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CRIMINAL LAW

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I INTRODUCTION

GLANVILLE WILLIAMS remarked, "a crime is an act capable of being followed by criminal proceedings having a criminal outcome."[1] The decision to make any act a crime sends out a strong message that there is a public interest involved in ensuring that such an act is not committed and, if committed, it must be visited by pain of punishment to the offender. The courts in India, especially the apex court, have been doing a commendable job. The judges, by and large, uphold the rule of law by applying law in a non arbitrary manner, rationalizing it where needed and following precedents generally. At the heart of all this lies the requirement of doing justice to individuals and meting out punishment to the guilty. Hart voices this aspect of criminal law in the following words:[2]

> [T]he principle that punishment should be restricted to those who have voluntarily broken the law…incorporates the idea that each individual person is to be protected against the claim of the rest for the highest possible measure of security, happiness or welfare which could be got at his expense by condemning him by a breach of rules and punishing him. For this a moral license is required in the form of proof that the person punished broke the law by an action which was the outcome of his free choice … it is a requirement of justice.

The present survey is an attempt to examine the very rationality and legality of the decisions rendered by the courts in the year 2016 for various IPC crimes.

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1 Glanville Williams, "The Definitions of Crime" [1955]CLP 107 at 130.

2 Hart, 1968, 22 quoted in Alan Norrie, *Crime, Reason and History* 13 (Cambridge University Press, 2014).

II OFFENCES AGAINST BODY

Transferred malice

The requirement for liability is that the defendant sets out to commit an offence with respect to an *intended* victim. But it may so happen that he mistakes another for the intended victim, nonetheless the offence is said to be committed. The law regards intent as transferred and the offence as committed against the actual victim.[3] Section 301 IPC takes into account the transferred malice.

In *State of Rajasthan* v. *Ram Kailash,*[4] two persons riding on the motorcycle were followed by two persons on another motorcycle which included the appellant accused. He fired from his gun and the bullet hit on the lower side of the right chest of the person who was driving the followed motor cycle. The man died in the hospital after six days of the incident. The doctors opined that the gun shot injury was of such a nature as was likely to cause death. There was clear cut intention, on the part of the accused, to cause such injury but perhaps the offender did not know whom he was causing harm out of the two riding on the followed motorcycle. However, since death was caused the trial court convicted the accused under section 302 IPC apart from the Arms Act, 1959. The high court altered the conviction from section 302 to section 304 part I on the specious reasoning that the intended victim was not known. The fact that there was only one gunshot injury was also mentioned and the case was brought under section 299 clause (b) and conviction was altered to one under section 304 part I. In appeal, the apex court quoted from *State of A.P.* v. *Rayavarapu Punnayya,*[5] and delineated the steps to be considered for a murder conviction and where the high court had erred. The court also pointed out that the high court failed to take section 301 into consideration and restored the trial court conviction under section 302.

The doctrine of transferred malice and its connect with subjective guilt remains a topic of considerable controversy - whether defendant's original intent be linked to the ultimate death?[6] Section 301 IPC makes it abundantly clear that the offender is to be held guilty if the culpable homicide "is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause".

Murder

In *Nankaunoo* v. *State of U.P.,*[7] there was an altercation between a barber and his customer in the day time with the latter leaving the shop with a threat to the former. In the evening when the barber (since deceased) was out to answer nature's call, the accused appeared with a pistol and threatened him, as he had insulted the

3 See Andrew Ashworth, *Principles of Criminal Law* 193 (2009).
4 (2016) 4 SCC 590.
5 (1976) 4 SCC 382.
6 *Attorney General's Reference (No. 3 of 1994)* [1998]1Cr App R 91.
7 (2016) 3 SCC 317.

accused in the day time. He ran to save his life and the accused fired from the pistol which hit the deceased on his left thigh and he fell down. He was taken to the hospital and was declared brought dead. After committal to sessions court, the charges were framed. The sessions court pronounced him guilty under section 302. The high court dismissed the appeal against conviction.

