which is founded on the philosophy of law based on the political, economic, and social equality of sexes tries to identify gendered components and gendered implications of seemingly neutral laws and practices affecting marriage, divorce, reproductive rights, rape, domestic violence, sexual harassment *etc*. While criticising mainstream jurisprudence as patriarchal, the major schools of feminist jurisprudence - liberal, cultural and radical - evaluates and critiques the law by examining the relationship between gender, sexuality, power, individual rights, and the judicial and legal system as a whole. Greater protection for women against domestic and other violence, eliminating sexual harassment in the workplace, greater gender neutrality and achieving legal equality are the main focuses of feminist jurisprudence. The survey of 2012 cases of the apex courts and high courts reveal that in India the courts are vigilant in protecting the rights of women.

II WOMAN AND CHILD ATROCITIES

Honour killing

Honour killing is not the simple crime of a particular place. It is widespread in India amongst all religions and ethnic groups. Honour killing generally occurs when two young people marry in violation of their parents' wishes or ethnic culture or across caste barriers. The facts in *Ram Sahai Verma* v. *State of M.P.*[1] depict a direct atrocity on the innocent woman who had the love with another caste of the society and was victimised by her husband and other relatives on her husband side and on instigation by the mob present on the spot, she was mercilessly killed. In a *pro bono publico* petition under article 226 of the Constitution of India has filed by the petitioner seeking suitable directions for investigation in the matter of honour killing. The High Court of Madhya Pradesh issued the following guidelines/ directions for the investigating officers.[2]

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1 2012 (2) MPHT 37.

2 *Id.,* para 6.

1) In cases of woman and child atrocities the First Information Report be lodged without any delay ensuring the compliance of the provisions under Section 157 (2) of the Code of Criminal Procedure, 1973, which is mandatory for fair investigation;
(2) In cases of woman and child atrocities, mob violence and other cases of brutal in nature in the area, special measurements for fair and independent investigation may be adopted;
(3) In all criminal cases of brutality in nature the Investigating Officers and the Supervising Police Authorities shall take all measurements including compliance of the provisions contemplated under Sections 82 to 84 of Cr. PC to arrest all the accused involved in the crime;
(4) In all above mentioned cases and of sensitive nature of the area, all the articles/weapons of crime be kept in a sealed condition in safe-custody and be sent for scientific examination without any kind of delay on the part of the investigation and the Senior Police Officer will insist the State Forensic Laboratories to examine the articles/weapons without undue delay and the reports from the Experts must be filed along with the charge-sheet. They shall also take all measurements to produce the properties of crime before the Criminal Court with charge-sheet.
(5) For fair and speedy trial before the Courts, the Investigating Officers and the Senior Police Officers of the District and of the area shall be in constant contract of the prosecuting agencies and shall avoid all delays in recording the statements of material witnesses and Investigating Officers during trial. The concerned police officers on the request of the witnesses, on advice of the prosecution agencies and on directions of the Criminal Court shall provide the protection against the pressure or threat of the accused or effective persons acting for accused.
(6) The Senior Police Officers shall keep the vigil eye over the investigations of the crime of their area and issue the necessary directions to the Investigating Officers and also watch that their directions should be complied with effectively in time.

Stay of conviction

In *Munni Khatoon* v. *The State of Bihar*[3] drawing similarity with a person holding public office indulging in corrupt practice and honour killing, the High Court of Patna observed that the public officer – *mukhia* – who has been charged under sections 120B, 302/ 34 and 149 of IPC, if is held to be absolved of the charges and permitted to continue in the office of *Mukhiya* till she is honourably acquitted that would send a wrong message to the people. According to the court, the situation is same where a public servant is convicted of corruption charges and prays for stay of his conviction so that he can continue in public office. By referring to the cases such as *State of Maharashtra* v. *Gajanan*[4] and *Union of India* v. *Atar Singh,*[5] the High Court of Patna held that the power to stay conviction should not

3 2012 (2) PLJR 816.
4 (2003) 12 SCC 432.
5 (2003) 12 SCC 434.

be used to facilitate government servant to stay in service having been found guilty. It is only in exceptional cases that the conviction should be stayed.

The court has rightly declined to stay conviction of the public servant in connection with honour killing. The conviction entails as a matter of course certain consequences like removal from service and other disability. The disabilities and the consequences cannot be suspended by suspending conviction merely for the asking and only in exceptional cases can it be done.

Prosecution vis-a-vis honour killing

Passion runs high in our country when there are inter-caste marriages and especially when distances between untouchables and the higher castes is breached by those individuals who defy traditions and break the barriers of society and enter into a matrimonial alliance with each other. *State of Himachal Pradesh* v. *Narender Singh*[6] involved a matrimonial alliance between two consenting adults one from upper caste and other from scheduled caste which was not liked by the family members. The girl who belonged to the upper caste has clearly stated that she was being compelled by her family members to disown her marriage. But she refused to do so. Therefore, the motive was to settle the scores with the members of the scheduled caste community. Subsequently, two people belonging to the scheduled caste community have been beaten to death mercilessly. However, the police has not been able to prove the case against the alleged assailants beyond reasonable doubt.

By criticising the investigating officers, the court said that "merely because the crime is heinous and suspicion is strong is not a sufficient reason to convict the accused. The police could have investigated the matter in a much better fashion and if the investigation would have been carried out in a scientific manner, the true assailants could have been traced out." The instant case was based on circumstantial evidences. In cases where the prosecution relies upon circumstantial evidence, the law is well-established that the prosecution is bound to prove the circumstances and link them in a manner that they form a complete chain linking the accused with the crime. The chain should be complete and should only lead to only one conclusion that it is the accused alone who has committed the crime. The chain should also rule out the possibility of the crime having been committed by any person other than the accused.

III RAPE

Interference with the sentence

The law confers a wide discretion upon the judge, and leaves it to him to decide in each case whether the act done by the offender falls short of the maximum degree of gravity, and, if so, to what extent. The court should not inflict the maximum term of imprisonment on every offender without any regard to the seriousness or otherwise of the offence committed by him taking into consideration the circumstances under which the offence was committed and whether the offender is a first offender or

6 2012 (3) ShimLC 1469.

habitual offender.[7] It is a well settled principle that when the legislature has laid down a maximum punishment for an offence, it is the duty of the trial court to apportion punishment in each case after considering all the circumstances having a bearing upon it, and not to shirk its responsibility by imposing the maximum penalty upon every offender.[8]

The punishment as provided by the legislature under section 376(1) is three fold with fine. *Firstly,* it could be for life but *secondly*, not less than 10 years and *thirdly,* for adequate and special reasons to be mentioned in the judgment it could be for a term even less than 10 years. Further, in order to attract the punishment under section 376 (2) (f) it is first to be found that the rape is committed on a girl under 12 years of age. In *Guddu Kumar* v. *The State of Bihar,*[9] where rape was committed on a 5 year girl, the trial court has sentenced the accused to undergo imprisonment for life with a fine of Rs.5000/-. On appeal to the High Court of Patna, the court observed thus:[10]

> [T]here is a wide scope for variation of punishment upon finding of guilt depending on the circumstances, up to life imprisonment… normally the punishment for an offence under Section 376 (2) (f) could be anything between 10 years to life imprisonment and in exceptional cases -"for adequate and special reasons" it could be less than that also. The Legislature has given this discretion to the Trial Court but this discretion is not either fanciful or arbitrary as this discretion has to be exercised upon genuine and bona fide consideration of various factors. It is a judicial discretion. What we find here is that merely because of a rape of minor has been committed, it is stated to be a grave offence, calling for maximum punishment. That is not the legislative mandate. Section 376 (2) (f) with the discretionary punishment comes into play only when such a grave offence is committed. Yet the discretion.

