11

CRIMINAL LAW

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I INTRODUCTION

CRIMINAL LAW creates and reflects social values by labelling them sufficiently delirious to socially recognised individual, social, ethical or political 'interests' and ensuring their compliance by coercive penal measures. Perpetrator of a prohibited *actus*, by his intentional or reckless or negligent action or inaction, is made to suffer penal consequences for the *fault*. Both the prohibited (in)action and its coercive compliance, which are premised and justified on certain social and/or ethical values or pragmatic considerations, are bound to change with the changing social ethos and outlook. Contents of criminal law of a nation, therefore, can never remain static.

Courts, when called upon to adjudge 'guilt' of the alleged perpetrator of *actus reus* and determine his liability therefor, evaluate his conduct (along with the associated requisite *mens rea* and motive, if any), the resultant consequences thereof, and fix his 'liability', within the given statutorily stipulated range, forms of penal measures and the judicial discretion vested therein. Judicial adjudication, in the ultimate analysis, involves two general types of judgments, *i.e.* judgment about the 'harm' caused by the alleged perpetrator of crime, and judgment about the 'culpability' or 'blameworthiness' of the doer. Inquiry, in other words, involves assessment of the (prohibited) 'harm' (caused) and the (legal) 'blame' (of the doer).

Courts, while discharging their adjudicatory role, invariably, not only deliberate on different aspects of the case at hand, but also, with convincing reasoning, divulge finer contours of the offences involved or/and principles associated therewith or alter or supplant the existing ones by new ones (nascent or developed) that are in tune with the legislative intent or emerging ideas or principles of wider implications. While doing so, they, through judicial interpretation, also give certain meanings to the offences or definitional phrases used therein. The proposition becomes most apt with reference

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to the higher judiciary in India, the state high courts, in general, and the Supreme Court of India, in particular. 'Law declared' by the Supreme Court, through its judicial pronouncements, is 'binding on all courts within the territory of India'.[1] Even its *obiter dictum* is treated binding on the courts subordinate thereto. Minority and dissenting opinions of the apex court (and of the state high courts) also have great jurisprudential value as they do not merely exhibit 'another' jurist's-prudence but also have potential of igniting a new legal principle or proposition in the years to follow.

Hence, a careful review of judicial pronouncements carries significance. The present survey makes an endevour to highlight the judicially articulated contours, principles or propositions of law by the Supreme Court of India during the year 2015 in a few select areas of criminal law, *namely*, liability, offences against human body, crimes against women, certain specific offences, sentencing, and compensation to victims of crime. The selection, in no way, either undermines the significance of other offences or does diminish the contribution of the judiciary made therein.

II LIABILITY

Constructive criminal liability

As a general principle of criminal liability, a person who actually commits a crime becomes guilty thereof and is, accordingly, made to suffer penal consequence therefor. However, the Indian Penal Code, 1860 (hereinafter the IPC), through section 34 and section 149, incorporates therein certain principles of constructive criminal liability of a person, who is not a real perpetrator but a mere associate of others and shares either common intention or common object. He attracts liability for criminal act done by several persons in furtherance of the common intention of all[2] or by a member of unlawful assembly in prosecution of the common object of the assembly,[3] because he happens to be 'one' of the 'several persons' or 'a member of the unlawful assembly', respectively.

Criminal act done in furtherance of common intention

By virtue of section 34 of the IPC, every person, who, in furtherance of the common intention of all, did the criminal act with that common intention becomes criminally responsible for the offence committed irrespective of his actual 'contribution' in its commission.

In *Balu* v. *State (U T of Pondicherry)*,[4] the apex court, reiterating a set of thitherto settled principles of joint liability under section 34 of the IPC, has re-asserted that common intention implies pre-arranged plan and acting in concert pursuant to the pre-arranged plan. Common intention is an intention to commit the crime actually committed and each accused person can be convicted of that crime, only if he has

1 Constitution of India, art.141.

2 Indian Penal Code, s.34.

3 *Id*., s. 149.

4 2015 (11) SCALE 635.

participated in pursuance of that common intention. Simultaneous conscious mind of persons participating in the criminal action to bring about a particular result constitutes the key of the constructive liability. It also reiterated that it is incumbent on the part of the prosecution to establish beyond reasonable doubt that the criminal act in question was done by more than one person in furtherance of common intention of all, and for that it needs to prove that: (i) there was common intention on the part of several persons to commit it, and (ii) the crime was actually committed by them in furtherance of that common intention. Prior-concert among the parties, as a rule, is not necessary. Common intention between the parties may spring and develop on the spot. Direct proof of common intention, being a state of mind, is seldom available, and it, therefore, needs only to be inferred from the totality of the circumstances proved and brought on record. Acts committed in pursuance of 'similar' intention do not, obviously, qualify the requisite constituent elements of section 34. Random acts done by the participating individuals in the criminal act need to be attributed to the individual doers only and their liability needs to be fixed individually, not jointly.

Criminal act done in prosecution of common object

Another principle of constructive liability, for committing an offence by a member of an unlawful assembly in prosecution of the common object of the assembly, is articulated in section 149 of the IPC. Every member of the unlawful assembly[5] becomes liable for the offence committed by another member of the assembly in prosecution of the common object, irrespective of the fact whether he has done or not some overt act, provided he was member of the unlawful assembly at the time when the offence was committed and shared the common object of the assembly. Common object amongst members of the unlawful assembly may form on the spur of moment and prior concert by way of meeting of members of unlawful assembly is not necessary.[6]

In *Vutukuru Lakshmaiah* v. *State of Andhra Pradesh*,[7] the apex court was, *inter alia*, called upon to give its ruling on the issue as to whether absence of specific charge under section 149 of the IPC vitiates conviction thereunder. Placing reliance on its earlier pronouncements,[8] the court ruled that mere non-mentioning of charge under section 149 does not vitiate the conviction thereunder, if it becomes evident that: (i) the convict was a member of the unlawful assembly, (ii) every other accused, during the trial, was well-aware that he is tried for being a member of the unlawful assembly, and (iii) no prejudice is caused to the convict. Omission of a specific charge, in the absence of prejudice to the accused, becomes a mere irregularity, and not a fatal one. It is for the convict to show that the absence of specific charge under section 149 has caused him some prejudice to set aside his conviction.

5 *Supra* note 2, defined in s.141.

6 See Explanation to s. 141, IPC; see also *Inder Singh* v. *State of Rajasthan* (2015) 2 SCC 734.

7 2015 (5) SCALE 478.

8 *Willie (William) Slaney* v. *State of Madhya Pradesh*, AIR 1956 SC 116; *Anna Reddy Sambasiva Reddy* v. *State of Andhra Pradesh* (2009) 12 SCC 546.

A reading of the instant pronouncement makes it clear that the court has placed its reliance on two propositions of law, *namely*, the absence of specific charge under section 149 does not amount to 'a fundamental defect of an incurable illegality warranting setting aside the conviction and sentence thereunder' and 'if, on a careful consideration of all the facts, prejudice, or a reasonable and substantial likelihood of it, is not caused to the convict, his conviction must stand', to negate the assertion that the non-mentioning of specific charge under section 149 vitiates the conviction thereunder and it deserves to be set aside.

Section 149 comes into play only when it is proved that there was an unlawful assembly of five or more persons, named or unnamed, involved in commission of an offence. If the number of convicts, because of acquittal, turns out to be less than five, the provisions of section 149 become inapplicable. However, in *Bivash Chandra Debnath* v. *State of West Bengal*,[9] wherein the law could catch up with only three of the accused and 27 other got acquitted due to lack of evidence, the apex court, contrary to the judicial pronouncements cited therein[10] and the fact that there was 'ample evidence' on record to suggest that the appellants-accused were 'accompanied by others', set aside their conviction under section 302 read with section 149 and convicted them under section 302 read with section 34 of the IPC. Surprisingly, the court stressed the fact of sudden fight that ensued between the parties and found them guilty of sharing common intention, rather than common object. The sentencing and the guilt under sections 302 read with 34, in the backdrop of the facts and finding, seem to be less convincing.[11] Interestingly, in another case,[12] the Supreme Court ruled that it is permissible for a court to convict persons lesser than five of an unlawful assembly, provided the charge states that apart from the persons named, several other unidentified persons were also members of the unlawful assembly. Conviction of even one member of an unlawful assembly legally stands when the factum of presence of other members of the assembly is not disputed or is clearly established, but the court, because of lack of their identity, has acquitted them.[13]

It is also permissible for a competent court to convict a few of five persons of an unlawful assembly when the FIR and the evidence shows that apart from the persons

9 (2015)11 SCC 283. See also *Raj Singh* v. *State of Haryana* (2015) 6 SCC 268; *Manmeet Singh* v. *State of Punjab* (2015) 7 SCC 167 [para 32.]

10 *Khem Karan* v. *State of Uttar Pradesh* (1974) 4 SCC 603; *Dharam Pal* v. *State of Uttar Pradesh* (1975) 2 SCC 596; *Dahari* v. *State of Uttar Pradesh* (2012) 10 SCC 256; *Shaji* v. *State of Kerala* (2011) 5 SCC 423.

11 See *Sanjeev Kumar Gupta* v. *State of Uttar Pradesh* (2015) 11 SCC 69.

12 *Manmeet Singh* v. *State of Punjab* (2015) 7 SCC 167.

13 However, it was restated in *Manmeet Singh* that in case of the offence of dacoity participation of five or more persons is required. In the absence of an assembly of five or more persons imbued with the common object of committing dacoity with murder, no member of the assembly be convicted for dacoity with murder irrespective of his individual act of murder unless he is independently and categorically charged for that offence. See *Manmeet Singh* v. *State of Punjab*, *ibid*. See also, *Iqbal* v. *State of Uttar Pradesh* (2015) 6 SCC 623.

named, several other persons were also members of the unlawful assembly, though the charge does not state so, or though the charge and the prosecution witnesses named only the acquitted and the convicted accused persons there is other evidence which discloses the existence of named or other persons, provided no prejudice has resulted to the convicted persons by reason of omission to mention in the charge that the other unnamed persons had also participated in the offence.[14] Giving emphasis on a ruling of a Constitution Bench on the issue,[15] the apex court, in *Ramanlal* v. *State of Haryana*,[16] stressed that prejudice caused to the persons before the court due to the failure to refer in the charge to other unnamed and unidentified members of the unlawful assembly needs to be carefully considered.

Vicarious criminal liability of directors of a company - reverse *alter ego*?

A company, a corporation or a body incorporate is treated as a 'person' for the purpose of criminal law.[17] It can, by applying the principle of *alter ego*,[18] be held responsible for its criminal acts, unless they, by nature, are incapable to be committed by a company, corporation or body incorporate.

The principle of *alter ego*, as articulated and hitherto applied in India, in essence, states that criminal intent of the person or a group of persons, who manage or control affairs of the company or corporation as its agent(s), is imputed to the company or corporation. His/their criminality, therefor, is read as that of the company/corporation for holding it criminally responsible and awarding punishment therefor.[19]

In *Sunil Bharti Mittal* v. *Central Bureau of Investigation*,[20] a three-judge bench of the Supreme Court was called upon to decide as to whether the reverse application of the principle of *alter ego* is or is not permissible in India. The court was urged to examine maintainability of the summons issued by a special magistrate against managing directors of three companies (*i.e*. Bharat Cellular Limited; Hutchison Max Telecom Limited, and Sterling Cellular Limited) accused of committing certain offences contrary to the Prevention of Corruption Act, 1988 and conspiring (contrary to the IPC with the named public servants (who have committed alleged irregularities in granting the spectrum licences to the named companies and thereby caused heavy loss to the public exchequer) on the premise that they, at the relevant time, were/are in

14 *Supra* note 12, para 26.

15 *Mohan Singh* v. *State of Punjab,* AIR 1963 SC 174.

16 (2015) 11 SCC 1. See also *State of Madhya Pradesh* v. *Ashok* (2015) 12 SCC 92.

17 S 11, IPC.

18 See *Lennard's Carrying Co Ltd* v. *Asiatic Petroleum Co Ltd* [1915] AC 705; *HL Balton Co* v. *TJ Graham* [1956] 3 All ER 624; *Tesco Supermarket* Ltd v. *Nattrass* [1971] 2 All ER 127 (HL); *Meridian Global Funds Management Asia Ltd* v. *Securities Commission* [1995] 3 WLR 413 (PC).

19 See *Asstt Commissioner, Assessment-II, Bangalore* v. *Messer's Velliappa Textiles Ltd.,* AIR 2004 SC 86; *Standard Chartered Bank* v. *Directorate of Enforcement* (2005) 4 SCC 530; *Iridium India Telecom Ltd* v. *Motorola Incorporated* (2011) 1 SCC 74; *Central Bureau of Investigation* v. *Blue Sky Tie-Up Pvt Ltd* (2012) Cri LJ 1216 (SC).

20 (2015) 4 SCC 609.

the control of affairs of the respective companies, thereby they represented/represent the directing 'mind and will' of the companies, and their state of mind, by virtue of the principle of *alter ego*, was/is the state of mind of the respective accused companies, whose actions are to be attributed and imputed to the respective managing directors. However, the CBI, which investigated the matter and filed a charge-sheet against the named officers and the companies, did not find any facts implicating the petitioner-directors of the company in the matter. It, therefore, along with the public servants, named only the companies as accused persons.

After carefully looking into submissions of both the sides and the judicial pronouncements cited in support, the court ruled that criminal intent of director, managing director, or chairman of a company who guide the business or are/were in control of affairs of the company can be imputed to the company. Offence committed by him, with criminal intent, on behalf of the company, be imputed to the company. He, along with the company, can be made accused if there is sufficient evidence of his active role coupled with the criminal intent. He can also be implicated if the relevant statute provides for his vicarious liability. But the reverse application of the principle of *alter ego*, the court stressed, is 'difficult to accept as the correct principle of law' and is not permissible. When a company is the offender, vicarious liability of its director, unless the statute provides therefor, the court ruled, cannot be imputed automatically. When a company is the accused, its director can be roped in only if: (i) there is sufficient incriminating evidence against him coupled with the requisite criminal intent, or (ii) the statutory regime attracts the doctrine of vicarious liability.[21]

III OFFENCES AGAINST HUMAN BODY

Murder

Murder is the gravest offences against human body known to the IPC. Determination of complicity, in their definitional contours, of the alleged perpetrators and quantification of punishment therefore has been one of the most agitated matters in courts in India. There, obviously, has always been endevour of the culprits to go away with no or lesser punishment for their guilt. Deliberating on the issues brought before it, the apex court, most of the times, has carved out a proposition of law, strengthening the earlier ones or initiating a new one.

In *State of Maharashtra* v. *Ramlal Devappa Rathod*,[22] wherein a mob brutally assaulted a man who succumbed to his injuries, and the trial court, placing its reliance on testimony of a sole witness, though nine witnesses had turned hostile, which it found trustworthy, held the 8 accused persons guilty under section 302 read with section 149, IPC, but the Bombay High Court set aside the conviction of all the accused persons. The high court relied upon a ruling of the Supreme Court in *Masalti*[23] and

21 *Id*., paras 37-39.

22 2015 (10) SCALE 347.