In the apex court the counsel for the appellant, *inter alia*, contended that the gunshot injury was on the lower part of the left thigh which is a non-vital organ and hence the conviction under section 300 thirdly was flawed. *Virsa Singh* v. *State of Punjab,*[8] the *ratio* of which has come to occupy a locus-classicus position, was discussed in detail.[9] The court was of the view that due to the occurrence in the morning and his subsequent firing from the pistol, the intention was proved. Dealing with sufficiency of the injury to cause death (which must be proved and cannot be just inferred from the fact that death has taken place) and other details of the case the court altered the conviction from section 302 to section 304 part I IPC. But what is worrisome is that the alteration was done on the omission to elicit evidence from the doctor that the said injury was sufficient in the ordinary course of nature to cause death.' Writing a critique on *Gudar Dusadh* v. *State of Bihar,*[10] B.B. Pande[11] had criticized the court for this assessment of objective liability, which relied heavily on post-mortem report and medical opinion. Pande categorically cautioned that "assessment of the nature of injury solely on the basis of an expert opinion instead of the opinion of a reasonable man can hardly be justified under the third clause, which envisages an assessment of the injury only on the basis of the *ordinary objective standard of a reasonable man*." The end result of the judgment may be right but the reasoning employed, that "the prosecution has not elicited from the doctors that the gunshot injury on the inner part of left thigh caused rupture of any important blood vessel and that it was sufficient in the ordinary course of nature to cause death" is perhaps flawed. As is mentioned above, the assessment must necessarily be on the basis of ordinary objective standard of a reasonable man.[12]

Forcible sexual intercourse with his niece and on her threatening to lodge a a complaint, the accused poured kerosene over her and set her on fire form the gory

8 AIR 1958 SC 465.

9 It is clearly laid down that the prosecution must prove (1) that the body injury is present, (2) that the injury is sufficient in the ordinary course of nature to cause death, (3) that the accused intended to inflict that particular injury that is to say it was not accidental or unintentional or that some other kind of injury was intended. In other words Clause Thirdly consists of two parts. The first part is that there was an intention to inflict the injury that is found to be present and the second part that the said injury is sufficient to cause death in the ordinary course of nature. Under the first part the prosecution has to prove from the given facts and circumstances that the intention of the accused was to cause that particular injury. Whereas the second part whether it was sufficient to cause death is an objective enquiry and it is a matter of inference or deduction from the particulars of the injury.

10 AIR 1972 SC 952.

11 B.B. Pande, "Limits on Objective Liability for Murder," 16 *JILI* 469-82 (1974).

12 *Id.* at 474.

facts in *State of Assam* v. *Ramen Dowarah.*[13] The girl died of burns after two months. Her dying declaration was a testimony to the gruesome rape and murder. The trial court convicted the accused as he intended to cause death by setting her ablaze so that his nefarious deeds did not come out in the open. However, the high court held that the accused did not intend death and altered the conviction to section 304 part II! The apex court in appeal held that the high court erred in its ruling that death was not intended. The accused wanted to cover up the gruesome act (as evidence pointed that sexual intercourse was not consensual) and wanted to get rid of the victim by causing her death. The injuries were not dangerous to life and that's why she could survive for two months is not the test. The court restored the conviction of rape and murder given by the trial court.

Last seen together

Section 106 of the Indian Evidence Act, 1972 states that "when any fact is especially within the knowledge of any person, the burden of proving the fact is upon him". And hence the burden is on the person who is last seen with the deceased as to how and when they parted company. A criminal case is always a recreation of events that may have happened and the 'last seen together' has always been a strong indication of the guilt of the accused. But in no way is it conclusive of the guilt of the accused. It has to be corroborated by circumstantial evidence.[14] The factual matrix narrated in *Praful Sudhakar Parab* v. *State of Maharastra*[15] reveals that the accused and the victim, both were working in the police department. The accused came in the evening to the victim's house and asked the victim to accompany him back to office on the pretext that the senior had called him. The victim never came back and on inquiry it was found that the superior had not called him. Later, the accused confessed to the murder and took the police to the place where the body was kept. The sessions and the high court convicted the accused on the basis of 'last seen together' theory which was substantiated by circumstantial evidence. The apex court rightly endorsed the findings of the courts below.

In *Gajanan Dashrath Kharate* v. *State of Maharashtra,*[16] there was no mention of the post mortem report or the doctor's evidence but a father was found dead in the house. Prosecution witnesses had heard his wailing and there used to be constant fights between the father and the son. He could not explain the homicide death of the father though he was in the house and it became a strong circumstantial evidence against the accused. He was held responsible for the commission of the crime.