In this case, the medical examination of the girl has corroborated the incidence of rape. But the court noticed that the accused at the time when the offence was committed was a young man of 25 years of age with no criminal background. The appellant was the tenant in the house of the grandfather of the informant (PW 4) for over 35 years. Hence there was an argument to the effect that the case was a pretext to pressurize the eviction. on these circumstances, by considering the case as fit and appropriate to interfere in the matter of sentence, the high court, while sustaining the conviction reduced the sentence to 10 years of rigorous imprisonment with a fine of Rs.10,000/-.

In *Pushpanjali Sahu* v. *State of Orissa*,[11] the accused has committed the offence of rape against the matron of the hostel. The trial court, after analysing the evidence on record, concluded that the prosecution has proved its case and accordingly,

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7 *Kehr Singh* v. *Emperor*, AIR 1929 Lahore 29.
8 *Ibid*.
9 2012 (3) PLJR 619.
10 *Id*., para 18.
11 JT 2012 (9) SC 379.

convicted the accused and awarded the sentence directing the accused to undergo imprisonment for a period of 7 years. The session's court after considering the entire evidence on record has confirmed the order passed by the trial court. The high court in the revision petition, however, taking a lenient view of the matter, has reduced the sentence awarded by the trial court from 7 years to the period already undergone by the accused, *i.e.,* about a year. While allowing the appeal, the apex court set aside that portion of the order passed by the high court reducing the period of sentence from 7 years to the period already undergone by the accused and directed that the accused be convicted and sentenced for a period of 7 years.

Though, social impact of crime where it related to offences against women, which had great impact on social order and public interest, it would not be lost sight of and *per se* require exemplary treatment. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, *etc*. Rape is a crime against basic human rights, and is also violative of the victim's most cherished of the fundamental rights, namely, the right to life contained in article 21 of the Constitution. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely.

In *State of U.P*. v. *Munesh*,[12] apex court while setting aside the order of acquittal passed by high court held that the court shall not acquit accused if prosecution proves guilt of the accused. Similarly, in *the State of Tripura* v. *Md. Alfu Miah,*[13] the High Court of Gauhati held that in rape cases benefit of doubt shall not be given to the accused if it is beyond reasonable doubt established committal of offence by the accused. In cases of rape evidence of victim/prosecutrix, if inspire confidence, it must be relied upon without seeking corroboration of her statement in material. Accordingly, the court observed that the trial court has committed gross injustice in acquitting the accused from charges on benefit of doubt.

Capital punishment

In *Ramnaresh* v. *State of Chhattisgarh*[14] the appeals were directed against the concurrent judgments of conviction and award of capital punishment in rape case. The prosecution had been able to prove its case beyond reasonable doubt that accused were guilty of committing offence under sections 499, 376(2)(g) and 302 of IPC. However, the Supreme Court declined to uphold the capital punishment by stating that law contemplated recording of special reasons and, therefore, expression 'special' had to be given a definite meaning and connotation. According to the apex court, the court would inevitably arrive at only one conclusion, and no other, that imposition of death penalty was only punishment. Though the court itself mourned that the accused had committed a heinous and inhumane crime for satisfaction of

12 2012 (10) SCALE 141.
13 MANU/GH/0215/2012.
14 (2012) 4 SCC 257.

their lust, for the court, that was not sufficient with certainty to make the case fall in 'rarest of rare' cases.

Self defense

In *Anuj Jermi* v. *State by Inspector of Police*,[15] the accused an young college going girl of hardly 19 years of age, who stabbed her father to death, in order to protect her modesty and life when the deceased exhibiting animal behaviour violently attempted to rape her. The accused while facing prosecution under section 304(ii) of IPC, prayed the Madras High Court to quash the proceedings. After analying the facts and circumstances of the case, the court found that the petitioner has acted only in the exercise of right of private defence to save her modesty and life. Hence, in the opinion of the court that "when the materials placed before the court, by way of police report, statement of witnesses and documents, do not make out an offence for any trial, then, it will not be lawful to allow the trial to go on as the same would only be a wasteful exercise. Apart from that making a woman like the petitioner to undergo the ordeal of trial when obviously she has not committed any offence will be again a very serious human rights violation. Therefore, if the court is satisfied that no offence is committed by the petitioner, then, it is appropriate for this court to quash the proceedings".

The court appreciated the investigating officer who has done an honest investigation:[16]

> Seldom an Investigating Officer files a negative report when he finds that the accused falls within any one of the general exceptions or special exceptions appended to Section 300 of IPC. It is very rare for a police officer to look into the exceptions and to file a final report at the end, for a lesser offence like the offence punishable under Section 304 of IPC. In this case, the police officer, who investigated the case, without changing the course of investigation from its right direction has honestly done the investigation and has ultimately filed the final report against the petitioner for a lesser offence punishable under Section 304 of IPC.

The court also noticed that the petitioner need not have been arrested by the investigating officer. By referring to *Joginder Singh* v. *State of UP* , the court reiterated that " because it is lawful to arrest, it should not be resorted to in a mechanical fashion." even if the accused does not plead self defence, it is open for the court to consider such a question if the same arises from the materials on record.[17]

The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Hence, *inter alia,* to give effect to articles 14, 15 and 21 of the Constitution of India, the Parliament has brought in a legislation in the form The Protection of Women From Domestic Violence Act, 2005 to protect the victims of domestic violence. Despite the implementation of the said Act,

15 2012 (5) CTC 433.

16 *Id.* para 13.

17 *Darshan Singh* v. *State of Punjab*, 2010 (2) SCC 333 and *Munshiram* v. *Delhi Administration,* (1968) 2 SCR 455.

domestic violence has not been totally eradicated. Hence the court rightly held that the petitioner was justified in killing her father or otherwise, she would have fallen a victim of rape or in the effort she would have lost her life.