23 *Masalti* v. *State of Uttar Pradesh,* AIR 1965 SC 202: 1964(8) SCR 133.

read it to mean, as a principle of prudence, that testimony of a sole witness from the mob, with other corroborating evidence, is insufficient to convict a person for homicide. The Supreme Court, on appeal, ruled that the view and the test adopted in *Masalti*, and relied upon by the high court as a rule of prudence, cannot mean that in every case of mob violence there must be more than one eye witness to support the conviction. It did not find 'anything in *Masalti* which qualifies the well-settled principle that the conviction can be founded upon the testimony of even a single witness if it establishes in clear and precise terms, the overt acts constituting the offence as committed by certain named assailants and if such testimony is otherwise reliable'.[24] The court was of the view that since the evidence of sole witness is devoid of any exaggeration, is completely trustworthy and reliable and her deposition is well supported by the medical evidence and so conviction was rightly given by the trial court.

Culpable homicide not amounting to murder

The effort to bring an unlawful homicide under any of the exceptions to section 300, IPC, to reduce it to culpable homicide not amounting to murder so that the perpetrator is not hooked to the liability under section 302, but to section 304, IPC, is also witnessed during the year under survey.

In *Dhirendra Kumar* v. *State of Uttarakhand*,[25] the accused challenged his conviction under section 302 and pleaded that it was a case of free fight, governed by exception 4 to section 300 as he also received some injuries. After appreciating the evidence the apex court, negating the appellant's contention, like in the past, reiterated that the 'question whether a case falls under section 302 or section 304 has to be decided from case to case depending on a number of factors, like the circumstances in which the incident took place, the nature of weapon used and whether it was carried or was taken from the spot and whether the assault was aimed on vital part of the body; the amount of force used; whether the deceased participated in the sudden fight; whether there was any previous enmity; whether there was any sudden provocation; whether the attack was in the heat of passion; whether the person inflicting the injury took any undue advantage or acted in cruel or unusual manner.[26] In a plea of sudden fight the burden to show that the case falls under exception 4 to section 300 is on the accused.[27]

In *Ahmed Shah* v. *State of Rajasthan*,[28] in a land dispute there was sudden fight that resulted in homicide. Recalling the essential ingredients of exception 4 to section 300, the apex court altered conviction of the appellant from section 302 to section 304 part I as he inflicted injuries in the neck and scalp of the deceased with the intention of causing death in a sudden fight. In *Dilip Kumar Mondal* v. *State of West Bengal*,[29]

24 *Supra* note 22, para 24.
25 2015 (3) SCALE 30.
26 *Id*., para 15.
27 *Id*., para 12.
28 (2015) 3 SCC 93.
29 (2015) 3 SCC 433.

reiterating the essence of exception 4 to section 300 and holding that the appellant and his son did not take undue advantage of the situation and the incident of scuffle was not premeditated, the apex court also altered the conviction under section 302 to 304 part I. It stressed that the question as to whether a quarrel is sudden or not necessarily depends upon the proved facts of each case. For the application of exception 4 to section 300, it is not merely sufficient to show that there was a sudden quarrel and there was no premeditation. It also needs to be shown that the offender has not taken undue advantage of the situation or not acted in a cruel or unusual manner.

In the backdrop of the judicial tone, it is contextually apt to make mention of *Vutukuru Lakshmaiah* v. *State of Andhra Pradesh*,[30] wherein the apex court has reiterated that in the cases where it altered conviction under section 302 to section 304 part I, it took into account the genesis of occurrence or nature of injuries. Keeping in view the nature of injuries caused and previous animosity between the deceased and the accused, the Supreme Court refused to alter the appellant's conviction under section 302 to section 304 part I of the IPC. In *Ranjit Sarkar* v. *State of Tripura*,[31] the apex court took into account the single severe blow given with a wooden file on the head of the deceased and opined that the act of the appellant is covered by section 304 part I, altered his conviction from section 302 to section 304 part I and altered the sentence of imprisonment for life to rigorous imprisonment for a term of ten years.

In *Balu* v. *State of Maharashtra*,[32] the apex court, taking note of the fact that there erupted a sudden fight between the two groups over taking possession of land and there was neither intention nor motive on the part of the appellants to eliminate the deceased, and after an elaborate analysis of the thitherto pronounced cases and the propositions of law deduced therefrom, opined that the appellants, in the backdrop of the facts, should have been convicted under section 304 part I instead of section 302, IPC. Deliberating on the feasibility of their conviction under section 304 part II, and not under part I, in the absence of intention to kill, the court offered six reasons for altering their conviction under section 302 to section 304 part I. They are: (i) the absence of intention or motive on their part to kill the deceased; (ii) absence of any enmity between them and the deceased; (iii) their intention to take possession of the land and not to kill the deceased or any member of the other group; (iv) they, in spite of having weapons with them, haven't inflicted injury or gave blow to the deceased; (v) the deceased died due to burn injuries when the appellants put on fire the cattle shed which they wanted to take possession with no intention to kill any one, and (vi) the absence of any overt act by any of the appellants towards the deceased to inflict injury on her. But all these reasons, in the present submission, seem more apt for altering their conviction to section 304 part II, and not to part I, as there was no intention on the part of the appellants to kill the deceased. Interestingly, in *Jagtar*

30 (2015) 11 SCC 102.

31 2015 (10) SCALE 164. Most of these cases have no discussion as to the applicability of ss. 299 and 300 and the ultimate conviction under s.304.

32 (2015) 3 SCC 409.

Singh v. *State of Haryana*,[33] the apex court justified/affirmed the conviction of the appellants ordered by the lower courts under section 304 part II, who, in their endevour to acquire possession of a disputed agricultural land, caught hold of the deceased by his hand, pulled him down to the ground and hit him on his head that proved fatal. The court came to this conclusion after having regard to the nature of injury caused by the appellants; the manner in which the death was caused, and the cause of death, *i.e.* shock and haemorrhage.[34]

Further, the apex court, keeping in view the essence of the exception 4 to section 300 and circumstances of the case at hand, has not only altered the conviction for homicide from section 302 to section 304 part I or II, but also convicted the appellant-accused/respondents for the apt minor offences. In *Sakha Ram* v. *State of Madhya Pradesh*,[35] wherein the appellant, in a sudden fight and a fit of passion, caused fracture and dislocation of frontal bone of skull, the apex court altered conviction of the appellant to section 325 as the injury clearly falls in the category of 'grievous hurt' enumerated in section 320, IPC, even though the doctor was not questioned about the nature of injury.

Plausibly, with this judicial spirit, the apex court in *State of Rajasthan* v. *Prakash,*[36] took a serious note of the fact that the high court, with no reasoned judgment, altered the conviction of the respondent-accused from section 302 to 304 part II, IPC, without carefully considering the evidence and scrutinizing the nature of injuries caused and the method and manner in which the injuries were inflicted. It also did not consider the aspect as to whether the respondent – accused inflicted injuries with intent to cause death of the deceased. It merely observed that a careful scrutiny of the entire evidence is done. The Supreme Court remitted the matter to the high court and directed it to decide the appeal *de novo*. The instant ruling of the apex court, in the present submission, reaffirms that justice should not only be done but seen to be done as well and sends a message to the high courts that their decisions altering conviction and sentence under section 302 to section 304 part I or II should contain judicial deliberations on how and why a case at hand falls under 304 part I or part II, IPC.

A closer reading of section 304 reveals disparity between its part I and II, which respectively envisage imprisonment for life or simple or rigorous imprisonment for a term up to ten years, and fine (if death is caused with the intention to cause it or causing bodily injury which is likely to cause death) and simple or rigorous imprisonment for a term up to ten years or fine or both (if the act which caused death is done with the knowledge but without any intention to cause it) and the varied judicial treatment thereto (most of the times with no clear reasoning in support of the dictum, as mentioned in the preceding paragraphs) in altering conviction and sentence of the appellants/respondent under section 302 to section 304 part I or II. In *Tukaram*

33 (2015) 7 SCC 675.

34 *Id*., para 26.

35 (2015) 10 SCC 557.

36 2015 (10) SCALE 167.

Dnyaneshwar Patil v. *State of Maharashtra*,[37] when the Supreme Court noticed that the high court allowed the appellant to go free with the imprisonment already undergone (*i.e*. 11 months' imprisonment) by altering his punishment from section 302 (read with section 34) to section 304 and ordered him to pay Rs 35,000 by way of compensation, showed its unease and got into a pontificating mode. Stressing that prime objective of sentencing is the imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature, gravity of crime, and the manner in which it is committed and undue sympathy to accused causes more harm to the justice system and undermines the public confidence in the efficacy of criminal law, it ruled that the sentence of 11 months was meagre, even in the light of the fact that the appellant-accused was asked to pay handsome amount of compensation. It, therefore, sentenced him to rigorous imprisonment for a term of five years. It observed that no amount of compensation can relieve the family of victim from the constant agony.[38]

Last seen together theory- evidentiary value in homicidal cases

A person last seen together with the deceased, by virtue of section 106 of the Indian Evidence Act, 1872 (hereinafter IEA), is required to offer a satisfactory and reasonable explanation as to when he parted with the deceased person. Failure on his part to do so provide an additional link in the chain of circumstances proved against him and thereby a strong presumption of his guilt.[39] However, courts in India have consistently held that the last seen together theory cannot on its own be a conclusive proof of guilt of the accused. The prosecution needs to offer clinching evidence in support of the last seen together theory to shift the burden on the accused. The non - explanation of death of the deceased, along with other circumstances surrounding the incident, like relations between the accused and the deceased, enmity between them, previous history of hostility, recovery of weapon from the accused, may lead to a presumption of guilt.[40] The apex court, nevertheless, advised the courts not to place their reliance on the last seen together theory when the time gap between the last seen together and the death of the deceased is too long unless it is corroborated by evidence and other circumstances.[41] The theory comes into play only when the time gap between the deceased seen alive with the accused and the deceased found dead is so small that

37 (2015) 11 SCC 194.

38 In *Ravinder Singh* v. *State of Haryana*, 2015 (8) SCALE 34, the apex court reiterated that monetary benefit cannot be equated with life of person and the society's cry for justice, though it affirmed alteration of sentence of seven years imprisonment to the sentence already undergone, enhanced the amount of fine from Rs. 25,000 to Rs. 1, 25,000 of each of the accused and ordered them to pay it to legal heirs of the deceased by way of compensation. But the court made it clear that the pronouncement should not be treated as a precedent, but just a measure to mitigate the hardship caused.

39 *Dasin Bai* v. *State of Chhatisgarh* (2015) 4 SCC 186.

40 See *Ashok* v. *State of Maharashtra* (2015) 4 SCC 393; *State of Karnataka* v. *Chand Basha*, 2015 (9) SCALE 809.

41 *Nizam* v. *State of Rajasthan* 2015 (9) SCALE 513. Recovery of certain articles of deceased from accused on his instance leaves no room for doubt for drawing an inference about guilt of the

it rules out the possibility of any person other than the accused has committed the act.[42] Further, it is for the prosecution to adduce certain clinching evidence to show that the chain of events excludes any hypothesis other than the guilt of the accused, including the last seen together theory, and not the exact happening of the event, to prove his guilt. It is for the accused to explain the exact happening. Prosecution is exempted from proving the exact happening of incident. This burden of the accused never shifts on the prosecution.[43]

Death by rash or negligent act

State of Punjab v. *Saurabh Bakshi*,[44] wherein two persons lost their lives due to rash and negligent act of the respondent-accused, who was convicted by the trial court under section 304A, IPC, and sentenced him to undergo rigorous imprisonment for a period of 1 year and pay a fine of Rs 2,000, with a default clause. The conviction and sentence was affirmed by the appellate court. However, the high court, which got swayed by the passion of mercy and with the compensation money, reduced the sentence of 1 year to 24 days already undergone. The apex court, exhibiting its narration heavily on the side of stringent punishment for death caused by rash or negligent act,[45] showed its disapproval to the high court's lenient approach. It stressed that such a 'misplaced sympathy' is, in a way, 'mockery of justice' as justice is 'the crowning glory', 'the sovereign mistress' and 'queen of virtue', and it 'shatters the faith of the public in judicial system'. But the apex court at the end of its talk about stringent punishment, interestingly, gave only six months imprisonment' to the respondent,[46] which seemingly defies logic. Nevertheless, the apex court, with immense anguish, urged the law-makers to scrutinize, re-look and re-visit the sentencing policy in section 304A of the IPC.[47]

However, in *State of Madhya Pradesh* v. *Surendra Singh*,[48] echoing the same philosophy of sentencing in the cases of death caused by rash or negligent driving that imposition of adequate, just, proportionate punishment, commensurate with the gravity, the nature of crime and the manner in which the offence is committed is the primary objective of criminal law; punishment should not be so lenient that it shocks the conscience of society; awarding lesser sentence encourages any criminal and, as a result of the same, society suffers, and undue sympathy by means of imposing inadequate sentence does more harm to justice system to undermine the public confidence in the efficacy of law, the Supreme court set aside the order of the high

accused. See *Raghuvendra* v. *State of Madhya Pradesh* (2015) 2 SCC 259. However, the court has to be more cautious when it relies upon testimony of a sole witness in support of the last seen theory. It needs to be tested against other material on record and must inspire confidence and leaves no scope for suspicion. See also *State of Uttar Pradesh* v. *Satveer* (2015) 9 SCC 44.

42 *Kiriti Pal* v. *State of West Bengal*, 2015 Cri LJ 3152 (SC).

43 See *Ashok* v. *State of Maharashtra* (2015) 4 SCC 393.

44 (2015) 5 SCC 182.

45 See Jyoti Dogra Sood, "Criminal Law", L *ASIL* 438 (2014).

46 *Supra* note 44, para 24.

47 *Id*., para 25.

48 (2015) 1 SCC 222.

court reducing the sentence of 2 years' rigorous imprisonment for death caused by rash and negligent driving to the period already undergone. It, to avoid miscarriage of justice, restored the sentence of rigorous imprisonment imposed by the trial court and affirmed by the appellate court.

Sushil Ansal v. *State*,[49] (popularly known as Uphaar Cinema Case) appears to be a very peculiar judicial pronouncement on sentencing in case of death caused by rash or negligent act, the quantum of fine that may be imposed, and its utilisation. The two judges of the apex court, who heard prior criminal appeals from orders of the high court, though upheld the order of conviction of the appellants, differed on the quantum of sentence to be awarded to them. One of the judges, dismissing the appeal, upheld the sentence (of rigorous imprisonment for a period of 1 year imposed by the high court) awarded to them, while the other judge, allowing the appeal, held that in lieu of the enhanced sentence of one year a fine of Rs 100 Crores (to be shared equally by both the appellants) be imposed and it should be utilised for construction of a trauma centre to be built in the memory of Uphaar victims in New Delhi. Because of the wide difference of opinions between the two judges regarding the quantum of sentence, the matter was referred to a three-judge bench for a final decision. The bench was of the opinion that the magnitude of the matter (resulting in death of 59 persons) calls for a higher sentence, but it has to limit itself within the two years' imprisonment prescribed under section 304A of the IPC. It agreed that the sentence needs to be enhanced to the maximum period of two years, but in lieu of additional imprisonment for a period of 1 year, the amount of fine be enhanced to Rs 60 Crores (30 Crores on each appellant), and if it is paid within a period of three months, the sentence of appellants, given their advanced age, be reduced to the sentence already undergone. If fine is not paid within the three months, it directed the appellants to undergo 2 years' rigorous imprisonment, including the sentence already undergone by them. And the amount of fine should be used for the purpose of setting up a Trauma Centre in NCT Delhi or upgrading Trauma Centres of Hospitals managed in NCT Delhi by the Government of Delhi. And on the ground of parity, it asked another appellant to pay a fine of Rs 10 lacs and if paid his sentence should be reduced to the period already undergone. It is, in the present submission, highly unfortunate that the court lost an opportunity to deal sternly with criminal negligence of a very high degree. The age factor of the appellants became the determinant and not the guilt. When it asserts that 'the court has to limit itself to the choice available under the law prescribing sentence' then where does it get the right to bring in the factor of age when culpability is clear. Only for juveniles we do have a parallel criminal administration but not for the aged. It, further submitted, is a case of gross miscarriage of justice.