13 (2016) 3 SCC 19.

14 See *Ashok* v. *State of Maharastra* (2015) 4 SCC 393; *Nizam* v. *State of Rajasthan*, 2015 (9)SCALE 513; *Raghuvendra* v. *State of M.P*. (2015) 2 SCC 259; *State of Uttar Pradesh* v. *Satvir* (2015) 9 SCC 44.

15 (2016) 12 SCC 783.

16 (2016) 4 SCC 604.

Causation

In result crimes, causation is a key issue. In case of result crime, the prosecution has to discharge the burden of proving that the defendant *cause* the result. So the issue involved is not *what* caused the result but did the defendant *cause* the result? And for this the prosecution would have to establish both causation *in fact* and causation *in law.* Once these two are established it will have to be considered whether or not any intervening circumstance broke the chain of causation *i.e., novus actus interveniens*. If the chain is broken then the defendant is not liable for the result crime. The intervening act may be of the victim himself/herself or of some other agency. If the act of the victim was not reasonably forseeable, the chain of causation breaks. Keeping these principles of criminal law in mind we may now examine *Rajesh* v. *State of M.P.*[17] and *Govindaswami* v. *State of Kerala.*[18] Both the cases were decided by the same bench within a span of 10 days. While the former was an order, the latter was a judgment.

Rajesh case involved a minor victim. The girl child, about seven years of age, was adopted by a guardian who wanted to bring up the minor as his own daughter. The factual matrix revealed that the child was repeatedly raped and sodomized and the neighbours would often hear her cries. This battered child ultimately died and a post mortem was conducted which revealed about 31 injuries. There was unflinching evidence of repeated sexual assault, both natural and unnatural. The expert opined that it was a case of battered child who had been repeatedly sexually assaulted and "death was due to asphyxia as a result of aspiration of gastric content in the air passage". The accused was convicted under sections 302/376 and 377 IPC and was given death penalty under section 302 IPC and life imprisonment under sections 376 and 377 IPC, both by the trial court and the high court. The apex court, on perusal of the case, upheld the sentence of life imprisonment under sections 376 and 377 IPC but engaged in reconsideration of the charge under section 302 IPC. The court concluded that since death was due to asphyxia and the injuries that were caused by the accused on the *day of the incident* (*i.e,* the day on which the child ultimately succumbed to this inhuman treatment) were either on the skull or the hand or thumb, it could not have been the reason for the death and hence the accused was not guilty under section 302 but was liable under section 325.

The question to be asked is: Is it the conclusion of the court that the injury caused to the child was not responsible for death or is it that of the doctor? As a law person the doctor's report has only a limited value (though an important one).[19] The doctor being not a legally qualified person gives a mechanical reasoning. But the court must appraise the evidence, including the doctor's report by close scrutiny. The court observed that "none of the injuries have been caused on any part of the body of

17 (2017) 4 SCC 386.
18 (2016) 16 SCC 295.
19 *Umesh Singh* v. *State of Bihar* (2013) 4 SCC 360 at 373.

the victim which could reasonably lead the court to conclude that the said injuries could have caused death."[20] What about the cumulative effect of the injuries caused over a period of time, day after day? If the court had left aside the single statement by one Dr. A.K. Rastogi (P.W 15) and examined the post mortem report, would it not have led to a reasonable conclusion that the death occurred because of the cumulative effect of these injuries?[21] The child had broken down one day and perhaps it was on a day sexual assault (natural and unnatural) was not inflicted but she had sustained injuries on other parts of the body - head, thumb *etc*. It is submitted that section 33 of the Code defines "act" as a series of acts as a single act.[22] The age of the child, the past history of sexual abuse and beatings over a long period of time, the injury on the thumb and the head could have been taken as enough to traumatize a child to the extent of causing aspiration of gastric content in the air passage resulting in asphyxia. The tender age of the child should have been kept in perspective.