Consent *vis-a-vis* submission

In *Sonu Kumar* v. *State of Himachal Pradesh*[18] while acquitting the accused from charges under section 366(A) of IPC, the High Court of Himachal Pradesh reiterated that three principal ingredients are must to constitute an offence under section 366-A IPC: (a) a minor girl below the age of 18 years is induced by the accused; (b) she is induced to go from any place or to do any act, and (c) she is so induced with intent that she may be or knowing that it is likely that she will be forced to seduce to illicit intercourse with another person.[19]

However, by upholding the conviction under section 376 of IPC the court drew a difference between consent[20] and submission in rape cases. Submission of one's body under the influence of fear or terror is not consent. Every consent involves a submission but the converse does now follow and a mere act of submission does not involve consent. Consent of the girl in order to relieve an act, of a criminal character like rape, must be an act of reason, accompanied with deliberation, after the mind has weighed as in a balance, the good and evil on each side, with the existing capacity and power to withdraw the assent according to one's will or pleasure.

Defective investigation

In *Jiban Das* v. *State of Tripura*,[21] where a husband set fire on his wife and put her to death, referring to *Karnel Singh* v. *State*[22] the High Court of Gauhati reiterated that in the cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting the accused person solely on account of the defect; to do so would tantamount to plying in the hands of the investigating officer, if the investigation is designedly defective. Heavily criticising the court below and the investigating officers the court held thus:[23]

> On going through the case record we have no doubt that it is a case of poor investigation and prosecution and is also an incident where trial court also

18 2012 CriLJ 3210.

19 Also see *Ramesh* v. *State of Maharashtra*, AIR 1962 SC 1908.

20 In *Rao Harnarain Singh* v. *State,* AIR 1958 P&H 123 the 'consent' has been explained as:

> A mere act of helpless resignation in the face of inevitable compulsion, acquiescence, non-resistance, or passive giving in, when volitional faculty is either clouded by fear or vitiated by duress, cannot be deemed to be 'consent' as understood in law. Consent, on the part of a woman as a defense to an allegation of a rape, requires voluntary participation, not only after the exercise of intelligence, based on the knowledge, of the significance and moral quality of the act but after having freely exercised a choice between resistance and assent.

21 2012 CriLJ 3237.

22 1990 CriLJ 4173.

23 See, *Kundula Bala* v. *State* (1993) 2 SCC 684.

> has failed to take an active part in the trial of the case. The learned Additional Sessions Judge, West Tripura, Agartala acted like a silent spectator. It was the duty of the trial Judge to see and to find out all the material aspects of the evidence of the case. A trial Judge cannot be a mere spectator but to control criminal proceeding by actively participating there in to find out the truth which unfortunately is not present in the case.

The courts are expected to be sensitive in cases involving crime against women. The role of courts under the circumstances assumes greater importance and it is expected that the courts would deal with such cases in a more realistic manner and not allow the criminals to escape on account of procedural technicalities or insignificant lacunas in the evidence as otherwise the criminals would receive encouragement and the victims of crime would be totally discouraged by the crime going unpunished.[24]

In *Kanu Debnath* v. *State of Tripura*, the High Court of Gauhati held that the courts must be sensitive in trying cases involving crime against women, should also not expected to be guided by sentiment or emotion. The courts are required to carefully examine the evidence and surrounding circumstances and arrive at a decision so that the real culprits, if involved in the crime of offence, are booked and that no one is subjected to punishment because of some sorts of wear and tear in the ordinary family life.

IV MARRIAGE AND DIVORCE

Right to marry

In *Major Yogesh Chandra Madhav Sayankar* v. *The Chief of Army Staff Integrated Head Quarters (Army), Ministry of Defence*,[25] the division bench of the Bombay High Court quashed the order of refusal to grant permission to marry or to release the army officer from the services of the army and accordingly had directed the army authorities, to consider the application of the petitioner for permission to marry or for release/resignation as per rules 17 and 20 of the Army Order 14/2004MI, subject to recovery of the cost of training. Similarly, in *The Union of India Represented by The Secretary, Ministry of Defence* v. *Major Vikas Kumar*[26] the respondent, a serving major in the Indian army desired to marry a foreign national. He filed an application seeking permission to marry the foreigner or if that was considered to be impermissible, to be released from the army. This request has been rejected and hence he invoked the extraordinary writ jurisdiction of the high court. He has also agreed to refund the entire costs of his training and also to the forfeiture of his terminal benefits in the event that the appellants were unwilling to grant him permission to marry and in those circumstances to compel and constrain him to resign his army commission. Instead granting him the permission either to marry or to resign from the army service, the concerned officers brought one after another an array of writs against the respondent. In the present writ, the apex court

24 2011 (3) Mh LJ 620.

25 2013 (1) AKR 491: MANU/KA/1707/2012.

26 *Id*., para 8

held thus:[27]

> It is a Human Right of every human-being, including Army Personnel, to marry a person of his choice albeit after obtaining requisite permission from the Competent Authority of the Indian Army. We can conceive of no reason for the appellants to refuse to accord permission to the petitioner No. 1 to do so.

On the question of the jurisdiction, the court held that there are no statutory constraints on the exercise of the extraordinary powers conferred on the high court under articles 226 and 227 of the Constitution of India. Section 14 of the Armed Force Tribunal Act, 2007 explicitly bars the jurisdiction of only civil Courts. There is a plethora of precedents on the issue that even where another high court could more conveniently decide the writ petition, the high court seized of the writ can investigate and proceed to decide the *lis* if it favours the opinion that the dictates of justice require it do so. The same enunciation of the law has been recorded even where the availability of an alternate or efficacious remedy is a germane consideration. By awarding exemplary damages to the respondent, the court said so:

> This conduct and inconsistent pleadings of the appellants call for imposition of exemplary costs, since the petitioners have been vexed with multiplicity of proceedings. We do not propose to make any further observations on the conduct of the Military Secretary (PR) Integrated HQ of Ministry of Defence and/or other Officers, as they stand arrayed and summoned in the pending Contempt proceedings. For these manifold reasons, we are of the view that the Writ Appeals are completely devoid of merit. They are dismissed. In the facts and circumstances, the Appellants are directed to pay costs of Rs. 75,000/- (Rupees seventy five thousand only) within thirty days from today, payable jointly to the Respondents.

Writ jurisdiction and its limitation

Marriage is certainly desire of a boy and a girl to continue with their conjugal relationship provided they have attained the age of marriage, as required by law. The courts have been fortified with several writ petitions in which more or less identical reliefs were claimed for protection of their marital relationship, which is allegedly being interfered with and harassed by their parents or relatives, who are private respondents. In *Ashish Sharma* v. *State of U.P*.[28] the High Court of Allahabad was called upon to resolve such type of dispute between the two private parties. However, the High Court of Allahabad after justifying the cause of living together by quoting several judgments[29] dismissed the writ, holding thus:[30]

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27 2012 ACR 2866: MANU/UP/1589/2012.

28 *Gian Devi* v. *Supdt., Nari Niketan, Delhi*, 1976 (3) SCC 234; *Lata Singh* v. *State of U.P,* 2006 (5) SCC 475; *S Khushboo* v. *Kanniammal,* 2010 SC 3196; *Bhagwan Dass* v. *State (NCT of Delhi),* 2011 (6) SCC 396 *etc*.