IV CRIMES AGAINST WOMEN

Rape

Rape - a violation of human right

Like in the past, the Supreme Court has not only condemned sexual assault on women and children, but also shown its sensitivity to victims of rape and utter contempt

49 (2015) 10 SCC 359.

to its perpetrators. It has stressed that rape, one of the most heinous assaults on physical integrity, dignity, and honour of the victim woman, is basically an affront blow on her human rights and dignity as a woman. It is an attack on her individuality. It creates an incurable dent in her right and free will and personal sovereignty over the physical frame. No individual has any right to invade on her physical frame in any manner. It is not only an offence but it creates a scar in the marrows of the mind of the victim. Anyone who indulges in such assault not only he violates the penal provision but also her right to individual identity. He must realise that when he indulges in such an offence, "he really creates a concavity in the dignity and bodily integrity of an individual which is recognised, assured and affirmed by the very essence of article 21 of the Constitution."[50]

Testimony of prosecutrix without corroboration-relevance

Rape, in the pre-2013 amendment era, was sexual intercourse with a woman against her will or without her consent. It was a non-consensual penile penetration.[51] For holding its perpetrator responsible, it is essential to prove the sexual intercourse by direct or circumstantial evidence. Consensual sexual intercourse with a woman does not amount to rape, provided the consent is not vitiated or obtained through deception or other legally inapt means and circumstances.

It is well settled that victim of sexual assault is not an accomplice. Her testimony cannot be tested with suspicion as that of an accomplice. Her evidence is similar to that of an injured complainant or witness. She needs to be placed on a higher pedestal than an injured witness. Conviction can be based on the sole testimony of the prosecutrix, if it is unimpeachable, beyond reproach, reliable or suffers from no infirmity. No further corroboration, as a rule, is required, unless the court, by way of caution, insists therefor or there exist some compelling reasons. In such a situation, there seems no justification for a court to reject uncorroborated testimony of the prosecutrix. But when a court, on a careful scrutiny of facts of the case at hand, finds her testimony is unreliable or full of discrepancies and does not inspire confidence, it becomes necessary for the court to search for some direct or circumstantial evidence that lends assurance and credibility to her testimony.[52] In fact, once it is proved that the accused had sexual intercourse with the prosecutrix against her will or without her consent and he has failed to give any satisfactory explanation in his defence, the court, by virtue of section 114A of the IEA, is entitled to draw a presumption against the accused that he had non-consensual sexual intercourse with the prosecutrix.[53]

50 *Parhlad* v. *State of Haryana* (2015) 8 SCC 688, para 18.

51 By the 2013 amendment the definition of rape has been broadened to include in it non-consensual penile-vaginal-anal-oral penetration; object-vaginal-anal penetration, and bodily part vaginal-anal penetration.

52 See *Mohd. Ali* v. *State of Uttar Pradesh* (2015) 7 SCC 272; *State of Karnataka* v. *F Nataraj*, 2015 (10) SCALE 495.

53 *Deepak* v. *State of Haryana* (2015) 4 SCC 768, para 24.

In *Ravindra* v. *State of Madhya Pradesh*,[54] a two-judge bench of the apex court, reiterating the proposition of law that testimony of prosecutrix is to be believed, re-stressed that testimony of prosecutrix can be relied upon in spite of having minor contradictions or insignificant discrepancies. Keeping in view the fact that the incidence occurred almost 20 years back, both, the victim and the perpetrator are married (not to each other) and settled in life, and have entered into a compromise to close the case, the apex court allowed the perpetrator to go free with the sentence of imprisonment already undergone by him.[55]

However, in *State of Madhya Pradesh* v. *Madan Lal*,[56] the fact of compromise between the perpetrator and his victim did not find favour with another two-judge bench of the Supreme Court. It declined to uphold the ruling of the Madhya Pradesh High Court wherein it, on the ground of compromise effected between the parties, reduced the offence of rape to outraging modesty of woman and allowed the perpetrator to go with the already undergone custodial sentence (of more than a year). Coming down heavily upon the laxity shown by the high court in exercising its appellate jurisdiction in the present case, the Supreme Court ruled that in cases of rape, where the dignity of woman is brutally defiled, compromise or settlement between the parties cannot be an absolute solution. It observed: [57]

> [I]n a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the 'purest treasure', is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. — [C]ourts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. — [I]t would in realm of a sanctuary of error.

Placing reliance on a latest judicial pronouncement of a three-judge bench of the Supreme Court in *Shimbhu* v. *State of Haryana*,[58] wherein it ruled that compromise

54 (2015) 4 SCC 491.

55 It relied upon *Baldev Singh* v. *State of Punjab* (2011) 13 SCC 705, wherein a two-judge bench of the apex court reduced the sentence of 10 years' rigorous imprisonment for committing rape to that already undergone (3 ½ years) on the grounds that the case was old one (of 14 years), both the parties are married (not to each other), and have entered into a compromise.

56 (2015) 7 SCC 681.

57 *Id*., para 18.

58 (2014) 13 SCC 318.

entered between rape-victim and perpetrator cannot be construed as a leading factor for reducing punishment as rape is an offence against the society and it is a non-compoundable offence under the Code of Criminal Procedure, 1973 (hereinafter the CrPC), categorically stated that the dictum of *Ravindra* (and *Baldev Singh*) has to be confined to the facts thereof and not to be regarded as a binding precedent. It, accordingly, remitted the matter to the High Court of Madhya Pradesh for reappraisal of the evidence and for fresh decision.[59]

Thus, there seems that there is no coherence in the judgements of the apex court on the 'special reasons' for scaling down sentence in cases of sexual assault. However, it is worth to note that the concept of 'special reasons', allowing courts to reduce punishment, as engrafted in section 376 of the IPC is now done away with through the Criminal Law (Amendment) Act, 2013. Now, courts are not permitted to award lesser punishment even there are certain 'special reasons' for doing so.

Circumstantial evidence

In *Ram Sunder* v. *Narender*,[60] wherein a minor girl was raped and killed by the respondent-accused, who admitted his guilt and at his instance blood-stained underwear of the deceased were recovered from a pitcher kept behind his house, pleaded not guilty and claimed for a trial when he was charged under sections 302, 376(2)(f) and 201 of the IPC. The trial court, placing reliance on circumstantial evidence, convicted him and sentenced to death and rigorous imprisonment for a certain period. However, the High Court of Madhya Pradesh, in confirmation of the death sentence proceedings, set aside the conviction on the ground that the circumstances relied upon by the trial court were not proved by the prosecution and the chain of circumstances, therefore, was not sufficient enough to connect the accused with the offences charged. Dismissing the appeal against acquittal, the apex court ruled, rather re-asserted, that when prosecution relies on circumstantial evidence, it, for sustaining the conviction, requires to establish that: (i) the circumstances from which an inference of guilt is sought to be drawn, is cogent and firm, (ii) those circumstances unerringly point towards guilt of the accused, (iii) the circumstances taken cumulatively form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, (iv) the circumstantial evidence is complete and incapable of explanation of any other hypothesis than that of the guilt of the accused, and (v) it is not only consistent with the guilt of the accused but is also inconsistent with the innocence.[61]

Rape of minor

A few incidences of sexual assault on minor girls are brought before the Supreme Court for its judicial deliberation on the issue of determination of age of the minor-girl-victim and the (in)adequacy of the punishment awarded to the perpetrators.

59 *Supra* note 56, para 19.
60 2015 (10) SCALE 710.
61 *Id.*, para 15.

In *Satish Kumar Jayanti Lal Dabgar* v. *State of Gujarat*,[62] wherein a girl who was below 16 years of age eloped with the already married appellant-accused, married him, willingly had sexual intercourse with him at different places and occasions, and the appellant was, convicted for, *inter alia*¸ committing rape contrary to section 375 *sixthly* of the IPC. His defence that the girl was major and was a willing partner in the physical intimacy was turned down by the trial court and affirmed by the high court. The trial court discarded a xerox copy of her school certificate as a proof of her age as it was not proved in accordance with law. Instead, it relied upon testimony of her mother and the birth certificate issued by the *Nagar Palika*, where the victim was born, and ruled that the victim was below the stipulated age at the time of incidence. It held the appellant-accused guilty of rape, along with other counts, and sentenced him to rigorous imprisonment for a term of 7 years[63] and levied on him a fine of Rs 45,000 (to be paid to the victim as compensation). The high court, on appeal, affirmed the conviction, but reduced the term of imprisonment from 7 to 4 ½ years for rape,[64] plausibly, on the grounds that he is a married man; a sole bread-earner in his family; the entire episode was the result of love affair between him and the prosecutrix minor girl, and every sexual act between him and the prosecutrix, though she was below the statutory consenting-age, was consensual, and the prosecutrix is married (to another) with a child and is happily settled in her matrimonial home. The apex court explained the legislative intent and rationale of section 376 *sixthly* and stressed that consent of a minor girl for sexual intercourse is immaterial and inconsequential as she is incapable to think rationally and pros and cons of her action. Her consent cannot, therefore, be treated as her informed consent. Perpetrator, therefore, cannot claim consent of the minor prosecutrix as a mitigating circumstance. If it is accepted, the court stressed, it may lead to disastrous consequences. The apex court refused to treat consent of the minor prosecutrix as a mitigating circumstance for reducing sentence of the perpetrator. However, it affirmed the sentence reduced (from 7 years to 4 ½ years) by the high court on the ground that they are married. But it refused to show further mercy to the appellant by holding that none of the mitigating circumstances pleaded by him, in the backdrop of the facts of the case and that the high court has already reduced his punishment, justify further leniency. It also gave a long sermon on sentencing in a rape case and how judicial discretion cannot be whimsical and arbitrary.

However, in *Bhavanbhai Bhayabhai Panella* v. *State of Gujarat*,[65] the Supreme Court, on its own, reduced the sentence of life imprisonment imposed by the trial court for committing rape on a minor to the already undergone rigorous imprisonment

62 (2015) 7 SCC 359.

63 Under the pre-2013 amended version of s. 375 *sixthly*, the mandatory punishment provided for raping a girl below sixteen years of age was simple or rigorous imprisonment for a term not less than seven years, but extendable to the term of ten years or for life.

64 The pre-2013 amended s. 376 allowed a court, for adequate and special reasons to be mentioned in the judgment, to impose a sentence of imprisonment for a term less than seven years. The post-2013 amended version of s 376 has taken away the enabling provision.

65 2015 Cri LJ 3402 (SC).

(of about 10 years) for unspecified reasons. Only justification it offered was that the reduced sentence would, in the backdrop of the totality of circumstances, meet the 'ends of justice'. The cryptic judgment, in the present submission, hardly reflects the grounds that prompted the court to allow the culprit to go with lighter sentence.

In *State of Madhya Pradesh* v. *Anoop Singh*,[66] the Supreme Court was called upon to set aside the acquittal order of the High Court of Madhya Pradesh (reversing the conviction order of the trial court) on the ground that the prosecutrix, at the time of sexual assault, was more than 18 years of age. The high court, unlike the trial court which relied upon birth certificate and the middle school examination certificate of the prosecutrix exhibiting two dates of birth with a difference of two days, relied upon an ossification test suggesting that the age of the girl was more than 15 years but less than 18 years. It, believing that the difference of two days in the two certificates is sufficient to disbelieve the age of prosecutrix and placing reliance on the ossification test, presumed that the prosecutrix was of 18 years old at the time of incidence, and she was a consenting party. The apex court, recalling rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (wherein a list of documents, *namely*, the matriculation or equivalent certificate; the date of birth certificate from the first attended school, and birth certificate issued by a corporation, municipal authority or *panchayat*, in the order of priority, need to be considered for ascertaining age of a juvenile in conflict with law) and the rule laid down by it in *Mahadeo Keraba Maske* v. *State of Maharashtra*,[67] (that the said rule can rightly be followed by courts in ascertaining age of a victim of crime and only in the absence of such documents, medical opinion may be sought and relied upon), ruled that certificates issued by school is to be relied upon for determining the age of the prosecutrix (which exhibits that she, at the time of incidence, was below 16 years of age). Further, the court observed that the difference of two days in the dates of birth (in the said two certificates) is immaterial and is just a minor discrepancy (which needs to be discarded). Keeping in view version of the prosecutrix, the medical examination reports substantiating her version; statements of the prosecution witnesses inspiring confidence, and the birth certificates proving the age of the prosecutrix, the apex court set aside the acquittal order of the high court and upheld the conviction order of the trial court, convicting the respondent-accused for rape and sentencing him to rigorous imprisonment for a term of 7 years.

In *S* v. *Sunil Kumar*,[68] the apex court, keeping in view the legislative intent of section 375 *sixthly* and the proximity of the victim with the offender that affords the former sufficient time to imprint upon her mind the identity of the former, ruled that test identification parade (TIP) is not the rule of law, but rule of prudence. Admitting that prior identification of an accused in a TIP by witness is a substantive piece of

66 (2015) 7 SCC 773.
67 (2013) 14 SCC 637.
68 (2015) 8 SCC 478.

evidence and it lends assurance so that the subsequent identification in court during the trial may be safely relied upon, it ruled that even in the absence of TIP, the identification in court can, in given circumstances, be relied upon. There is nothing wrong or exceptional in identification by a minor-prosecutrix of the accused for the first time in court, if her testimony is completely trustworthy and reliable. In the instant case, the apex court, reversing the order of acquittal passed by the trial court and affirmed by the high court, has convicted the respondent for committing rape on the minor appellant-prosecutrix and sentenced him to imprisonment for a term of seven years and imposed a fine of Rs 5,000.

Rape and murder of minor

Instances of subjecting a minor girl to brutal sexual assault and killing her, plausibly, to leave no traces of the wrong behind are not rare. A few of such instances have reached the Supreme Court in the year under survey agitating before it either propriety of conviction/acquittal of the perpetrator and/or the quantum/form of punishment imposed therefor.

Kalu Khan v. *State of Rajasthan*,[69] wherein a 4 year old child was lured by her neighbour, a *tantrik*, by offering her berries, and prompted his minor son to commit rape, before he did it and killed her, is another disturbing case that reached the Supreme Court. Placing reliance on a chain of circumstances, like recovery of the weapon of offence, blood-stained shirt of the appellant-accused, blood-stained clothes of the deceased and other articles at the instance of the accused; extra-judicial confession of the co-accused, and the FSL report stating that the blood-stains on the clothes of the deceased, the weapon of offence, and the clothes of the appellant-accused matched with the deceased's blood sample, the trial court found him guilty of the charges [*i.e*. sections 302 and 376(2)(f)] levelled against him. Keeping in view the trust vested in him by the deceased as a neighbour and by other members of the community as a *tantrik*, the manner of killing a hapless small child, and his act of depravity, the trial court, treating it a rarest of the rare case, sentenced him to death. The high court confirmed it on the ground that the brutality on the part of the accused has not only pricked the judicial conscience but even conscience of the community. The apex court, after referring to catena of cases specifying mitigating circumstances warranting life imprisonment and not death and principles that can be deduced therefrom, however, took a humanitarian approach and commuted the sentence of death to imprisonment for life. It observed: [70]

> Even though there are no missing links in the chain, the evidence also does not sufficiently provide any direct indicia whereby irrefutable conclusions can be drawn with regard to the nexus between 'the crime' and 'the criminal'. Undoubtedly, the aggravating circumstances reflected through the nature of crime and young age of the victim make

69 2015 (7) SCALE 195.