The issue of causation, it is submitted, must be dealt extensively in such cases so as to leave no scope for obscurity. This is recorded as an 'order' of the court and not judgment, perhaps that was the reason for a very cryptic discussion. The opinion given by medical witnesses need not be the last word on the subject. Such an opinion needs to be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all, opinion is what is formed in the mind of a person regarding a fact situation. The court has no liability to go by that opinion merely because it is said by the doctor. "Of course due weight must be given to opinions given by persons who are experts in the particular subject."[23]

The other case is equally horrendous.[24] A woman was alone in a ladies compartment where she was assaulted by a 'habitual offender'. The people in the other compartment heard her crying and wailing. And then one man saw her jump/ pushed from the train. The accused also jumped from the other side, lifted the victim to another place and sexually assaulted her. She later succumbed to her injuries in the hospital. The post mortem report revealed injuries including one which is "caused only if the head is forcefully hit backward and forward against a hard flat surface".

One must keep in mind that while deciding such cases, the causation has to be dealt with and that can be done by recreating the crime scene as per the available evidence. The victim had fracture on maxilla and mandible and 13 teeth had also

20 *Supra* note 17 at 392.

21 In *Mahavir Singh* v. *State of M.P.* (2016) 10 SCC 220 at 228 the court explained the relevance of medical evidence and stated that ocular testimony of a witness has greater evidentiary value *vis a vis* medical evidence. However, the court cautioned that if the medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of evaluation of evidence. The point that needs to be noted is that medical evidence is not put on a high pedestal and beyond questioning or beyond alternative possibilities. The totality of the case has to be kept in mind.

22 S. 33 IPC. See also, *Om Prakash* v. *State,* AIR 1961 1782.

23 *State of Haryana* v. *Bhagirath* (1999) 5 SCC 96 at 101.

24 *Govindaswamy, supra* note 18.

severed. These lead to an assumption that she was rendered insensitive as a result of these injuries. In the absence of natural reflex, when she jumped/pushed, the face had to bear the brunt of the fall. These injuries in itself have the potential to attract the provisions of section 300 IPC. The possibility of her jumping out was not ruled out in light of the fact of the admissible hearsay evidence that victim had "jumped out … and escaped." The accused also jumped out and then raped her. The trial court and the high court convicted him under section 376 read with section 302 IPC. It may be mentioned that the trial court had the opportunity to see the demeanour of the witnesses which is of extreme significance in such cases.[25] And without doubt, it may be said, that watching the demeanour of a witness, credibility of his/her testimony can be best assessed.

The death, as per the expert evidence, was caused due to keeping her in a supine position. That made the apex court in appeal to acquit the accused of the section 302 IPC charge on a facile argument that the accused kept her in a supine position to rape and not to kill! Now, let us just try and establish the chain of causation necessary in law. The attack in the ladies compartment, as per available evidence, stands proved. The fall/jump from the train is attributed to the victim but that does not break the chain as it was a fallout of the assault in the ladies compartment. In an English case *Roberts*[26] the victim jumped from a moving car when the driver made unwanted sexual advances. It was held that the victim's reaction was "reasonably foreseeable" and did not break the chain of causation. Hence the fall and the subsequent injuries and then the rape, all cumulatively accounted for her death which under the circumstances was "reasonably foreseeable". To say otherwise is to misunderstand the principle of causation so fundamental to homicide offences. Nowhere in the entire transaction did the chain of causation snap and hence to discharge the accused of section 302 is, to say the least, shocking!

If one examines the trial court's judgment,[27] it was opined by the doctor that the head injury caused was enough to cause the death and hence the case fell squarely under section 300 IPC. Further, the medical evidence proved that the head injury (marked as injury no. 1) was caused by "repeated, rapid and intentional bang on a flat surface." Given the gruesome manner in which the accused had inflicted the injuries, it clears the test of objective standard of a reasonable man and brings the case clearly under thirdly of section 300 IPC. The accused under the circumstances (injury no. 1 and then this jump/ falling on the face, wounds) should be deemed to have foreseen that death or serious injury was virtually certain.

25 See also, *State of H.P.* v. *Sanjay Kumar* (2017) 2 SCC 51 at 67 and *Sunil Kumar Sambhudayal Gupta* v. *State of Maharashtra* (2010) 13 SCC 657.

26 *R*. v. *Roberts* [1971] EWCA Crim 4 Court of Appeal.

27 *State of Kerala* v. *Govindaswamy,* Sessions Case No. 345/2011 at Fast Track Court No. 1, Thrissur.