29 2012 ACR 2866, para 9.

30 Judgment dated 03.04.2012 in civil misc. writ petition no. 16299 of 2012.

> The applicant has made out a case under Sections 193, 196, 199, 200, 463, 471 and 475 IPC, but no FIR has been lodged nor any complaint case was filed nor the applicant proceeded before the Criminal Court to obtain an order. Law is well settled by now that the term 'Court' indicates that there must be power to record evidence and to come to a judicial determination on the evidence so recorded. The words used in the provision are important. The Writ Court is not the Court of evidence. Thus, the Writ Court under no circumstances can be said to be the 'Court' under the provisions of Section 195 read with Section 340 Cr PC. 10.

On a similar question of law, in *Niresh Kumar Srivastava* v. *State of U.P.*[31] the Supreme Court held thus:[32]

> ... Firstly, if one is sui juris, no fetter can be placed upon choice of the person with whom she is to stay nor anyone can restrict her. Secondly, any person cannot give threats or commit or instigate the acts of violence and cannot harass the adult person who undergoes inter-caste or inter-religion marriage. Administration/policy authorities can be directed to see to it so that the couple, upon being major, should not be harassed by any one. Thirdly, live-in relationship between two consenting adults of heterogenic sex does not amount to any offence. It will not be unnecessary to say that there are many States in our country where castism or religionism is so deep rooted even in the 21st Century that one can go to the extent of honour killing upon being forgetful that their interference might cause unhappiness in the life of their children. Such type of activities are totally in violation of the preamble of the Constitution of India in connection with human dignity of an individual. The country is one and it is pluralistic in nature. No secular idea can be ignored. No person shall be deprived of his life and personal liberty except according to the procedure established by law as per Article 21.
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> ... If there is any real grievance of married couple against their parents or relatives who are allegedly interfering with their conjugal rights which goes to such extent that there is threat of life, they are at liberty to lodge any criminal complaint or file F.I.R. whichever is required under the law to the police and in case of refusal, may make appropriate application before the appropriate Court of criminal law by way of applications under Sections 155 or 156 of the Criminal Procedure Code. Similarly, in case the parents or relatives, find that illegally their son or daughter was eloped for the purpose of marriage although he or she is underage or not inclined or they are behaving violently, they are equally at liberty to take steps in a similar manner.
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> But, when neither of the actions are taken amongst each other, a fictitious application with certain vague allegations, particularly by the newly married

31 1012 (3) KLJ 460: MANU/KE/0942/2012.

32 2003 KHC 688.

> couple, under writ jurisdiction of the High Court, appears to be circuitous way to get the seal and signature of the High Court upon their respective marriages without any identification of their age and other necessary aspects required to be done by the appropriate authority/authorities. It is well settled by now that every marriage is required to be registered by the appropriate registering authority upon due verification of the ages etc. of respective parties. We cannot also allow to develop the disputed questions of fact under the writ jurisdiction nor we can draw any inference by the colourful presence of the newly wedded couple in the Court as per the respective advices. If we do so, it will be wrong presumption by using excessive power of the Court in this jurisdiction. However, where no F.I.R. has been lodged or necessary police actions are taken by either of the parties, it is expected that no coercive action could be taken against each other. In case the party/parties approaches/approach the appropriate Court of law or the authority concerned, raising his/her/their grievances, the same will be considered strictly in accordance with law. If this order is obtained by fraud or suppression of material facts, then the law will take its own course independently.

As the court pointed out, even in 21st century so many factors are involved in connection with the life and security of the married couples. Casteism, religionism, 'honour' killings, forcible departure of the boy and girl from each other even by the parents or family members, threat, pressure and many other nature of transgress, infringes their life and personal liberty as guaranteed under article 21 of the Constitution. Such actions are not in the garb of but in the wake of violation of article 21. However, the writ court is not expected to hold a robbing inquiry into the material facts of the case such as, validity of documents, place of marriage, residence, *etc*. Scope of the writ petition is limited about the adult marital relationship only for their protection.

Decree *nisi*

By the Indian Divorce (Amendment) Act, 2001 drastic amendments were made to the Indian Divorce Act, 1869. Before the amendment, a petition for dissolution of marriage under section 10 of the Indian Divorce Act or a petition for decree of nullity under section 18 of the Act could be filed either before the district court or before the high court. After the amendment of 2001, the original jurisdiction of the high court was taken away. Before the amendment, a decree of divorce passed by the district court was required to be confirmed by the high court under section 17 of the Act. A decree could be confirmed by the high court only after the expiry of a period of not less than six months from the date of decree. Section 17 was substituted by the amendment and now it is not necessary to confirm the decree (passed by the district court) by the high court. In *Linish P. Mathew* v. *Mruthula Mathew*[33] the question arose before the High Court of Kerala was whether a decree for dissolution of marriage could be passed straight away or whether it is necessary to pass a decree *nisi* as provided under section 16 of the Divorce Act.

33 (2012) 8 SCC 580.

In *Monika Sanctis* v. *Henry Joseph*[34] the Karnataka High Court has held that the whole object of the 2001 amendment Act is that the parties may get relief quickly and easily and to relieve them of the procedural hurdles which had been found in the principal Act with its colonial background. One very salient change brought about by the amendment is doing away with the requirement of confirmation of a decree for dissolution of marriage passed by the district court by a bench of three judges of the high court. This indicates that a decree for dissolution of a marriage passed under the Divorce Act after the amending Act becomes effective on its own and does not require any further confirmation. The provisions of section 16 does not apply in a situation where the high court while exercising its appellate jurisdiction passes an order of dissolution of marriage on any of the stipulated grounds. The amended provisions of section 17 also lend support to this view as when once a decree is passed for dissolution of marriage the parties are at liberty to marry again immediately after the period of limitation for filing an appeal expires.

In *Linish* the Kerala High Court agreed with the view taken by the Karnataka High Court in *Monika Sanctis* and observed that it is not necessary to pass a decree *nisi* in a petition under section 10A of the Divorce Act. Section 10A inserted by 2001 amendment provides for passing a decree declaring the marriage to be dissolved with effect from the date of decree, on the motion of both the parties made not earlier than six months after the date of presentation of the petition under section 10A, provided the other conditions of sub-section (2) thereof are satisfied. Sub-section (2) of section 10A does not provide for passing a decree *nisi* as provided in section 16, to be made absolute after the expiration of six months. A decree under section 10A can be passed after the expiry of six months from the date of its presentation. The legislature deliberately made provision for passing a decree for dissolution of marriage under section 10A instead of passing a decree *nisi*. Even after the amendment of the various provisions of the Act, a decree *nisi* is required to be passed under section 16, but such a decree *nisi* is not required to be passed under section 10A. If it is to be construed that a decree to be passed after expiration of the period of six months from the presentation of the petition under section 10A can only be a decree *nisi* as provided under section 16 of the Act, the result would be delay of a minimum period of one year from the date of presentation of a petition under section 10A for dissolution of marriage by mutual consent. Before the amendment of section 57, which was substituted by 2001 amendment, a party who had obtained a decree of divorce could not marry again before the expiry of six months after the order of the high court confirming the decree for dissolution of marriage or where the decree was passed by the high court dissolving a marriage, before the expiry of six months from the date of decree. But after the amendment, waiting for a period of six months is not required. As per section 57 as amended, a party can marry again after the expiry of the time for filing the appeal or when an appeal has been filed, on attaining finality of the dismissal of the appeal.