70 *Id*., para 29.

> the crime socially abhorrent and demand harsh punishment. However, there exist the circumstances such as there being no criminal antecedents of the Appellant-accused and the entire case having been rested on circumstantial evidence including the extra-judicial confession of a co-accused. These factors impregnate the balance of circumstances and introduce uncertainty in the 'culpability calculus' and thus, persuade us to that death penalty is not an inescapable conclusion in the instant case. We are inclined to conclude that in the present scenario an alternate to the death penalty, that is, imprisonment for life would be appropriate punishment in the present circumstance.

The choice between life and death by the judiciary as the divine's delegatee, interestingly, crept in the judicial deliberation when the apex court stated: [71]

> [L]ife and death are acts of divine and the divine's authority has been delegated to the human Courts of Law to be only exercised in exceptional circumstances with utmost caution. Further, that the first and foremost effort of the Court should be to continue the life till its natural end and the delegated divine authority should be exercised only after arriving at a conclusion that no other punishment but for death will serve the ends of justice.

In the backdrop of the evidence on record and minute examination thereof, the apex court drew the conclusion that 'the four main objectives which the state intends to achieve, *namely*, deterrence, prevention, retribution and reformation, can be achieved by sentencing the appellant-accused for life'.[72]

It may be interesting to note that the apex court in the year 2014 in *Vasanta Sampat Dupare* v. *State of Maharashtra*,[73] was called upon to examine propriety of the death sentence (along with other sentences for the offences charged) imposed on the appellant-accused, a married man of 47 years, who lured a girl of 4 years to accompany him to have chocolates, sexually assaulted her in a brutal manner, and mercilessly killed her by hitting her with two heavy stones. The apex court held that the criminality and the conduct of the appellant is not only depraved and debased, but can have menacing effect on the society. It is calamitous. The act of committing rape on a 4-year old minor innocent girl child and killing her is perversity in its enormity.

71 *Id*., para 30.

72 *Ibid*

73 (2015) 1 SCC 253. Also see *State of Uttar Pradesh* v. *Satish* (2005) 3 SCC 114; *Rameshbhai Chandubhai* v. *State of Gujarat* (2011) 2 SCC 764, *Chhote Lal* v. *State of Madhya Pradesh* (2013) 9 SCC 795; *Ramesh* v. *State* (2014) 9 SCC 392, wherein the apex court regarded rape on minor with death the rarest of the rare case. But see, *Sebastian @ Chevithiyam* v. *State of Kerala* (2010) 1 SCC 58, and *Amit* v. *State of Uttar Pradesh* (2012) 4 SCC 107, wherein the apex court commuted the sentence of death awarded to persons raping a minor and subsequently killing her to life imprisonment extended to full life, with remission permitted under law, on the ground that the accused, if given a chance, may be reformed.

It irrefragably invites the extreme abhorrence and indignation of the collective. It is anathema to the social balance. It meets the test of rarest of the rare case.

The judicial pronouncements of the Supreme Court in *Vasanta Sampat* and *Kalu Khan* do exhibit a different judicial response to identical crimes committed in almost similar set of circumstances by two different persons of identical traits. In the latter case, unlike the former, criminal background of the perpetrator, it seems, has disentitled him to seek his sentence of death commuted to imprisonment for life. It is however, interesting to note that neither the dictum of *Vasanta* nor of any judicial pronouncements mentioned therein, is referred to in *Kalu Khan*, though it was decided and reported earlier. A comparative reading of both the judgments make us to feel that the dictum and reasoning reflected in *Vasanta* is more convincing and in tune with the thitherto judicial trend and approach.

Dowry death

Section 304B of the IPC defines and punishes dowry death. The basic ingredients of the offence are: (i) the death of a woman should be caused by burns or fatal bodily injury or otherwise than under normal circumstances; (ii) such death should have occurred within seven years of her marriage; (iii) she, soon before her death, must have been subjected to cruelty or harassment by her husband and/or his relative(s), and (iv) such cruelty or harassment should be for, or in connection with, demand of dowry. Once prosecution proves that a married woman has died in unnatural circumstances at her matrimonial home within seven years of her marriage and there are allegations of cruelty or harassment by her husband or his relatives soon before the death, it is, by virtue of the deeming provision, presumed that the husband and/or his relatives, as the case may be, has/have caused the death. Then, it is for the husband/ his relative(s) to rebut the presumption and to prove beyond reasonable doubt his/ their innocence and dislodge the presumption. It is for him/them to prove, *inter alia*, that the death was accidental. The deeming provision is further strengthened by section 113B of the IEA, inserted therein in the same year in which section 304B was inserted in the Penal Code. By virtue of section 113B, the court, once essential ingredients of section 304B, IPC, are proved and the court is encountered with the question as to whether the accused husband or his relatives has committed it, is bound to presume that the husband/his relative has caused the dowry death.[74] The expression 'the court shall presume' used in section 113B leaves no option with the court but to presume that the accused brought before it has caused the dowry death and is guilty of the offence. Section 113B reverses the onus of proof on the accused of dowry death to prove his/her innocence.[75]

74 The presumption is introduced to overcome the difficulty of getting direct evidence in the cases of dowry death as it is committed in the privacy. And the complainant, in anticipation that the relations, in due course of time, will improve, generally suffers in silence. See *Amrutlal Liladharbahi Kotak.* v. *State of Gujarat* (2015) 4 SCC 452; *V K Mishra* v. *State of Uttarakhand* (2015) 9 SCC 588; *Harish Kumar* v. *State of Haryana* (2015) 2 SCC 601.

75 *Maya Devi* v. *State of Haryana*, 2015 (13) SCALE 336.

In *Sher Singh* v. *State of Haryana*,[76] the Supreme Court was called upon to, *inter alia*, look into the propriety of the High Court of Punjab & Haryana's insistence that the prosecution is required to 'prove beyond reasonable doubt' that the husband or his relative has, soon before the death, subjected her to cruelty or harassment in connection with, or demand for, dowry. It, on this ground, acquitted the appellant's brother and father. It refused to acquit the appellant - husband as he failed to explain the unnatural death of his wife was not due to cruelty meted out to her. Before the apex court, he argued that his conviction is liable to be set aside as the prosecution has failed to prove beyond reasonable doubt that he, soon before his wife committed suicide, had subjected to cruelty or harassed her for, or in connection with, demand for dowry. The prosecution, he contended, is not merely required to 'show' but to 'prove' it beyond reasonable doubt. Recalling one of the pronouncements of the Supreme Court[77] wherein an opinion, similar to submission of the appellant-husband, was expressed that the concept of deeming fiction in section 304B of the IPC, read with section 113B of the IEA, in the light of the presumption of innocence in favour of suspect contained in article 20 of the Constitution, is hardly applicable to criminal jurisprudence, the court observed: [78]

> It is after deep cogitation that we consider it imperative to construe the word 'shown' in section 304B of the Indian Penal Code as to, in fact, connote 'prove'. — Once the presence of these concomitants [of section 304B] are established or shown or proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt. It seems to us that what Parliament intended by using the word 'deemed' was that only preponderance of evidence would be insufficient to discharge the husband or his family members of their guilt.

The court ruled that the proper manner of interpreting section 304B is that 'shown' should be read as 'proved' and 'deemed' should be read as 'presumed'. Section 304B does not require the accused to give evidence against himself but casts the onerous burden to dislodge his deemed guilt beyond reasonable doubt and lessening the husband's onus to prove it on preponderance of probability will 'annihilate the deemed guilt' expressed therein and will 'defeat and neutralise the intentions and purposes of Parliament'.[79] The onus cast on the prosecution stands satisfied on the anvil of mere preponderance of probability. The accused, because of deeming provision, is required to prove his innocence beyond reasonable doubt.

76 (2015) 3 SCC 724.

77 *Pathan Hussain Basha* v. *State of Andhra Pradesh* (2012) 8 SCC 594.

78 *Supra* note 76, para 16.

79 *Id.*, para 19.

Subsequently, reiterating and relying upon the *Sher Singh* dictum, the Supreme Court, in *Ramakant Mishra* v. *State of Uttar Pradesh*,[80] has upheld conviction of the appellant, who relied upon a dying declaration of the deceased but failed to prove its authenticity, on the ground that he has not established his innocence beyond reasonable doubt and thereby has not dislodged the mandatory presumption of his guilt. And failure on the part of the accused to rebut the presumption justifies his conviction.[81]

The *Sher Singh* dictum, thus not only offers the proposition of law pertaining to the requisite quantum of burden and onus of proof on the prosecution and the accused husband/his relatives and of contours of section304B, IPC, read with section 113B, IEA, in the context of article 20 of the Constitution, in the right perspective, but also seems to be a judicially acceptable ruling.

In *Rajiv Singh* v. *State of Bihar*,[82] the Supreme Court ruled that the deeming presumption embedded in section 304B, IPC, read with section 113B, IEA, cannot be invoked when essential foundational facts triggering it remain unproved. It also asserted that no charge can be proved on mere suspicion. Suspicion, howsoever strong it may be, cannot take the place of proof. The prosecution case to succeed has to be in the category of 'must be' and not 'may be'. The presumption of innocence, the court stressed, serves not only to protect a particular individual on trial but to maintain public confidence in the enduring integrity and security of the legal system. Further, the Supreme Court, in *Monju Roy* v. *State of West Bengal*,[83] perceiving that the possibility of naming all family members, in over enthusiasm and anxiety of the complainants to seek conviction of maximum persons in the dowry death, is not ruled out, held that omnibus allegation against all the family members particularly against brothers and sisters and other relatives do not stand on the same footing as husband and parents, who are in a position to harass. And the apex court advised the courts to satisfy themselves the demand for dowry and the consequential harassment was caused by all the named persons, if not, give them benefit of doubt. The courts, it stressed, have to be cautious so that injustice is not done.

The court is required to remind itself that in normal circumstances, demand for dowry or harassment for the same takes place within four corners of the house and even the parents and relatives of the girl do not become aware thereof unless they are informed either by the girl herself or demand is made directly to them. Hence, the court should not discard statements of the parents or relatives of the deceased woman merely on the ground that they are interested witnesses. Only contradictions shown in their deposition or cross examination will make their statements diminish their evidentiary value.[84]

80 (2015) 8 SCC 299.

81 *V K Mishra* v. *State of Uttarakhand* (2015) 9 SCC 588.

82 2015 (13) SCALE 901.

83 2015 (5) SCALE 288.

84 *Rajinder Kumar* v. *State of Haryana* (2015) 4 SCC 215. See also *Amrutal Liladharbhai Kotak* v. *State of Gujarat* (2015) 4 SCC 452.

'Demand for dowry' and *'soon before her death'- the key elements re-explained*

One of the essential ingredients for attracting the provisions of s 304B is that the deceased married woman was 'soon before her death' was subjected to cruelty or harassment by her husband or his relatives for, or in connection with, demand for dowry. 'Demand for dowry' and 'soon before her death', hence, constitute the key terms.

Rajinder Singh v. *State of Punjab,*[85] signifies a significant development in judicial articulation of demand for 'dowry', a key phrase in section 304B, defined in section 2 of the Dowry Prohibition Act, 1961. Referring to the ruling of the apex court in *Appasaheb* v. *State of Maharashtra,*[86] (and followed in *Vipin Jaiswal* v. *State of Andhra Pradesh* [87]) that a demand for money on account of some financial stringency or meeting some urgent domestic expenses or for purchasing manure cannot be termed as a 'demand for dowry', and the subsequent rulings[88] distinguishing it to hold that the *Appasaheb* dictum cannot be read as an absolute proposition and it should be understood in its factual settings, the Supreme Court categorically held that the *Appasaheb* dictum (and followed in *Vipin Jaiswal*) 'does not state the law correctly'. It 'declared' that 'only money or property or valuable security demanded by any of the persons mention in section 2 of the Dowry Prohibition Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to marriage, unless the facts of a given case clearly and unequivocally point otherwise'.[89]

The phrase 'soon before her death' has been consistently held by courts not to mean 'immediately before the death'. It is not synonymous with 'immediately before'. It conveys that the dowry demand should not be stale.[90] It should not be perceived in terms of 'days or months or years but as necessarily indicating that demand for dowry should not be stale or as an aberration of the past, but should be the continuing cause for the death'.[91] It connotes that there must be 'a proximate and live link between effects of cruelty or harassment on dowry demand and death concerned'.[92] An incident of cruelty which is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, as a rule, is of no consequence.[93] 'Soon before her death' is a relative term to be judged in the light of facts and circumstances

85 (2015) 6 SCC 477.

86 (2007) 9 SCC 721.

87 (2013) 3 SCC 684.

88 *Bachni Devi* v. *State of Haryana* (2011) 4 SCC 427; *Kulwant Singh* v. *State of Punjab* (2013) 4 SCC 177; *Surinder Singh* v. *State of Haryana* (2014) 4 SCC 129; *Raminder Singh* v. *State of Punjab* (2014) 12 SCC 582.

89 *Supra* note 85, para 20.

90 *Id.*, paras 22-24.

91 *Sher Singh* v. *State of Haryana* (2015) 3 SCC 724.

92 *Major Singh* v. *State of Punjab* (2015) 5 SCC 201.

93 *Maya Devi*, *supra* note 75; *Major Singh* v. *State of Punjab* (2015) 5 SCC 201.

of the case at hand. Time-lags may differ from case to case. It cannot have fixed formulae.[94] However, it, keeping in view the legislative intent, should receive a fair and pragmatic construction.[95] The legislative intent in providing such a radius of time by using the expression ('soon before her death') is to emphasise the idea that the (unnatural) death (of a married woman), in all probabilities, has been aftermath of the cruelty or harassment.[96]

Cruelty by husband or his relatives

Cruelty to a woman by her husband or his relatives is another offence against a married woman. Any wilful conduct by him or his relatives that is likely to drive his wife to commit suicide or to cause grave injury or danger to her life, limb, or mental or physical health or subjecting her to harassment with a view to coercing her (or any person related to her) to meet his unlawful demand for any property or valuable security amounts to 'cruelty'.[97] By virtue of section 113A of the IEA, when she commits suicide within seven years of her marriage and her husband or his relatives had subjected her to cruelty within the meaning of section 498A, IPC, the court may, having regard to other attending circumstances, presume that the husband or his relatives have abetted the suicide. Such a suicide, being unnatural death in terms of section 304B, IPC, amounts to dowry death. The husband or his relatives, therefore, can be prosecuted and convicted under sections 304B and 498A of the Penal Code,[98] along with other apt charges that can be levelled against him/them for the abetment, homicide, constructive liability, *etc*.

What amounts to cruelty, within the meaning of section 498A, has always been a matter of fact to be judged in the facts of the case at hand and the judicial appreciation thereof.