34 The petitioner has relied on *Anil Kumar Jain* v. *Maya Jain* (2009) 10 SCC 415, wherein it was held that after arriving at a conclusion that the marriage between the parties had broken down irretrievably, the court can invoke its powers under art. 142 of the Constitution.

Cooling period

In *Devinder Singh Narula* v. *Meenakshi Nangia*[35] the apex court had an occasion to consider the purpose of the second motion in divorce petitions. The section 13B itself provides for a cooling period of six months on the first motion. After the initial motion and the presentation of the petition for mutual divorce, the parties are required to wait for a period of six months before the second motion can be moved. If the parties then make up their minds that they would be unable to live together, the court, after making such inquiry as it may consider fit, grant a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree being moved. This statutory waiting requirement was challenged in the present case.[36]

By invoking the powers under article 142, the Supreme Court held thus: "Marriage is subsisting by a tenuous thread on account of the statutory cooling off period, out of which four months have already expired. When it has not been possible for the parties to live together and to discharge their marital obligations towards each other for more than one year, we see no reason to continue the agony of the parties for another two months".

Safeguarding the institution of marriage is the sole legislative wisdom behind stipulating a cooling period of six months from the date of filing of a petition for mutual divorce till such divorce is actually granted. Though in every case of dissolution of marriage under section 13B, the court need not exercise its powers under article 142 of the Constitution, in appropriate cases invocation of such power would not be unjustified, and in some cases, the same may even prove to be necessary.

U. Sree v. *U. Srinivas*[37] the apex court concurred with the findings of the family court and the high court while holding that the husband had proved the mental cruelty as there were maladroit efforts by the wife to malign reputation of family of husband. Though the court upheld the divorce on the ground of mental cruelty, the court had dislodged the lower court's finding of desertion. The court quoted[38] with approval the judicial view of cruelly as expressed in *Ravi Kumar* v. *Julmidevi*:[39]

> In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, sometime it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty. Therefore, cruelty in matrimonial behaviour defies any definition and its categories can never be closed. Whether the husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any predetermined rigid formula. Cruelty in

35 (2013) 2 SCC 114.
36 *Id*. at 126, para 19.
37 (2010) 4 SCC 476.
38 2012 (10) SCALE 494.
39 (2012) 7 SCC 91.

> matrimonial cases can be of infinite variety- it may be subtle or even brutal and may be by gestures and words.
>
> Addressing the issue of permanent alimony, the court said thus:[40]
>
> While granting permanent alimony, no arithmetic formula can be adopted as there cannot be mathematical exactitude. It shall depend upon the status of the parties, their respective social needs, the financial capacity of the husband and other obligations... it is the duty of the Court to see that the wife lives with dignity and comfort and not in penury. The living need not be luxurious but simultaneously she should not be left to live in discomfort. The Court has to act with pragmatic sensibility to such an issue so that the wife does not meet any kind of man-made misfortune.

In *Nazma* v. *Javed @ Anjum,*[41] where the Supreme Court has been entertaining an appeal filed against the order of high court directing stay of arrest (of the respondent 1 – the accused husband in a case under the Dowry Prohibition Act read with IPC and Cr PC)) until conclusion of investigation, the court said thus:

> [T]he High Courts are entertaining writ petitions under Articles 226 and 227 of the Constitution, so also under Section 482 Code of Criminal Procedure and passing and interfering with various orders granting or rejecting request for bail, which is the function of ordinary Criminal Court. The jurisdiction vested on the High Court under Articles 226 and 227 of the Constitution as well as Section 482 Code of Criminal Procedure are all exceptional in nature and to be used in most exceptional cases. The jurisdiction under Section 439 Code of Criminal Procedure is also discretionary and it is required to be exercised with great care and caution…..Once the criminal writ petition has been disposed of, the High Court becomes *functus officio* and cannot entertain review petitions or miscellaneous applications except for carrying out typographical or clerical errors. In the instant case, the High Court has entertained a petition in a disposed of criminal writ petition and granted reliefs, which is impermissible in law.

V DOWRY DEATH

The requirements of section 304B were examined in *Rajesh Bhatnagar* v. *State of Uttarakhand.*[42] The requirements are: the death of a woman is caused by burns, bodily injury or otherwise than in normal circumstances; and death has been caused or occurred within 7 years of marriage within seven years of her marriage. Further, it should be shown that soon before her death, she was subjected to cruelty or harassment by her husband or her husband's family or relatives and thirdly, that

40 While dealing with similar issue, in *Bachni Devi* v. *State of Maharashtra* (2011) 4 SCC 427 it was held that each case had to be decided on its own facts and merit.

41 2012 7 SCC 91, para 41.

42 (2007) 1 SCC 721.

such harassment should be in relation to a demand for dowry. Once these three ingredients are satisfied, the death shall be treated as a 'dowry death' and once a 'dowry death' occurs, such husband or relative shall be presumed to have caused the death. Thus, by fiction of law, the husband or relative would be presumed to have committed the offence of dowry death rendering them liable for punishment unless the presumption is rebutted. It is not only a presumption of law in relation to a death but also a deemed liability fastened upon the husband/relative by operation of law.

The court also explained in the same case the nature of presumption under the Evidence Act with reference to dowry death. It is, under section 11B of the Evidence Act, 1872, mandatory on the part of the court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with any demand of dowry. It is unlike the provisions of section 113A of the Evidence Act where discretion has been conferred upon the court wherein it had been provided that court may presume abetment of suicide by a married woman. Therefore, in view of the above, onus lies on the accused to rebut the presumption and in case of section 113B relatable to section 304B IPC, the onus to prove shifts exclusively and heavily on the accused. In case the essential ingredients of such death have been established by the prosecution, it is the duty of the court to raise a presumption that the accused has caused the dowry death. The IPC as well as Evidence Act do not explain the expression 'soon before her death.' Hence, in each case,[43] the court has to analyse the facts and circumstances leading to the death of the victim and decide if there is any proximate connection between the demand of dowry and act of cruelty or harassment and the death.

While dismissing the appeal and rejecting the contention of lessening the quantum of sentence awarded by the trial court, the apex court held thus:[44]

> When the offence of Section 304B is proved, the manner in which the offence has been committed is found to be brutal, it had been committed for satisfaction of dowry demands, particularly, for material goods like television or cooler and furthermore the accused takes up a false defence before the Court to claim that it was a case of an accidental death and not that of dowry death, then the Court normally would not exercise its judicial discretion in favour of the accused by awarding lesser sentence than life imprisonment.