The first limb of section 498A, which refers to cruelty, has nothing to do with demand of dowry, though it, by nature, is likely to drive the woman to commit suicide or to cause grave injury. In *Ghusabhai Raisangbhai* v. *State of Gujarat*,[99] the deceased committed suicide out of the pain and disturbance that her husband was having an illicit affair with another woman. It is a well settled principle that mere extra-marital relationship, as perceived by the judiciary, does not amount to cruelty, though it is illegal or immoral. For bringing extra-marital relation within the ambit of 'cruelty', as perceived in section 498A, it is required to prove that the accused husband conducted himself in such a manner to drive his wife to commit suicide.[100]

94 *Rajinder Singh* v. *State of Punjab* (2015) 6 SCC 477.

95 *Supra* note 91.

96 *Supra* note 75.

97 S. 498A, IPC.

98 *Supra* note 75.

99 2015 (2) SCALE 500.

100 See *Pinakin Mahipatry Rawal* v. *State of Gujarat* (2013) 10 SCC 48 (was quoted in the instant case).

Similarly, no conviction under section 498A stands even when torture and harassment for dowry is proved, but the cause of suicidal death happens to be an accidental, say by consumption of poisonous tablets by mistake.[101] However, its approach in *Harish Kumar* v. *State of Haryana*,[102] seems to be different. Even when the trial court and the high court convicted the appellant under section 304B as it was shown that his wife died an unnatural death within 7 years of marriage and there was dowry demand, the apex court, relying upon a dying declaration stating that the burn injury was accidental, set aside his conviction under section 304B and upheld the conviction under 498A, IPC.

Flaws in investigation/prosecution-a ground for acquittal?

The apex court has asserted that no flaws in the investigation or lapses on the part of the investigation officer should be allowed to benefit the accused, if testimony of the witnesses is supported by medical evidence and circumstances speak against the accused. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation.[103]

For convicting an accused for subjecting a woman to cruelty and thereby driving her to take an extreme step of self-termination of life, it is necessary for the prosecution to demonstrate, through consistent, coherent and compact evidence, that the events that have built up intolerable mental or physical torture driving the deceased to commit suicide were unmistakably linked to the accused persons. In such a situation, other circumstances, like the deceased has lost her mother in her early childhood, her father married another woman, and she was denied the love and affection of her self-centred and less-sensitive father, do hardly, in the opinion of the court, become significant to say that she lost her mental balance and took the extreme step of extinguishing her life.[104] Similarly, when cruelty meted out to the deceased by the accused persons at the matrimonial home was so acute that made her mentally depressed and developed in her suicidal tendencies, the accused cannot take the plea that the death was accidental.[105]

In *Major Singh* v. *State of Punjab*,[106] the apex court, relaying on certain discrepancies in the prosecution story, set aside the conviction of the appellant-in-laws of the deceased though the trial court, on the proof of all the ingredients of section

101 *Bhanuben* v. *State of Gujarat* (2015) 10 SCC 390.

102 (2015) 2 SCC 601(reported in Jyoti Dogra Sood, "Criminal Law," L *ASIL* 426 (2014).

103 *Naval Kishore* v. *State of Maharashtra*, 2015 (3) SCALE 750. In this case the investigation officer made no efforts to obtain handwriting expert report relating to the suicide purportedly written by, and seized from, the deceased wife, and relied upon by the appellant-accused in his defence. The apex court upheld the conviction under ss. 498A, 302, and 201, IPC.

104 *M Narayan* v. *State of Karnataka* (2015) 6 SCC 465.

105 *Supra* note 75.

106 *Supra* note 92.

304B alleged against them (and their son, who died subsequently) convicted them under section 304B, and the high court subsequently affirmed it. The apex court, in appeal, noticed that the prosecution specifically stated that the demand of dowry was informed to the *panchayatdar* by the father and that the *panchayat* was taken to the deceased's home one week prior to the incident, but the same was not proved by the examination of the *panchayatdars*. Perceiving the lapse as a serious omission on the part of the prosecution, it set aside conviction of the appellants under section 304B of the IPC.

In *State of Karnataka* v. *Suvarnamma*,[107] the Supreme Court reiterated that neither minor discrepancies can dislodge or discredit the overwhelming evidence proving guilt of the accused nor minor flaws/ lapses in the investigation/prosecution can justify acquittal of the persons accused of dowry death. Any lapse on part of the prosecution cannot *per se* be a ground to disbelieve the prosecution when overwhelming evidence exists against the accused. It restored the order of conviction passed by the trial court holding the respondent-husband and mother-in-law guilty of cruelty, dowry demand and bride-burning, though there were conflicting dying declarations. It relied upon the fact that the deceased died within seven years of her marriage, the incriminating dying declaration was fully corroborated by medical evidence, and the view taken by the high court for acquittal was based on minor contradictions.

No or notional punishment in lieu of compensation/settlement

In this context, it is worth to take note of a unique judicial approach exhibited by the apex court in its pronouncement in *Saloni Rupam Bhartiya* v. *Rupam Prahlad Bhartiya* ,[108] a case of cruelty meted by a married woman from her husband, and who was sentenced to rigorous imprisonment for term of one year and a fine of Rs 10,000. The High Court of Bombay, in a criminal revision petition filed by the respondent-husband, upheld his conviction under section 498A, IPC, but reduced the term of rigorous imprisonment from one year to imprisonment till the rising of the court and enhanced the amount of fine from Rs. 10,000 to Rs. 1 Lac. It also directed that a sum of Rs. 90,000 from the fine deposited by the aappellant-husband be paid to his wife by way of compensation.[109] In the instant case, the appellant-wife preferred an appeal to the Supreme Court. During the court hearings before the apex court, the appellant and the respondent had agreed to seek dissolution of marriage by mutual consent. The respondent-husband also agreed to pay and the appellant-wife agreed to accept, Rs. 50 Lac as a full and final settlement towards her and her daughter's maintenance. The apex court, keeping in view the dissolution of marriage by mutual consent and the full and settlement of maintenance claim, set aside the judgment and order of conviction of the respondent-husband. It reasoned that there, in the backdrop of the circumstances of the case (particularly finding a lasting solution on all the outstanding issues between

107 (2015) 1 SCC 323.

108 (2015) 4 RCR (Cri) 172.

109 *Rupam Pralhad Bhartiyo* v. *State of Maharashtra*, 2011 Cri LJ 3540 (Bom).

themselves), is 'no reason why the conviction recorded by the courts below and the sentence of imprisonment till the rising of the court, which the respondent has already undergone, should continue to blemish the respondent-husband'.[110]

Appeal against order of an acquittal under section 304B and/or section 498A

By the state government

In *State of Uttar Pradesh* v. *Damodar*,[111] a cryptic order of the High Court of Allahabad rejecting leave to appeal preferred by the appellant-state government against the judgment and order of acquittal of the persons accused of committing offences contrary to section 498A and section 304B of the IPC passed by a sessions court subordinate to it. Taking cognizance of a set of facts, *namely*, non-consideration of the evidence on record and the evidence led by the prosecution by the high court; non-issuance of notice to the other side; absence of screening of the material and consideration of rival submissions, and improbability of the fact that a person as result of falling of a lamp on the mattress of the deceased causing her 100 per cent burns, the apex court set aside the order passed by the high court and remitted the matter to it for fresh consideration.

By the father of a victim of dowry death and/ or of cruelty-driven suicide

In *Satya Pal Singh* v. *State of Madhya Pradesh*,[112] the appellant, the father of the deceased daughter, filed a complaint regarding the death of his daughter to the SP, as the concerned police station refused to entertain it. And after investigation was carried out, the accused persons were slapped with charges under sections 498A, 304B of the IPC, section 4 of the Dowry Prohibition Act, 1961, and, alternatively, under section 302, IPC. The trial court, after examination of the evidence on record, passed a judgment acquitting all the accused. The father, under the proviso to section 372, Cr PC,[113] being a victim as defined in section 2(wa), CrPC,[114] filed an appeal before the High Court of Madhya Pradesh against the order of acquittal. But the high court, without examining as to whether the leave to file an appeal against an order of acquittal, in accordance with section 378(3) of the CrPC, can be granted or not, mechanically disposed it of through a cryptic order. The appellant, being aggrieved, questioned it before the apex court, primarily on the ground that he, being father of the deceased and a victim as defined in section 2(wa), has, by virtue of proviso to section

110 *Supra* note 108 para 3.

111 2015 (6) SCALE 87.

112 2015 (10) SCALE 444.

113 It reads: 'Provided that the victim shall have the right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such court'. The proviso was inserted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009). It became effective from 31.12.2009.

114 It defines 'victim'. It reads: 'Victim' means a person who has suffered any loss or injury caused by reason of her act or omission for which the accused person has been charged and the expression 'victim' includes his or her guardian or legal heir'. The proviso was inserted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009).

372 of the CrPC, the *locus standi* to file an appeal before the high court against the order of acquittal without seeking the leave of the high court as required under section 378(3) of the CrPC. He asserted that it is his statutory right to do so. He placed his strong reliance upon a judicial pronouncement of the full bench of the High Court of Delhi,[115] wherein it, offering its interpretation to the proviso to section 372 read with section 2(wa) of the CrPC, ruled that the right to prefer an appeal conferred upon the victim or relative of the victim by virtue of proviso to section 372 is an independent statutory right, and it is, therefore, not necessary to seek leave of the high court as required under section 378(3) of the CrPC to prefer an appeal under proviso to section 372 of the CrPC. The appellant-father, therefore, claimed that his appeal against the order of acquittal is maintainable before the Madhya Pradesh High Court. He has also contended that the high court, being the appellate court, has not re-appreciated the evidence, but it, on mere cursory glance thereon, disposed of his appeal through a cryptic order. After a careful perusal of the proviso to sections 372 and section 2 (wa), in the backdrop of its legislative intent, and of section 378(3) of the CrPC, and the rules of interpretation of a proviso to a statutory provision, the apex court, holding that the view of the High Court of Delhi is 'not legally correct', ruled that: [116]

> [T]he proviso to s 372 of Code of Criminal Procedure must be read along with its main enactment i.e. s 372 itself and together with sub-sec (3) to s 378 of Code of Criminal Procedure otherwise the substantive provision of s 372 of Code of Criminal Procedure will be rendered nugatory, as it clearly states that no appeal shall lie from any judgment or order of Criminal Court except as provided by Code of Criminal Procedure.

Accordingly, it disposed of the legal issue involved in the case at hand. It concluded that the right of questioning the correctness of the judgment and order of acquittal by preferring an appeal to the high court is conferred upon the victim including the legal heir and others as defined in section 2(wa) of the CrPC, under proviso to section 372, but only after obtaining the leave of the high court as required under section 378(3) of the CrPC.[117] The apex court, therefore, set aside the judgment and order of the Madhya Pradesh High Court and remanded the matter to the high court for its consideration for granting leave to file an appeal by the appellant-father as required under section 378(3) of the CrPC.[118]

The ruling of the Supreme Court, being the first judicial pronouncement in the matter relating to a victim's right to prefer an appeal against an order of acquittal or of conviction of accused for a lesser offence or of imposing inadequate compensation, is obviously going to set a judicial tone and direction for further articulation. However,

115 *Ram Pal* v. *State*, 2015 Cri LJ 3220 (Del).

116 *Supra* note 112, para 12.

117 *Id*., para 13.

118 *Id*., para 15.

the ruling, in the backdrop of the legislative intent and spirit with which the proviso to section 372 and section 2(wa) are inserted in the CrPC, seems to be a sort of restrictive interpretation. Hopefully, the apex court, in due course of time, will make some inroads in making it more victim-oriented with lesser judicial hallmark.

V SPECIFIC OFFENCES

Kidnapping for ransom - scope and constitutional *vires*

In *Vikram Singh* v. *Union of India*,[119] the Supreme Court was called upon to determine scope of the offence created under, and adjudge the constitutional validity of, section 364A of the IPC. Section 364A creates kidnapping or abduction for ransom an offence and provides for death or imprisonment for life and fine therefor.

The contention of the appellants-accused, who were convicted and sentenced to death for committing the offences punishable under section 302 and section 364A of the IPC, was that the words 'any other person' in section 364A following the expression 'Government or any foreign State or international inter-governmental organization' need to be read by the rule of *ejusdem generis*. They argued that section 364A is attracted only when the offence of kidnapping for ransom is committed against the government or a foreign state or inter-governmental organisation. It cannot come into play in a situation when a person who has kidnapped or abducted for ransom demand money from a private individual. It, therefore, only deals with kidnapping by terrorists for ransom or where terrorists take hostages with a view to compelling the government or a foreign state or international inter-governmental organisation to do or abstain from doing any act or to pay ransom. The High Court of Allahabad, recalling the situation when section 364A was inserted in the IPC, objectives thereof, and the situation changed thereafter, held that section 364A takes into its ambit even kidnapping or abduction for ransom to coerce a private individual to pay it. When the appellant-accused approached the apex court took pains to cull out the 42nd Report of the Law Commission Report, the Indian Penal Code (Amendment) Bill, 1994, and its objects and reasons[120] to clarify that 'person' in section 364A has the same meaning as the definition of 'person' in section 11 of the IPC[121] and endorsed the high court's ruling that section 364A caters to the cases of kidnapping and ransom by private individuals as well as by terrorist organizations.[122] It, however, cautioned that the rule of *ejusdem generis* needs to be cautiously applied while interpreting statutory provisions and it is a rule of construction and not rule of law. And where it tends to defeat the spirit of the statute it needs to be abandoned.[123]

The appellants-accused also challenged the constitutional *vires* of section 364, IPC, on the grounds that it takes away the courts' discretion in awarding any sentence

119 (2015) 9 SCC 502.
120 *Id*., paras 12-17.
121 *Id*., para 31.
122 *Id*., para19.
123 *Id*., para 26.

other than death or life imprisonment and thereby offends the fundamental right to life guaranteed under article 21 of the Constitution. And section 364A, being violative of article 21, is *ultra vires* to the Constitution. Relying upon earlier pronouncement of the apex court in *Mithu* v. *State of Punjab*,[124] wherein the Supreme Court declared section 303 of the IPC unconstitutional as it, *inter alia*, did not allow the courts to award sentence other than death and thereby took away the judicial discretion, the appellants-accused argued that section 364A is unconstitutional as it also does not leave any discretion with the courts in the matter of sentences except death or life imprisonment. The apex court ruled that the *Mithu* dictum is not applicable to the case at hand as it does not provide for mandatory death sentence. It provides for death or imprisonment for life, and thereby vests discretion in the courts to, depending upon the circumstances, award death or life imprisonment. It also made it very clear that a legislation is presumed to be constitutionally valid and it is for the person to prove who challenges its constitutionality. And courts should show due deference to the parliamentary wisdom and exercise self-restraint while examining the *vires* of a legislation validly enacted. Laws that are outrageously barbaric or penalties that are palpably inhuman or shockingly disproportionate to the gravity of the offence for which the same are prescribed can be interfered with by the courts. Courts, however, cannot interfere with a legislation simply because the punishment is perceived to be excessive. Upholding the constitutional validity of section 364A, IPC, the apex court observed: [125]

> Given the background in which the law was enacted and the concern shown by the Parliament for the safety and security of the citizens and the unity, sovereignty and integrity of the country, the punishment prescribed for those committing any act contrary to section 364A cannot be dubbed as so outrageously disproportionate to the nature of the offence as to call for the same being declared unconstitutional. Judicial discretion available to the Courts to choose one of the two sentences prescribed for those falling foul of section 364A will doubtless be exercised by the Courts along judicially recognized lines and death sentences awarded only in the rarest of rare cases. But just because the sentence of death is a possible punishment that may be awarded in appropriate cases cannot make it *per se* inhuman or barbaric. — [W]e are concerned with is whether the provisions of section 364A in so far as the same prescribes death or life imprisonment is unconstitutional on account of the punishment being disproportionate to the gravity of the crime committed by the Appellants. Our answer to that question is in the negative.