In *Appasaheb* v. *State of Maharasthra*,[45] the apex court has held that "a demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood." However, *Appasaheb* was reconsidered by the apex court in *Bachni Devi* v. *State of Maharashtra*[46] wherein it was held that *Appasaheb* does not lay down a law of universal application. If a

43 (2011) 4 SCC 427.
44 (2012) 6 SCC 589.
45 AIR 2011 SC 2271.
46 (2012) 4 SCC 722.

demand for property or valuable security, directly or indirectly, had nexus with marriage, such demand would constitute demand for dowry. In *Rohtash* v. *State of Haryana,*[47] where there had been major embellishments in the prosecution case, the appellant was given benefit of doubt by the trial court and acquitted him of the charges under sections 304B and 498A of IPC. However, the high court interfered with order of acquittal and convicted the accused by reversing the order of the sessions court. Relying on *State of Rajasthan* v. *Talevar*[48] and *Govindaraju @ Govinda* v. *State by Srirampuram Police Station*[49] the Supreme Court expressed its displeasure in high court's interference in the following words:[50]

> [O]nly in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse, the appellate court can interfere with the order of the acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial cour's acquittal bolsters the presumption of innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

Pathan Hussain Basha v. *State of A.P.*[51] presented to the Supreme Court similar fact situations. The court observed that when there is charge under sections 304B and 498A IPC, the prosecution has to prove guilt of the accused beyond reasonable doubt. In the present case, the prosecution by reliable and cogent evidence has established guilt of the accused. Then, it was for the accused to show that death of the deceased did not result from any cruelty or demand of dowry by the accused persons. The accused has to explain as to how and why his wife died, as well as his conduct immediately prior and subsequent to the death of deceased. If it was found that the accused did not care to explain as to how death of his wife occurred, the onus is not said to be discharged. Maintaining silence could not be equated to discharge of onus by the accused.

In *State of Himachal Pradesh* v. *Anil Kumar*[52] the court explained the difference between section 306 and 498A IPC. The basic difference between the two sections, *i.e.,* section 306 and section 498A is that of intention. Under the latter, cruelty committed by the husband or his relations drag the woman concerned to commit suicide, while under the former provision suicide is abetted and intended. Justifying the acquittal of the accused since the prosecution has failed to prove its case by not leading clear, cogent and convincing material to prove the guilt of the accused to establish the charge against the accused, the High Court of Himachal Pradesh held thus:[53]

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47 (2012) 6 SCC 589, para 27.
48 (2012) 8 SCC 594.
49 2012 (2) ShimLC 710.
50 2012(3) GLD39 (NULL).
51 (2012) 7 SCC 288.
52 (1988) 1 SCC 105.
53 (1994) 1 SCC 337.

> There should be reasonable nexus between cruelty and suicide. It has to be substantiated, established and proved on record. Cruelty by itself would not amount to having committed an offence punishable under Section 498A IPC. A reasonable nexus has to be established between cruelty and the suicide in order to make good the offence of cruelty under the penal laws. Cruelty has to be of such a gravity as is likely to drive a woman to commit suicide. Suicide alone would not establish that it was occasioned on account of cruelty which was of sufficient gravity so as to lead a reasonable person placed in similar circumstances to commit suicide. Mere assumption or demand of dowry by itself in given circumstances may not amount to cruelty. The harassment has to be with a definite object i.e. to meet any unlawful demand. Every act of cruelty is not punishable. There must be evidence to show that soon before the death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of natural or accidental death so as to prove that the death had occurred otherwise than in normal circumstances. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If the incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

Separate sentence

Babul Rabi Das v. *The State of Tripura*[54] was a case of dowry death of a young girl in the matrimonial home, by the husband on demand of dowry, setting her to fire pouring kerosene oil. Though all ingredients of dowry death have been proved with overwhelming evidence and much more than that what is proved in the case was that it was not merely a case of dowry death but was a clear case of murder, the sessions' judge ignored all circumstances and recorded no finding of punishment under section 302 of IPC though there was charge framed against the accused. However, since the accused has already been sentenced for life under section 304(B) of IPC and since there is no appeal filed by the prosecution to that account, thy High Court of Gauhati did not incline to take further steps to convert the punishment under section 302 of IPC from that of one under section 304B of IPC. The court also observed that where the accused is held guilty of committing offence both under sections 498A and 304B of IPC, separate sentence under section 498A of IPC is not required.

Mental cruelty

The expression 'cruelty' has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status. The 'cruelty' may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem to determine it. It is a question of fact and degree. If it is mental, the problem presents difficulty.

54 AIR 2002 SC 2582.

In *Vishwanath* v. *Sarla Vishwanath*,[55] the appellant husband had filed a petition for divorce under section 13(1) (ia) of the Hindu Marriage Act, 1955. The trial judge dismissed the application for divorce. On appeal, the first appellate court held that the appellant had failed to make out a case of mental cruelty to entitle him to obtain a decree for divorce. The high court took a concurrent view by holding that no substantial question of law was involved and hence dismissed the appeal. The apex court was called upon to examine whether a case for divorce had really been made out and what actually constitutes 'mental cruelty'? After examining law pertaining to mental cruelty, the apex court scrutinized whether in the case at hand, there has been real mental cruelty or not? For that the court has examined the explanation of mental cruelty spelt out in various judgements such as *Shobha Rani* v. *Madhukar Reddi*,[56] *V. Bhagat* v. *D. Bhagat (Mrs.)*,[57] *Praveen Mehta* v. *Inderjit Mehta*,[58] *Vijaykumar Ramchandra Bhate* v. *Neela Vijaykumar Bhate*,[59] *A. Jayachandra* v. *Aneel Kaur*,[60] *Vinita Saxena* v. *Pankaj Pandit*,[61] *Samar Ghosh* v. *Jaya Ghosh*[62] and *Suman Kapur* v. *Sudhir Kapur.*[63]

The trial court as well as the first appellate court has disbelieved the evidence of most of the witnesses cited on behalf of the husband on the ground that they are interested witnesses. This has been criticised by the apex court. In a matrimonial dispute, it would be inappropriate to expect outsiders to come and depose. The family members and sometimes the relatives, friends and neighbours are the most natural witnesses. The veracity of the testimony is to be tested on objective parameters and not to be thrown overboard on the ground that the witnesses are related to either of the spouse.

The court has noticed that in the cross-examination, it is clearly stated that the wife was crumpling the ironed clothes, hiding the keys of the motorcycle and locking the gate to trouble him and the said incidents were taking place for a long time. In the opinion of the court, "it does not require Solomon's wisdom to understand the embarrassment and harassment that might have been felt by the husband. The level of disappointment on his part can be well visualised like a moon in a cloudless sky." The trial court by negating the contention of the husband that there was mental cruelty by wife has referred to various authorities of many high courts. According to the apex court, the allegation of cruelty must be proved or disproved by acceptable evidence.

The apex court held that there has been real mental cruelty. The findings of courts below were perverse, unreasonable, against the material record or based on non-consideration of relevant materials. The high court has, in a singular line, declined to interfere with the judgment and decree of the courts below stating that

55 AIR 2003 SC 2462.
56 (2005) 2 SCC 22.
57 (2006) 3 SCC 778.
58 (2007) 4 SCC 511.
59 AIR 2009 SC 589.
60 AIR 2001 SC 1273.
61 (2005) 2 SCC 500.
62 I (2012) DMC 721.
63 (2007) 4 SCC 511.

they are based on concurrent findings of fact. The plea of perversity of approach though raised was not adverted to.

By quoting *Kulwant Kaur* v. *Gurdial Singh Mann*[64] and *Govindaraju* v. *Mariamman*,[65] the court held that an issue pertaining to perversity comes within the ambit of substantial question of law. By holding that the high court has failed to exercise the jurisdiction conferred on it despite the plea of perversity being raised the court said that any finding which is not supported by evidence or inferences is drawn in a stretched and unacceptable manner can be said to be perverse. The court concluded that the childish and fanciful behaviour of the wife, the allegation by wife of the extra marital affair of the Appellant-husband, publication in the newspapers that the husband was a womaniser and a drunkard *etc*. amounted to cruelty.

Shashi Bala v. *Rajiv Arora*[66] was an appeal filed under section 28 of the Hindu Marriage Act, 1955, the appellant seeking to challenge the impugned order and decree passed by the learned trial court whereby a decree of divorce in favour of the respondent husband under section 13(i)(a) of the Hindu Marriage Act was granted and the counter claim filed by the appellant seeking a decree for restitution of conjugal rights under section 9 of the Hindu Marriage Act was dismissed. By reiterating *Samar Ghosh* v. *Jaya* Ghosh[67] the High Court of Delhi held that willful denial of sexual intercourse without reasonable cause would amount to cruelty. By upholding the order of the trial court, the high court observed thus:

> ...the sex starved marriages are becoming an undeniable epidemic as the urban living conditions today mount an unprecedented pressure on couples. The sanctity of sexual relationship and its role in reinvigorating the bond of marriage is getting diluted and as a consequence more and more couples are seeking divorce due to sexual incompatibility and absence of sexual satisfaction. To quantify as to how many times a healthy couple should have sexual intercourse is not for this Court to say as some couples can feel wholly inadequate and others just fine without enough sex. "That the twain shall become one flesh, so that they are no more twain but one" is the real purpose of marriage and sexual intercourse is a means, and an integral one of achieving this oneness in marriage.

Rajeev Chadha v. *Shama Chadha*[68] the High Court of Delhi held that wife is entitled for decree of divorce if cruelty on part of husband is proved. The marriage between the couple was an arranged one. However, the appellant was not interested in establishing marital relations with the respondent and he was more interested to have earnings of his wife. Contempting the attitude of the appellant husband who has given matrimony a hue of being a barter system rather than a pious, sacred

64 2012 (130) DRJ 20.
65 *Id.,* para 16.
66 AIR 2012 SC 965.
67 (2010) 10 SCC 469.
68 *Id.,* para 31.

union of two bodies and souls, the court observed thus:[69]

> In India, finding a suitable match through newspaper is a means to the popular arranged marriage phenomena and various factors such as caste, religion, physical appearance, professional qualifications, family background, etc serve as parameters for selecting a match. For some, it may be paramount that their spouse is homely and takes care of their family while there may be some for whom it is a decisive factor whether the girl is a working woman or not. In today's era of technological bliss, where there are websites and brokers dedicated to the task of finding the perfect match, it is not extraordinary to seek a spouse having a particular quality or pursuing a particular hobby, what to talk of a particular profession. Hence, this court cannot find fault with the demand of the appellant husband where he sought a working wife and for that reason he even categorically specified it in the matrimonial advertisement as well. However, having said that, this court at the same time cannot persuade itself to believe that a newly married person would refuse to establish physical relationship with his wife on the ground that she is unable to produce her employment and educational certificates within a day of getting married. This court is not suggesting that a person should not have any preference while looking for a life partner as it helps in cementing the relationship but to put a pre-condition for discharging one of the most vital matrimonial obligations is baffling and unfathomable to say the least. The appellant ideally should have waited for the respondent to settle down and then take up the topic of employment with her. It is also most unfortunate that cases like the present one, the parties do not try to resolve the matter and seek the help of marriage counselors and the situation then reaches the point of no return.

VI PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT

Whether a petition under the provisions of the Protection of Women from Domestic Violence Act, 2005 (PWD Act) was maintainable by a woman, who was no longer residing with her husband or who was allegedly subjected to any act of domestic violence prior to the coming into force of the PWD Act on 26.10. 2006, was the question which came up for determination of the apex court in *V.D. Bhanot* v. *Savita Bhanot.*[70] The additional session's judge has held that since the wife had left the matrimonial home on 04.07. 2005, and the Act came into force on 26.10. 2006, the claim of a woman living in domestic relationship or living together prior to 26.10. 2006 was not maintainable. On appeal, the Delhi High Court considered the constitutional safeguards under article 21 of the Constitution, *vis-a-vis* the provisions of sections 31 and 33 of the PWD Act, 2005. Accordingly, the high court set aside the order passed by the additional session's judge and held that a petition under the provisions of the PWD Act, 2005, is maintainable even if the

69 (2013) 2 SCC 137: MANU/SC/1096/2012.

70 2012 CriLJ 4106.

acts of domestic violence had been committed prior to the coming into force of the said Act, notwithstanding the fact that in the past she had lived together with her husband in a shared household, but was no more living with him, at the time when the Act came into force.

The apex court agreed with the view expressed by the high court that in looking into a complaint under section 12 of the PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order under sections 18, 19 and 20 thereof. The apex court also agreed with the view that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005.

The object of the PWD Act is to provide effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family. It was with the view of protecting the rights of women under articles 14, 15 and 21 of the Constitution that the Parliament enacted the PWD Act, 2005. The judgement materialise the legislative intent.

Earlier in *D. Velusamy* v. *D. Patchaimmal*[71] the court had an occasion to consider the provisions of section 2(f) of the PWD Act which defines domestic relationship and the court had come to the conclusion that a 'relationship in the nature of marriage' is akin to a common law marriage which requires, in addition to proof of the fact that parties had lived together in a shared household as defined in section 2(s) of the PWD Act, the following conditions to be satisfied:[72]

(a) The couple must hold themselves out to society as being akin to spouses.
(b) They must be of legal age to marry.
(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.
(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

In *Deoki Panjhiyara* v. *Shashi Bhushan Narayan Azad*[73] the court was confronted with the questions (i) if the parties have/had lived together whether the same gives rise to relationship in the nature of marriage within the meaning of section 2(f) of the PWD Act; (ii) whether the decision in *Velusamy* is an authoritative pronouncement on the expression 'relationship in the nature of marriage' and if so (iii) whether the same would require reference to a larger bench? The present case reached the apex court against the order of the high court holding that appellant wife was not the legally wedded wife of the respondent and as such she was not entitled to maintenance granted by the courts below. The apex court found that till date, the marriage between the parties is yet to be annulled by a competent court. As long as, the marriage between the parties subsists under the law the appellant wife would continue to be the legally married wife of the respondent so as to be entitled to claim maintenance and other benefits under the PWD Act. In fact, in such a situation there will be no occasion for the court to consider whether the

71 (2008) 4 SCC 649.
72 2012 (10) ADJ 464.
73 (2000) 3 SCC 693.

relationship between the parties is in the nature of a marriage.