In this backdrop, the apex court also declined to accept the contention of the appellants-accused that the death sentence was wrongly given to them, and its execution deserved

124 (1983) 2 SCC 277.

125 *Supra* note119, paras 54 and 55.

to be restrained by judicial order. It ruled that the sentence of death awarded to them was just, fair and reasonable, even by the standards of the rarest of rare cases evolved by the apex court.

Criminal intimidation - post on social media?

In *Manik Taneja* v. *State of Karnataka*,[126] the apex court was called upon to adjudge as to whether a post put on social media Facebook of the Bengaluru traffic police regarding the rude behaviour of a traffic police inspector amounts to use of criminal force to deter a public servant from discharging his duty and criminal intimidation contrary to the provisions of section 353 and section 506 of the IPC, respectively. When a FIR, on a complaint filed by the police officer, was registered against the appellant for the offences punishable under section 353 and section 506 of the IPC, the appellant approached the Karnataka High Court seeking quashing of the FIR and the consequential criminal proceedings. The high court dismissed the petition on the ground that it was filed at a pre-mature stage. The appellant approached the Supreme Court for quashing the order of the high court and thereby seeking relief. The respondent contended that the appellant by posting a derogatory comment on the Facebook has obstructed him and his staff from discharging public duty and it amounted to 'threatening' and 'criminal intimidation' within the meaning of section 503 of the IPC. The apex court, responding to the respondent's assertions, observed: [127]

> It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of 'criminal intimidation'. The threat must be with intention to cause alarm to the complainant to cause that person to do or to omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. — As far as the comments posted on the Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of the Appellants posting a comment on the Facebook may not attract ingredients of criminal intimidation in Section 503 Indian Penal Code.

It also ruled that even uncontroverted allegations in the FIR do not satisfy the requisite ingredients of the alleged offences, and it, therefore, would be unjust to allow the process of the court to be continued against the appellants. It, accordingly, set aside the high court's order.

Obscenity

In *Devidas Ramachandra Tuljapurkar* v. *State of Maharashtra*,[128] the Supreme Court dealt with the question as to whether the poem *Gandhi Mala Bhetala* (I met

126 (2015) 7 SCC 423.
127 *Id*., para 12.
128 (2015) 6 SCC 1.

Gandhi) published in a magazine meant for private circulation amongst the members of All India Bank Association Union, justify framing of charge under section 292 of the IPC against the author, the publisher and the printer, and whether in a write-up or a poem, keeping in view the concept and conception of poetic licence and the liberty of perception and expression, use of the name of a historically respected personality by way of allusion or symbol in an obscene manner is permissible. The discussion in the judgment veers around poetic license, importance of historical personalities *etc*. It takes an exhaustive survey of judicial pronouncements on obscenity and the tests evolved/employed to determine it in the UK, USA, Europe, and India to drive a point at home that the tests, with the passage of time, have changed and the freedom of speech is not absolute on all occasions or in every circumstance. The instant judicial pronouncement is a compendium of obscenity cases decided by the courts in India. It has not left out a single leading case on obscenity decided in India. It starts with *Ranjit D Udeshi*[129] and ends up with *Aveek Sarkar's*[130] 'community standard' and *Shreya Singhal's*[131] 'freedom of speech and expression'. The judgments have also been culled out to showcase the perception of Mahatma Gandhi by the Supreme Court. It held that there can be no difficulty with the freedom to express views freely about a historically respected personality showing disagreement, dissent, criticism, non-acceptance or critical evaluation, so long as there is no obscenity in the expression. Prevalent test of obscenity in India in *praesenti*, is the contemporary community standards test *i.e.* obscenity has to be judged from the point of view of an average person, by applying contemporary community standards which vary from time to time, as perception, views, ideas and ideals can never remain static. It has to be appreciated on the foundation of modern perception .The comparables test is not the applicable test, and it may at best reflect what the community accepts. Further held, poetry as a medium of expression can have individual features; deviation from norm, collective characteristics or linguistic freedom but poetic expression cannot enjoy absolute or limitless freedom and is subject to reasonable restrictions under article 19(2) of the Constitution.

What is indeed painful in this judgment is that the apex court bestows to the population at large an immature subjectivity and dons the role of one who will do the policing so as to obliterate all strident or perhaps obscene voices which may dent the image of important personalities - in this case Gandhi's. After grand talk about poetic license, the court somehow in the final lap completely forgets that poetic license may be used to create a surreal world by using real world heroes as was done in this case. And sadly ends up giving a seal of approval to framing of charges under section 292, IPC. The court in its endeavor to be the filter for the societal members, who are almost always infantilized by the courts in obscenity cases, has stretched the contours of section 292 too far and in fact has ended up undermining the greatness of the Father of Nation.

129 *Ranjit D Udeshi* v. *State of Maharashtra* (1965) 1 SCR 65.

130 *Aveek Sarkar* v. *State of West Bengal* (2014) 4 SCC 257.

131 *Shreya Singhal* v. *Union of India* (2015) 5 SCC 1.

VI SENTENCING

General considerations

Sentencing, in the absence of precise guidelines and principles in India, has been a matter of judicial and juristic deliberations. Though a few philosophical and juristic propositions are often stated and relied upon by judges, the fact remains that courts in India generally, except the offences stipulated with the mandatory minimum sentence, enjoy a considerable amount of discretion in quantification of punishment. In doing so, courts are not only influenced by the laudable objectives of punishment but also other variety situational and personal circumstances of, or associated with, the crime and/or criminal. Sentencing in India, therefore, remains judge-centric, guided by his penal philosophy and perceptions. No attempts, legislative or judicial, are made to exhaustively enumerate possible relevant considerations that need to go in judicial deliberations in quantification of sentence (within the judicial discretion) or weightage to be given to the hitherto so-called enumerated/used/ considered (in different judicial pronouncements) parameters. Laying down/enumerating factors relevant for all the situations or forming uniform sentencing policy, nevertheless, is not an easy task as quantum of punishment to be awarded to culprit depends on a variety of mitigating or aggravating factors.[132] However, one finds a couple of indicative propositions in different judicial pronouncements that are considered relevant in sentencing.

Judicial pronouncements delivered during the year under survey, echoing the hitherto so-called principles/factors, exhibit judge-centric judicial outlook to sentencing.

The apex court in *Jasbir Singh* v. *Tara Singh*,[133] admitting impossibility of laying down strict principles on sentencing, reiterated that certain indicators, like the gravity of the offence, the mitigating factors and circumstances (like parties buying peace, parties settling disputes and getting reconciled, victim subsequently becoming part of the family, victim showing interest in getting monetarily compensated), the manner of planning and committing the offence, and the social abhorrence of crime, amongst others, need to be kept in mind by judges while quantifying sentence. These factors, the court stressed, help the court to discern and decipher the appropriate purpose of punishment and to enter satisfaction that justice has been done.[134] In *Sanjiv Kumar* v. *State of Punjab*,[135] it stressed that 'sentencing for any offence has a social goal and it is obligatory on the part of the court to keep in mind the impact of the offence on the society, and its ramifications, including the repercussion on the victim'.[136] *Purushottam Dashrath Borate* v. *State of Maharashtra*,[137] spoke in terms of role of criminal law

132 See *K P Singh* v. *State of N C T of Delhi* 2015 (10) SCALE 213.

133 2015 (10) SCALE 95.

134 *Id*., para 10.

135 2015 (3) SCALE 803. See also *Nanda Gopalan* v. *State of Kerala* (2015) 11 SCC 137; *State of Punjab* v. *Bawa Singh* (2015) 3 SCC 441.

136 *Id*., para 15.

137 (2015) 6 SCC 652.

vis-à-vis social interests, claims and demands, and stressed that protection of society and stamping out criminal proclivity is the object that needs to be achieved by imposing appropriate sentence on the culprits. A sentencing court, according to the apex court, is required to be stern where it should be and tempered with mercy where warranted. But undue sympathy to convict by allowing him to go with inadequate sentence does not merely cause more harm to the justice system (by undermining the public confidence in the efficacy of law) but also tempt injured victim to resort to private vengeance. It should also keep in view the rights of victims.[138] The object of sentencing policy, according to the court, should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it.[139] A court, through its judgment on sentence, has a duty to protect and promote public interest and build up public confidence in efficacy of rule of law. Misplaced sympathy or unwarranted leniency sends a wrong signal to the public giving room to suspect the institutional integrity, affecting the credibility of its verdict.[140] A court, while exercising its judicial discretion, has to keep in mind the social interest and the conscience of the society.[141] It is 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. It is expected to take into account all relevant facts and circumstances having bearing on the sentence and pronounce the sentence that commensurates with the gravity of the offence. It should keep in mind the social interest and conscience of the society while considering the determinative factor of sentence with gravity of crime.[142] Heavily coming down on the casual and callous approach of the high court in reducing the sentence of the convicts for abetting suicide under section 306, IPC, to the imprisonment already undergone (*i.e*. 4 months and 20 days) on the ground that no purpose would be served by asking them to undergo imprisonment for unspecified reasons, the Supreme Court has tendered a bit of judicial advise to courts subordinate to it. It observed: [143]

> A Court, while imposing sentence, has a duty to respond to the collective cry of the society. The legislature in its wisdom has conferred discretion on the Court —. It has to exercise the discretion on reasonable and rational parameters. The discretion cannot be allowed to yield to fancy or notion. A Judge has to keep in mind the paramount concept of rule of law and the conscience of the collective and balance it with the principle of proportionality but when the discretion is exercised in a

138 *State of Madhya Pradesh* v. *Surendra Singh* (2015) 1 SCC 222. Also see *State of Punjab* v. *Bawa Singh* (2015) 3 SCC 441.

139 *Id*., para 13.

140 *Shanti Lal Meena* v. *State of N C T of Delhi CBI* (2015) 6 SCC 185.

141 *Raj Bala* v. *State of Haryana*, 2015 (9) SCALE 25.

142 *State of Punjab* v. *Bawa Singh*, *supra* note 138.

143 *Supra* note 141, para 11.

> capricious manner, it tantamounts to relinquishment of duty and reckless abandonment of responsibility. One cannot remain a total alien to the demand of the socio-cultural milieu regard being had to the command of law and also brush aside the agony of the victim or the survivors of the victim. Society waits with patience to see that justice is done. There is a hope on the part of the society and when the criminal culpability is established and the discretion is irrationally exercised by the court, the said hope is shattered and the patience is wrecked. It is the duty of the court not to exercise the discretion in such a manner as a consequence of which the expectation inherent in patience, which is the 'finest part of fortitude' is destroyed. — He should always bear in mind that erroneous and fallacious exercise of discretion is perceived by a visible collective.

Sentencing in violent sexual assault and murder

Recalling the principle of proportionality of sentence, social impacts of crime, the consequences of imposing inadequate sentence, and the rising violent crimes against women, the Supreme Court, it seems, is inclined to apply stricter yardsticks in sentencing to make punishment a deterrent one in violent heinous crimes that not only shock the collective conscience of the court and community but also cause revulsion in the society. Lighter punishment in such cases does not meet the ends of justice, but it rather tempts other potential offenders to commit such crimes and get away with lesser or lighter punishment.

In *Satish Kumar Jayanti Lal Dabgar* v. *State of Gujarat*,[144] the apex court refused to accept the argument that marriage of the prosecutrix victim of rape and of the perpetrator (not to each other) and the former is having a child should be treated as mitigating factors for showing leniency in the punishment. The court stressed that it hardly becomes a mitigating circumstance. Referring to propositions from its earlier decisions, it reminded the courts that it is their duty to impose adequate sentence as one of the purposes of imposition of requisite sentence is protection of the society and a legitimate response to the collective conscience. If proper sentence is not awarded, the fundamental grammar of sentencing is guillotined. Law cannot tolerate it; society does not withstand it; sanctity of conscience abhors it.[145]

In *Purushottam Dashrath Borate* v. *State of Maharashtra*,[146] wherein a BPO employee working in the night shift was picked up by the assigned cab driver as was the routine, but conspiracy had been hatched to rape her, the apex court upheld the death sentence. The appellant-accused carefully planned and executed meticulously with sheer brutality and apathy for humanity the execution of the rape and murder of a helpless girl. The court held that 'the heinous offence of gang rape of an innocent

144 *Supra* note 62.

145 *Id*., para 18.

146 (2015) 6 SCC 652.

and helpless young woman by those in whom she had reposed trust, followed by a cold-blooded murder and calculated attempt to cover up is one such instance of a crime which shocks the collective conscience of the community and the court' falls in the category of 'rarest of the rare' case. It ruled that perpetrators meet death penalty and none less. The collective conscience of the community is so shocked by the crime that imposing alternate sentence, *i.e*. a sentence of life imprisonment, on the accused, the court felt, does not meet the ends of justice.[147] It even refused to treat their age, non-criminal background and the possibility of reformation as mitigating factors. It stressed that age of the offenders' is a 'relevant consideration but not a determinative factor by itself'.[148]

However, *Kalu Khan* v. *State of Rajasthan*[149] exhibits a different judicial approach and treatment to the appellant-accused of rape and murder of a girl of four. The apex court, even in the absence of any missing-link in the chain of events leading to rape and death of the small girl lured by him, held that the evidence does not sufficiently provide any direct nexus between 'the crime' and 'the criminal'. Admitting that the incidence of rape on a small girl by a grown-up man and his son makes the crime socially abhorrent and demands harsh punishment, perceived the absence of criminal antecedents of the offender, circumstantial evidence on which the entire case is built-up, and the extra-judicial confession of the co-accused as mitigating factors and felt that the appellant-accused does not deserve death penalty, but the sentence alternative thereto, *i.e.* imprisonment for life.

A comparative reading of judicial pronouncements of the apex court in *Purushottam Dashrath Borate* and *Kalu Khan*, in which conviction was primarily based on circumstantial evidence, reveals different judicial approach. In the latter, the apex court preferred life imprisonment, instead of death sentence, for the perpetrator on the ground, *inter alia*, of his non-criminal antecedent and possibility of reform. But in the former the court refused to accept the same grounds as mitigating factors and to turn down their submission for altering the sentence of death to imprisonment for life. In terms of gravity of the offence and the proof of guilt, in the present submission, both the cases stand at par, deserving similar judicial response. On the contrary, *Kalu* deserves equal, if not more, judicial condemnation as it involved luring of a minor girl, gang rape, subsequent murder, and (attempted) removal of traces of their misdeed behind.

Multiple-killings- choice between sentence of death and imprisonment for life

The two multiple-killing cases reported in the year under survey exhibit different judicial response to the submission for altering death sentence to imprisonment for life, permissible under section 302 of the IPC. In one of the two, the apex court has refused to commute the sentence of death to imprisonment for life, while in other, it

147 *Id*., para 38.

148 *Id*., para 32.

149 *Supra* note 69.

exercised its discretion in favour of the accused. They do make an interesting reading on judicial reflection on sentencing in the identical facts-scenario.