The court further observed that it is only upon a declaration of nullity or annulment of the marriage between the parties by a competent court that any consideration of the question whether the parties had lived in a 'relationship in the nature of marriage' would be justified. In the absence of any valid decree of nullity or the necessary declaration the court will have to proceed on the footing that the relationship between the parties is one of marriage and not in the nature of marriage. Any determination of the validity of the marriage between the parties could have been made only by a competent court in an appropriate proceeding by and between the parties and in compliance with all other requirements of law. In the opinion of the court, until the invalidation of the marriage between the appellant and the respondent is made by a competent court it would only be correct to proceed on the basis that the appellant continues to be the wife of the respondent so as to entitle her to claim all benefits and protection available under the PWD Act, 2005. By allowing the appeal, the court also noted that interference made by the high court with the grant of maintenance in favour of the appellant was not at all justified.

In *Gangadhar Pradhan* v. *Rashmibala Pradhan*[74]regarding the applicability of the PWD Act, the court observed that the relief claimed in the petition filed under section 12 of the PWD Act is civil in nature. The appellant-petitioner, the father-in-law of opposite party has been directed by the lower court to pay a sum of Rs. 1000/- towards monthly maintenance to the respondent-opposite party (wife of the deceased son). In the instant case, till the date of filing of the present petition under section 12, the original petitioner (the opposite party herein) was not granted any of the reliefs sought for in her petition under section 12 of the Act. Therefore, it is a continuous act of deprivation of the original petitioner's right. Admittedly, she was not given her share in joint family properties by the present petitioner (father-in-law of opposite party). Thus, it is a continuous cause of action for which the original petition filed under section 12 of Act claiming the statutory reliefs is maintainable and the provisions of Act are squarely applicable to the present case. According to the court, the criminal cases earlier filed by the wife under IPC and the Dowry Prevention Act have nothing to do with the original petition filed under section 12(1) of the PDW Act. Hence, the plea of the present petitioner that the petition filed by the opposite party (wife of the deceased husband) under section 12 of the PWD Act is not maintainable on the ground that the Act applies only prospectively, *i.e.,* from the date of coming into force on 26.10. 2006 is totally misconceived and not sustainable in law.

While dealing with the right of maintenance under the PWD Act, the Supreme Court referred *Vimlaben Ajitbhai Patel* v. *Vatslaben Ashokbhai Patel*[75] wherein it was held that PWD Act provides for a higher right in favour of the wife, who not only acquires a right to be maintained but also there-under acquires a right of residence which is a higher right. However, the said right as per the legislation extends only to joint properties in which the husband has a share. Accordingly the court rightly concluded that as the petitioner has not given to opposite party her share in the joint family properties in question, the opposite party is entitled to get maintenance till she gets her share in the said properties. In absence of getting a share in the ancestral joint family properties, she is deprived of her economic and

financial resources to which she is legally entitled to get. As per the facts of the case, the opposite party's husband had a right in the joint family properties. After his death in 2006 the opposite party has acquired such right. Since she has not been given her share in the joint family properties, the lower courts have rightly granted monthly maintenance to opposite party till she gets a share in the petitioner's properties. Justifying the verdict of the lower court, the apex court further held thus:[76]

> In view of the definition of 'domestic violence' given in Section 3 of the Act, 2005 and Explanation (iv) explaining the economic abuse, the Courts below are fully justified to grant monthly maintenance to the respondent (opposite party herein) till she gets her share in the ancestral joint family properties.

VII MISCELLANEOUS

Bhumidhari rights

In *Sarla Sharma* v. *Prem Prakash (Deceased) Through LRs*, the the Delhi High Court has been confronted with interpretation of sections 48, 51 and 53 of the Delhi Land Reforms Act, 1954 (DLR Act), *i.e*., who is to succeed to/inherit the agricultural holding to which a female, whether as a mother or a widow, had acquired interest prior to coming into force on 20.07.1954 of the DLR Act. The appellants therein were the heirs under section 53 of DLR Act. The financial commissioner has held that the females having acquired interest in land prior to coming into force of DLR Act, they were *Khudkasht* as on 20. 07.1954 and *bhumidhari* rights in their favour were created by virtue of sections 5 and 11 of the DLR Act and hence it was irrelevant whether prior to such statutory creation of *bhumidhari* rights the females had a limited interest as under the DLR Act they became *bhumidhar* and the agricultural holding so held by them as *bhumidhar* is to devolve to their heirs/ successors under section 53 and not to the heirs/successors of the last male proprietor on whose demise the females had inherited interest in the holding. The single judge has disagreed with this view and hence the present appeal reached the Delhi High Court. The high court by agreeing with the financial commissioners view, held that even though the females in the present appeals, before the commencement of the DLR Act, had a life estate only in the agricultural holding and became a *bhumidhar* with such life estate only but on the coming into force of the Succession Act such life estate was (by virtue of section 14 thereof) converted into an absolute estate. Thus when the said females died, they in accordance with the personal law applicable to them, were entitled to the said agricultural holding absolutely, within the meaning of section 51(2) (a) (ii) of the DLR Act. Accordingly, such holding shall devolve in accordance with section 53 and not upon the nearest surviving heir of the last male proprietor, under section 51(2) (a) (i).

Cognizance against family members

There is a tendency very much prevalent in India to involve entire family members of household in domestic quarrel taking place in matrimonial dispute. This tendency was criticised by the Supreme Court in *Geeta Mehrotra* v. *State of*

U.P.[77] The court has reiterated that mere casual reference of names of family members in a matrimonial dispute without allegation of active involvement in matter would not justify taking cognizance against them. It was also held that the trial against the family members - brother and sister of the husband – was not fit to be continued and the same amounted to abuse of the process of the court. Quoting with approval *G.V. Rao* v. *L.H.V. Prasad*,[78] it was observed that in a matrimonial dispute, the high court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation.

VIII CONCLUSION

These decisions surveyed would undoubtedly contribute to the development of law on the subject. Though there are no good number of cases in which issues of theoretical importance have been deliberated upon, cases like *Devinder Singh Narula* and *Linish P. Mathew* afford good interpretation to family law in general and Divorce Act in particular. As in the previous years, the judiciary was sensitive in dealing with the crimes affecting women. However, *Kanu Debnath* reminds us that though the courts must be sensitive in trying cases involving crime against women, it is not expected to be guided by sentiment or emotion.