In *Shabnam* v. *State of Uttar Pradesh*,[150] the appellant-accused, who was influenced by love and lust of her paramour, hatched a conspiracy with her paramour and killed seven persons of her own family, including innocent child, was convicted under section 302 and section 34, IPC, and sentenced to death. Her motive was to live with her paramour and to grab the property leaving no heir but herself. She pleaded for less serious sentence because of her young age, she was pregnant when the series of brutal murders took place, and she has a minor child at the time of hearing. But the court, against the backdrop of the extreme brutal, calculated and diabolical nature of the crime committed by her (along with her paramour) and the little likelihood of (their) reformation and of (their) abstaining from future crime, refused to read the pleaded circumstances as mitigating factors, and thereby alter the sentence of death to life imprisonment. It ruled that such compassionate grounds are not relevant in considering commutation of death sentence. When the offence is gruesome and was committed in a calculated and diabolic manner, the age of the accused hardly becomes a relevant factor. And when the crime is committed in the most cruel and inhuman manner which is extremely brutal, grotesque, diabolical and revolting, the accused deserve the death penalty.[151] Social perception of evolving role of daughters as being equal to sons, her highly educated family background and salubrious home environment, and her own profession as a teacher also taken as aggravating circumstances by the court to confirm the sentence of death.

However, in *State of Uttar Pradesh* v. *Om Prakash*,[152] another case of multiple-intentional killings, the Supreme Court has exhibited different approach. The accused persons burnt alive five persons by setting the *kothari* (a small room) on fire, including a small child, where they were hiding to save themselves from the accused. The accused persons, in their determination to take revenge against them for not voting in the *gram panchayat* election, did not allow the victims to escape from the *kothari* and those who attempted were chased and shot dead. The trial court awarded death sentence to 12 out of the 35 accused. The high court, in various criminal appeals and death sentence confirmation proceedings, however, held that the case does not fall in the category of the rarest of rare cases and it cannot be said that imprisonment for life is unquestionably foreclosed. It, accordingly, altered death sentence awarded to the accused to imprisonment for life. Placing reliance on rulings of the Supreme Court in *Bachan Singh*,[153] and *Ram Pal*,[154] the high court justified its conclusion thus:[155]

150 (2015) 6 SCC 632.

151 *Id*., paras 35-36.

152 (2015) 4 SCC 467.

153 *Bachan Singh* v. *State of Punjab* (1980) 2 SCC 684.

154 *Ram Pal* v. *State of Uttar Pradesh* (2003) 7 SCC 141.

155 *Supra* note 152, para 18.

> Compassion in sentencing is also a key factor. It allows the scars to heal. Longevity of incarceration may make them see reason. Passage of time may make them ponder over the crime they had committed. This might arouse in them a feeling of remorse and repentance

The appellant-state and the respondents-accused approached the Supreme Court for seeking confirmation of the death sentence and quashing conviction, respectively. The apex court, after analysing a few selective cases on death sentence, endorsed the decision of the high court overturning the capital punishment to life imprisonment. It observed:[156]

> We have no hesitation to say that the accused indulged themselves in acts of the most gruesome nature. At the same, it is to be borne in mind that the accused were on a rampage and running berserk with the only sense triggered by the thrust of avenge. The brutality of the murder must be seen along with all mitigating factors in order to come to the conclusion whether the case falls within the ambit of the rarest of the rare cases. Though the incriminating circumstances proved by the prosecution unmistakably and unerringly lead to the guilt of the Appellant/accused, but — after balancing all the mitigating and aggravating circumstances of the case, we are of the view that this case does not fall under the category of the rarest of the rare cases. Further the repetition of such criminal acts at their hands making the society further vulnerable are (sic) also not apparent. There is a ray of hope for their reformation and rehabilitation. Hence, we find no fault in the impugned judgment that the case does not fall within the *ratio* of rarest of rare cases as envisaged by this Court. While considering the nature of offence we are of the considered opinion that the accused can be awarded a lesser punishment than death penalty. Therefore, in our view, the High Court was right in modifying the death sentence awarded by the Trial Judge to that of imprisonment for life

What is interesting to note that the apex court, in spite of admitting that the multiple deaths caused by the accused were gruesome and brutal in nature, felt that 'repetition' of criminal act by the accused was 'not apparent' and saw a 'ray of hope for their reformation and rehabilitation'. However, the judicial pronouncement, in the present submission, hardly discloses the facts/situations that made the court to 'see' no apparent repetition of the ghastly act and a ray of hope of their reformation and rehabilitation. Such a ray of hope, with due respect, can even be seen, provided one is willing to do so, with reference to the accused in *Shabnam*. In terms of fact-situations, manner in which the deaths are caused, and background of the accused, the *Shabnam* and *Om Prakash* seem identical, thereby, deserving similar judicial response in terms

156 *Id*., para 34.

of sentencing of the apex court. Such a variance in sentencing, obviously, supports the prevailing proposition/impression that judges go by their own perception about the philosophy behind prescription of death sentence or life imprisonment, an alternative to death sentence. For some deterrence and/or vengeance becomes more important whereas others may be more influenced by the idea of reformation and rehabilitation of perpetrators of heinous crimes in a very brutal manner.

There also seems a some sort of judicial ambivalences in treating motive and certain personal attributes and circumstances as (non)mitigating or determinative factors in quantifying sentence. The apex court took a very stern view in *Abdul Waheed* v. *State of Uttar Pradesh*,[157] wherein it was argued that the appellant-accused aged about 90 years and sending him to prison for the offence of murder committed in 1974 may be harsh. Turning down the argument, the court ruled that 'when two persons died and a number of others were injured, age of the accused is of no relevance' and 'undue sympathy would do more harm to the criminal justice system undermining the public confidence in the efficacy of the system'.[158]

Imprisonment for life - imprisonment for rest of life or with/without permissible remission?

In *Union of India* v. *V Sriharan @ Murugan*,[159] a Constitution Bench of the Supreme Court explored certain fundamental questions, *namely*, (i) does imprisonment for life mean imprisonment for the rest of one's life without any right to claim legally permissible remission? (ii) can, as held in *Swamy Shraddananda(2)*,[160] a special category of sentence, instead of death, imprisonment for life or for a term exceeding 14 years and put that category beyond application of remission be imposed? (iii) is 'appropriate government' permitted to exercise the power of remission under section 432 or section 433 of the CrPC after the President of India or the State Governor has/have exercised his/their power under article 72/161 of the Constitution or the Supreme Court has exercised its power under article 32 of the Constitution? (iv) does section 432(7) CrPC contemplate two 'appropriate government' for the purpose of remission and gives primacy to the executive power of the Union over that of the state executive power? (v) is *suo motu* exercise of power of remission under section 432(1),CrPC permissible, and the procedure prescribed under section 432(2),CrPC, mandatory?[161]

However, the first two questions, having significant bearing on sentencing, are focused here. They, in a way, are inter-related.

157 2015 (9) SCALE 471.

158 *Id.*, para 15.

159 2015 (13) SCALE 165.

160 *Swamy Shraddanannda @ Murali Manohar Mishra* v. *State of Karnataka* (2008) 13 SCC 767.

161 See, *supra* note 159, para 8. Also see *Union of India* v. *Sriharan @ Murugan* (2014) 11 SCC 1, para 52.

The apex court, through *Maru Ram*,[162] and *Godse*,[163] and the host of cases relied thereon, came to the conclusion that 'imprisonment for life' in terms of section 53 read with section 45 of the IPC only means imprisonment for the rest of the life of the prisoner subject, however, to the right to claim remission, *etc*. as provided under articles 72 and 161 of the Constitution to be exercisable by the President of India and the Governor of the state and also as provided under section 432 of the CrPC.[164] It approved that though the sentence of imprisonment for life mean imprisonment till natural death of the convict, a court, while substituting it for death sentence, is empowered to impose imprisonment for a specified term (exceeding 14 years). In the Kaifullah J judgment, which is the majority judgment, the court placed too much reliance on *Swamy Shraddananda (2)* and interestingly reconstructed the case from the counsel Sanjay Hegde's perspective to bring the brutality and the horrendous diabolicity of the crime and ruled that the courts are within their right to pronounce sentence of imprisonment for the end of life or a term of 20 years 30 years *etc*. when pronounced after a detailed analysis and the judicial wisdom decides the years (of incarceration) depending on the proportionality of the crime committed. Countering the argument that it is an encroachment on the power of the executive, the court asserted that the executive should not feel slighted as executive action must be subservient to judicial pronouncements. Moreover, it was of the opinion that since section 433A of the CrPC, imposes a restriction of 14 years the court is within its right to extend that period to 20, 30 or 40 years in the interest of public at large.[165] The judge was of the opinion that there is no prohibition, in the IPC or any of the provisions of the CrPC where death penalty or life imprisonment is provided for, that imprisonment cannot be imposed for any specific period within the said life span.[166] However, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the high court and the Supreme Court and not by any other inferior court.[167] It ruled that the *ratio* of *Swamy Shraddananda(2)* that a special category of sentence, instead of death, imprisonment for life or for a term exceeding 14 years and put that category beyond the application of remission is well founded. However, his right to claim remission, commutation, reprieve as provided under articles 72/161 of the Constitution cannot be touched by the courts. They remain intact.[168]

The Kaifullah J judgment, however, betrayed the court's retributive psyche, which for most part remains clothed in reformatory rhetoric. When the counsel gave the

162 *Maru Ram* v. *Union of India*, 1981(1) SCR 1196.

163 *Gopal Vinayak Godse* v. *State of Maharashtra*, 1961 (3) SCR 440.

164 *Supra* note 159, para 61.

165 See *id*., paras 78-79.

166 *Id*., para 89. .

167 *Id*., para 105.

168 *Id*., paras 106 & 178.

argument of 'ray of hope' for the convict in terms of remission, the judge retorted thus: [169]

> [S]uch ray of hope was much more for the victims who were done to death and whose dependents were to suffer the aftermath with no solace left. Therefore, when the dream of such victims in whatever manner and extent it was planned, with reference to oneself, his or her dependents and everyone surrounding him was demolished in an unmindful and in some cases in a diabolic manner in total violation of the Rule of Law —, they cannot be heard to say only their rays of hope should prevail and kept intact. — [W]e find no scope to apply the concept of ray of hope to come for the rescue of such hardened, heartless offenders, which if considered in their favour will only result in misplaced sympathy and again will be not in the interest of the society.

However, it needs to recall that U U Lalit, as counsel, had argued in *Swamy Shraddananda* case that the court cannot whittle down the power of the executive to commute sentences and if at all that is allowed it will create tremendous imbalance. Sticking to his position, he as a judge, in his dissenting judgment in *Sriharan*, was categorical that 'courts cannot and ought not to deny to a prisoner the benefit to be considered for remission of sentence. By doing so, the prisoner must be condemned to live in the prison till the last breath without there being a ray of hope to come out. This stark reality will not be conducive for reformation of the person and in fact push him into a dark hole without there being semblance of light at the end of the tunnel'.[170] Responding to the referral question as to whether a special category of sentence, like in *Swamy Shraddananda(2)*, can be made in cases where the death penalty is substituted by the punishment for imprisonment for life or imprisonment for a term in excess of 14 years and to put that category beyond application of remission, he observed that it is neither 'open to the court to make any special category of sentence in substitution of death penalty and put that category beyond application of remission' or 'to stipulate any mandatory period of actual imprisonment inconsistent with the one prescribed under section 433A of the CrPC'.[171] He observed:[172]

> The law on the point of life imprisonment as laid down in *Godse's* case is clear that life imprisonment means till the end of one's life and that by very nature the sentence is indeterminable. Any fixed term sentence characterized as minimum which must be undergone before any remission could be considered, cannot affect the character of life imprisonment but such direction goes and restricts the exercise of power

169 *Id*., para 94.
170 *Id*., para 284.
171 *Id*., para 287.
172 *Id*., para 286.

> of remission before the expiry of such stipulated period. In essence, any such direction would increase or expand the statutory period prescribed under section 433A of Code of Criminal Procedure. Any such stipulation of mandatory minimum period inconsistent with the one in section 433A, in our view, would not be within the powers of the Court.

It is submitted that the courts in the post- *Swamy Shraddananda(2)* were somehow missing a fundamental point that the role of the court is to adjudicate guilt and pronounce punishment commensurate to the guilt. The execution of punishment was not their forte. The punishment ironically was being conceptualized with respect to the executive. The *Sangeet*[173] judgment did try to strike a warning signal and cautioned the court against an artificial construct of 14 years and 20 years but was rejected as per *incuriam* as *Swamy Shraddananda* (2) was a three-judge bench decision and *Sangeet* was of a smaller bench. The minority judgment of U U Lalit J (concurred with by Abhay Manohar Sapre J), which, in the present submission, seems to be more appealing in terms of courts powers in the domain of punishment and rehabilitative philosophy dominating in sentencing, encapsulated what we have been arguing in the previous survey[174] that the court cannot interfere in the domain of the executive. But now unfortunately this is the law of the land.

Compounding a non-compoundable offence-a ground for reduction of sentence?

The apex court, in a few cases reported in the year, was called upon to put its seal of approval for dropping criminal proceedings or punishment on account of compromise or out of court settlement entered between the parties to an offence punishable under section 307 of the Penal Code. And the judicial response has been un uniform.

In *State of Madhya Pradesh* v. *Manish* ,[175] the Supreme Court turned down the order of the high court quashing criminal proceedings initiated in the court subordinate thereto under, *inter alia*, section 307, IPC, on the ground that the injured party does not want to prosecute the accused as the matter was settled out of court. Recalling ruling of a three-judge bench in *Gian Singh* v. *State of Punjab*,[176] dealing with the circumstances and types of cases wherein the high courts' are expected to invoke and exercise their inherent power under section 482, CrPC, when, *inter alia*, parties have reached to a compromise in cases of non-compoundable offences, the apex court ruled that the High Court of Madhya Pradesh has failed to appreciate the legal propositions (laid down in *Gian Singh* case). It set aside the high court's order and directed the trial court to proceed with the trial in accordance with law.

173 *Sangeet* v. *State of Haryana* (2013) 2 SCC 452.

174 Jyoti Dogra, "Criminal Law" XLIX *ASIL* 450 (2013).

175 (2015) 8 SCC 307.

176 (2012)10 SCC 303. Also see *State of Madhya Pradesh* v. *Deepak* (2014) 10 SCC 285; *Narinder Singh* v. *State of Punjab* (2014) 6 SCC 466.

The apex court in *Mohar Singh* v. *State of Rajasthan*,[177] refused to appreciate compounding of offence under section 307, IPC, and to interfere with the conviction of the appellants-accused (under section 307 read with section 34, IPC) recorded by the trial court, and affirmed by the high court. But it 'thought it just' to reduce the period of the sentence of rigorous imprisonment from 5 years to 3 years by taking note of the fact that the injured party appeared in person before it and stated that he is no more interested in prosecuting the appellant-accused. The court, however, put a caveat that this ruling thereof should not be treated as precedent for sentencing in respect of offences punishable under section 307, IPC. But such an order, in the present submission, will definitely lead to a legitimate expectation of reduction in sentence for the parties wanting to compound even serious non-compoundable offences.

VII PROCEDURE TO BE ESTABLISHED AFTER CONFIRMATION OF DEATH SENTENCE

In *Shabnam* v. *Union of India*,[178] the apex court was called upon to look into the legality and propriety of death warrants that were issued (against the appellant-convict and her paramour, who were sentenced to death for killing 7 persons belonging to the family of the appellant-convict) by the sessions court six days after the rejection of their appeal by the Supreme Court. The execution of death warrants within six days of the dismissal of the criminal appeals by the Supreme Court, contended the convicts, is violative of article 21 of the Constitution, and thereby is illegal. It was also contended that the procedure articulated by the High Court of Allahabad in its pronouncement in *PUDR*[179] needs to be followed before executing death sentence of a convict. The essential procedural safeguards that need to be observed, according to the high court, are: (i) sufficient notice need to be given to the convict before a death warrant by the sessions court is issued to enable the convict to consult his lawyer and to be represented in the proceedings; (ii) the death warrant must specify the exact date and time for execution and not a range of dates which places a prisoner in a state of uncertainty; (iii) a reasonable period of time must elapse between the date of the order on the execution warrant and the date fixed or appointed in the warrant for the execution so that the convict will have a reasonable opportunity to pursue legal recourse against the warrant and to have a final meeting with the members of his family before the date fixed for execution; (iv) a copy of the execution warrant must be immediately supplied to the convict; and (v) where a convict is not in a position to offer a legal assistance, legal aid must be provided.[180] The apex court stressed that the death warrant issued against the appellant-convict (and her paramour) is impermissible and unwarranted because: (i) the convicts have not exhausted their judicial and administrative remedies, which are still open to them even though their appeals in the apex court have failed,

177 (2015)11 SCC 226.

178 (2015) 6 SCC 702.

179 *People's Union for Democratic Rights (PUDR)* v. *Union of India*, 2015 SCC Online All 143.

180 *Supra* note 178, para 11.

and the review petition, by virtue of the *Mohd Arif* dictum,[181] is required to be heard by a bench of minimum three judges in the open court by giving them an opportunity to make their oral submissions; (ii) their right to file mercy petition, under article 72/ 161 of the Constitution to the President of India or the State Governor, is still intact; (iii) no person, by virtue of article 21 of the Constitution, can be deprived of his right to life and personal liberty except according to the procedure established by law (read 'due procedure'); and (iv) the right to human dignity, that can legitimately be read under article 21 of the Constitution, does not end with the confirmation of the death sentence of the convict, but it goes beyond that and remains valid till the convict meets his last destiny.[182] The apex court ruled that no death sentence can be carried out in an arbitrary, hurried and secret manner without allowing the convicts to exhaust all legal remedies. It also ruled that the procedural safeguards prescribed in the *PUDR* dictum (indicated above) are not only in consonance with article 21 of the Constitution, but are mandatory in execution of death sentence.[183] The apex court, with these rulings and observations, quashed and set aside the death warrants of the appellant-convicts and directed the respondent to follow the procedure laid down by the High Court of Allahabad in its *PUDR* dictum.[184]

VIII COMPENSATING VICTIMS OF CRIME

On occasions more than one, the apex court has said that victims of crime are neglected and they are not adequately compensated in spite of the fact that the CrPC provides therefor.[185] The enabling compensatory provision is hardly used by the courts in India to compensate victims of crime.[186] They and their legitimate interests in the administration of criminal justice are overlooked. The apex court advised the courts subordinate thereto to use their legislative power to compensate victims of crime liberally to meet the ends of justice.[187] In fact, the apex court, of late, has been stressing that meeting interests of victims of crime is one of the significant attributes of just and humane administration of criminal justice.

In *Vinay* v. *State of Karnataka*,[188] reiterating some of the facets and objectives underlying the need for compensating victims of crime, re-stressed that 'the power of

181 *Mohd. Arif @ Ashfaq* v. *Registrar, Supreme Court of India* (2014) 9 SCC 737.

182 *Id.*, paras 13-14.

183 *Id.*, paras 20-21.

184 *Id.*, paras 22-23. However, what is required to be seen is as to whether the condemned prisoner had reasonable opportunity to assail the death warrant. If he had once, the death warrant cannot be quashed on the ground of lack of opportunity to exhaust legal remedies. See, *Yakub Abdul Razak Memon* v. *State of Maharashtra* (2015) 8 SCALE 339. For further comments see, K I Vibhute, "Right to Human Dignity of Convict under 'Shadow of Death' and Freedoms 'Behind the Bars' in India: A Reflective Perception" 58 *JILI* 15 (2016).

185 See Code of Criminal Procedure, s. 357.

186 *Hari Singh* v. *Sukhbir Singh* (1988) 4 SCC 551; *Dilip S Dahanukar* v. *Kotak Mahindra Co Ltd* (2007) 6 SCC 528.

187 *Ankush Shivaji Gaikwad* v. *State of Maharashtra* (2013) 6 SCC 770.

188 2015 (5) SCALE 314.

courts to award compensation is not ancillary to other sentences but is in addition thereto' and 'the power is intended to do something to reassure the victim that he is not forgotten in the criminal justice system'. It, being a measure reconciling the victim with the offender and a step forward in our criminal justice, 'needs to be exercised liberally to so as to meet the ends of justice in a better way'. However, it cautioned the courts to take into account the facts and circumstances of the case at hand and the capacity of the accused to pay before issuing the compensation order.[189]

In fact, the apex court elsewhere[190] stressed that it is a paramount duty of every court not to ignore the substantial sufferings of victims of crime but to safeguard their rights as diligently as those of the perpetrators. It is duty of the court to duly consider the aspect of rehabilitating the victim. Apart from sentence and fine or compensation to be paid by accused to his victim, the court, in appropriate cases, has to award compensation to be paid by the State under section 357A of the CrPC when the accused, in its opinion, is not in a position to pay a fair compensation.[191]

In *Suresh* v. *State of Haryana*,[192] wherein the appellants-accused, who were convicted for kidnapping for ransom and death in pursuance of criminal conspiracy and common intention and sentenced to life imprisonment and other minor sentences by the trial court and affirmed by the high court, preferred appeal to the Supreme Court against their conviction and sentence. After recalling apt judicial dicta on compensating victims of crime and the legislative intent behind inserting section 357A in the CrPC, the Supreme Court reiterated, with emphasis, that it is the duty of the courts, on taking cognizance of a criminal offence, to ascertain whether the victim is identifiable and whether the victim of crime needs immediate financial relief. If he needs it, it is incumbent on the court, on application by the identified victim or on its own motion, to award interim compensation, subject to determination of final one at a later stage. While determining the amount of compensation, gravity of the offence and need of the victim are to be kept in mind as guiding factors.[193]

189 With this zeal, the court reduced the sentence of 3 months' rigorous imprisonment (reduced by the high court from 3 years' rigorous imprisonment imposed by the trial court under s. 307 and s. 427 read with s 34, IPC) to the period already undergone, but increased the amount of fine from Rs 4, 000 imposed on each of the appellants to Rs 25,000 to compensates the victims.

190 *Mofil Khan* v. *State of Jharkhand* (2015) 1 SCC 67.

191 *State of Madhya Pradesh* v. *Mehtaab* (2015) 5 SCC 197. In this case the Supreme Court, to justify the period of rigorous imprisonment reduced by the high court from 1 year (under s. 304A) and 3 months (under s. 337) to 10 days (the imprisonment already undergone), asked the respondent to pay Rs 2 Lac by way of compensation to the heirs of the deceased. Realising that the amount of compensation awarded is too meagre to compensate but the respondent, given his financial status, cannot be asked to pay more, the court ordered the state to pay an interim compensation of Rs 3 Lacs under s 357A of the CrPC. Also see, *State of Himachal Pradesh* v. *Ram Pal*, 2015 (3) SCALE 111, wherein the Supreme increased the amount of compensation of Rs 40,000 (awarded by the high court) to Rs 1 Lac.

192 (2015) 2 SCC 227.

193 It ordered the State of Haryana to pay an interim compensation of Rs 10 Lacs (under s. 357A, CrPC) to the family of the deceased.

In *Jage Ram* v. *State of Haryana*,[194] the Supreme Court ordered one of the appellants-accused, who was convicted under section 307, IPC, and sentenced to rigorous imprisonment for a term of 5 years by the trial court, and confirmed by the high court, to undergo rigorous imprisonment for a period of 3 years and to pay Rs. 7,50,000 by way of compensation to his victim.

Nanda Gopalan v. *State of Kerala*,[195] presents a very interesting facet of judicial zeal in compensating victims of crime. The trial court convicted the appellant-accused under section 324 and section 326 of the IPC and sentenced him to suffer rigorous imprisonment for a period of 2 years and of 5 years respectively. In addition, a fine of Rs 10,000 under section 326 was also imposed on him. The high court, on appeal, confirmed the conviction and sentence of the accused under section 324. It, however, reduced the term of rigorous imprisonment (awarded under section 326) to 3 years and enhanced the amount of fine to Rs 30,000 (to be paid to the injured by way of compensation).[196] During pendency of the appeal before the high court, both the parties, being close relatives, reached to a settlement and moved an application to the high court for compounding the offence under section 324 and quashing the charge under section 326 on the basis of the compromise. The high court dismissed the application on the ground that a non-compoundable offence cannot be settled between the parties. The Supreme Court, on appeal against the order and judgment of the high court, was encountered with the question as to whether charges, based on a compromise between close relatives (who were party to the case), can be altered to section 323 and section 325, IPC, and thereby render them compoundable. Placing reliance on its earlier judicial pronouncements dealing with compounding of a non-compoundable offence and relevance of compromise between the parties in a non-compoundable offence in sentencing, the apex court vehemently rejected such a trading- off charges (on the basis of compromise) as there was no legal basis for the same, but accepted the proposition that compromise between the parties to settle a non-compoundable offence allows the court to alter punishment. It, accordingly, reduced the sentence of imprisonment of the appellant-accused to the period already undergone, but increased the amount of compensation to Rs 2 Lacs to be paid to the victim within three months, failing which the sentence given by the high court would stand affirmed.[197] Nevertheless, it, in the present submission, leaves behind a debatable issue whether such kind of a trade-off of imprisonment with (enhanced) compensation augurs well for the criminal justice administration.

Ranjan v. *Joseph*,[198] adds another facet of long-term positive dimensions to the victim - compensatory jurisprudence. A maid, working with respondents, died because of electric shock when she, on the instructions of the respondents, was operating a

194 2015 (1) SCALE 741.

195 (2015) 11 SCC 137.

196 *Nanda Gopalan* v *State of Kerala*, 2015 Cri LJ 1038 (Ker).

197 *Supra* note 195, para 16.

198 (2015) 8 SCC 436.

washing machine. The death was accidental. But on private complaint by her husband, the appellant, the magistrate took cognizance of the case under section 304-A, IPC. The high court, invoking section 482 of the CrPC, quashed the proceedings. The appellant-husband of the deceased, by special leave, challenged the quashing order of the high court and contended that his wife died due to rash and negligent acts of the respondents. The apex court, after perusal of the factual matrix, was also of the opinion that it was an accidental death and the respondent had no rash or negligent role in it. It concurred with the high court's ruling quashing the proceedings under section 304-A. However, the apex court was of the view that since the death of the deceased was during the course of employment in the respondent's home, it is axiomatic that the victim's family is compensated. It directed the respondents to pay 1 Lac to the appellant-husband of the deceased within four weeks apart from Rs 1 Lac that was to be paid to him from the Chief Minister's Distress Relief Fund. The ruling of the apex court is not only a welcome move in strengthening the victim-compensatory jurisprudence in the unorganised sector but will also hopefully initiate compensatory move in other identical fact-scenario situations.

IX CONCLUSION

As in the past the homicide provisions remained a confusing area. The court's discussion on the applicability of part I or part II of section 304, IPC, left much to be desired.[199] The court seems oblivious of the huge gap in the punishment in the two parts and hence does not engage in a serious deliberation as to the applicability of the either part and does it without application of fundamental principles of criminal liability. The judicial narrative on crime against women is another area which leaves much to be desired. Case after case the courts insinuate that in a rape case the dignity of a woman gets blemished forever. The court must realize that the dignity rights get attached to a person because of his/her being born as a human being and so nothing can take it away or 'create a concavity in the dignity'.[200] Rape is a sexual assault of an aggravated form which needs to be dealt sternly. The law and in turn the judicial pronouncements are norm- creating as well and so when the body of a woman is referred 'as her own temple' and rape resulting in her 'purest treasure'[201] being lost does more harm than good. Judicial response to rape of minor and death is far from uniformity and seems to be indecisive. The courts are expected to refrain from resorting to such Victorian discourse in the twenty-first century. The woman must have control of her sexuality and under no circumstances should anyone be able to interfere in that. Again in *Shabnam*,[202] the court engaged in a discourse on conditions in India and the role of familial relations. The court was of the view that daughters 'dutifully bear the burden of being the caregivers for her parents, even more than a son….. She is a caregiver and

199 See for example *Balu* v. *State of Maharashtra, supra* note 32.

200 *Parhlad* v. *State of Haryana, supra* note 50.

201 *State of Madhya Pradesh,* v. *Madan Lal, supra* note 56.

202 *Shabnam* v. *State of Uttar Pradesh, supra* note 150.

a supporter, a gentle hand and responsible voice, an embodiment of the cherished values of our society and in whom a parent places blind faith and trust.'[203] The court perhaps was more appalled by the sex and familial status of the accused and the very fact that the accused was not playing the designated role given to her by the society. The narrative of the court, when women commit crime or are victims of crime, leaves much to be desired. There is a need to deconstruct these gender dimensions of criminal law.

Sentencing continues to be 'judge-centric', rather than 'principle-centric'. In *Vasanta* case[204] death penalty was confirmed where the accused was declared to be beyond reformation and rehabilitation but in *Kalu's* case the apex court cautioned itself that life and death are divine acts and the court must exercise it very sparingly. How the court reached a conlusion in *Vasanta* that the man is beyond reformation is an enigma. How did and on what parameters a court see (or fail to see) ray of hope for reformation and thereby opt for 'life' in lieu of 'death'? Did the state try to reform him and failed? Are our prisons, with overcrowding and lacking basic amenities, a test place for reformation? These questions will have to be addressed by the judiciary before making such sweeping statements. *Uphaar* case[205] judgment is another serious blot on the judiciary. The surveyor had argued in the last 'Survey' that it would be difficult to bring the case under section 304 part II as was the contention of the AVUT. It was also mentioned that since rash and negligence has been bracketed together in section 304A, the judiciary would have to confine itself to section 304A and the legislature must revisit the section.[206] But strangely, the court did not award the stipulated 2 years' imprisonment but enhanced the amount of fine in lieu of one year incarceration. Is it the 'blood money' in its modern avatar! And interestingly in *Abdul Waheed*,[207] age of 90 years of the accused did not move the court as two persons had died and many were injured by his act but in *Uphaar* case age (and a much lesser than 90) became a mitigating factor resulting in innovative sentencing – bartering of fine with imprisonment. As far as executive domain of remission is concerned the majority judgment in *Sriharan,*[208] has diluted it. And the whimsical construct of 20, 25, 30 years' of life imprisonment, in lieu of death sentence, is there to stay in the criminal law firmament!

Victim-compensatory jurisprudence, like in the past, has been not only re-emphasised as an integral component of 'criminal justice' but also took lead in extending it to unorganised sector.[209] Hope, courts, in due course of time, will take it further.

203 *Id*., at 649.

204 *Vasanta Sampat Dupare* v. *State of Maharashtra, supra* note 73.

205 *Sushil Ansal* v. *State, supra* note 49.

206 Jyoti Dogra Sood, "Criminal law" L *ASIL* 437-38 (2014).

207 *Abdul Waheed* v. *State of Uttar Pradesh, supra* note 157.

208 *Union of India* v. *Sriharan, supra* note 159.

209 *Ranjan* v. *Joseph, supra* note 198.