Contrast these cases with *State of M.P.* v. *Goloo Raikwar*[28] where the high court altered the conviction to section 304 part I from section 302 IPC. The doctor's evidence, in this case, was that death had resulted from excessive bleeding from injury no. 3 which was on the knee (knee not being a vital organ). The apex court refused to accept this reasoning and taking the totality of the case that bomb was hurled, injuries were inflicted, took recourse to the discourse to *State of A.P.* v. *Rayavarapu Punnayya*[29] and restored conviction under section 302 IPC. The court in that case had held that "bodily injury" in clause thirdly includes also its plural, so that the clause would cover a case where all the injuries intentionally caused by the accused are cumulatively sufficient to cause the death in the ordinary course of nature, even if none of these injuries individually measure upto that sufficiency.[30]

In a case[31] of alleged perjury in *Prem Sagar Manocha* v. *State*[32] the court, in its discussion, gave very useful insights as far as expert evidence is concerned. The court affirmed that "expert evidence … is an opinion given by an expert and a professional … the duty of an expert is to furnish the court his opinion and the reasons for his opinion along with all the materials. It is for the court thereafter to see whether the basis of the opinion is correct and proper and *then form its own conclusion*"[33] The case was regarding initiating proceedings under section 340 Cr PC. But the observations, if read between the lines, clearly establish that the expert opinion may be useful but the ultimate conclusion is to be of the court and not that of the expert, as has been reiterated above

Culpable homicide not amounting to murder

The conviction in *Ram Autar* v. *State of U.P.*[34] was again under section 304 part I IPC as the factual situation revealed that there was no prior concert to commit murder, but it happened "on the spur of the moment and in an uncontrollable, embittered and agitated state of enragement, thus depriving the accused persons of the power of self control. Though during the assaults, the accused persons were understandably aware of the likely results thereof it is difficult to perceive that they had any common object of eliminating the deceased."[35] It is submitted that if this was the basis of the court's decision, then the conviction should have been under part II and not part I of section 304. Part II is lesser in degree of culpability and carries a lesser punishment. The apex court, while upholding conviction under part I, reduced it to seven years.

28 (2016) 12 SCC 139.
29 (1976) 4 SCC 382.
30 *Id.* at 394.
31 Also see *Rajwanta* v. *State of Kerala*, AIR 1966 SC 1874, *Virsa Singh*, *supra* note 8.
32 (2016) 4 SCC 571. For perjury see also *Dhiren Dave* v. *Surat Dyes* (2016) 6 SCC 253.
33 *Id*. at 581.
34 (2017) 2 SCC 449.
35 *Id*. at 453.

Similarly in *Prabhakar Vithal Golve* v. *State of Maharashtra,*[36] the apex court, though held that the crime was committed "in absence of intention to cause death" and "could be on account of sudden fight without premeditation in the heat of passion and upon a sudden quarrel," altered the conviction from section 302 to part I of section 304. There is no discussion in the case as to how it fell under part I and not part II of section 304.

In *Sanjay* v. *State of U.P.* with *Narendra* v. *State of U.P.,*[37] the accused Sanjay and Narender had developed enmity towards Roop Singh (since deceased) over the selling of a piece of land. Roop Singh and his wife were shot. Roop Singh was shot in the head and he underwent medical procedures and was discharged from the hospital in a 'stable' condition. Thereafter, he developed septicaemia and died after 62 days. To the charge of section 306, read with section 34, was added section 302 read with section 34 after the death. The trial court convicted the accused persons under sections 302, 307 read with sections 34 and 452 IPC. The same was confirmed by the high court. In appeal in the Supreme Court, the contention of the appellants, *inter alia,* was that when Roop Singh was discharged from the hospital his condition was stable and two months, thereafter Roop Singh died due to septicaemia and hence conviction under thirdly of section 300 was not applicable.

It is submitted that causation is at the heart of culpability. In this case, the factual causation, "but for" was satisfied; but the legal causation which links the proscribed harm to the act was not proved beyond reasonable doubt and hence the apex court altered the conviction from section 302 to section 304 part I.

A couple, fearing societal backlash as the families were opposed to the union, left their new born child of about 25 days on the river bank, hoping that a childless couple may see the abandoned baby and adopt the child.[38] The child died due to exposure. The explanation to section 317 IPC is very clear on the issue. And the couple was convicted under section 304 part II and sentenced to imprisonment for seven years.

In *Vijender* v. *State* (*Govt. of NCT of Delhi*),[39] a married woman Anita was having a live in relationship with one Zahir Alam (it is contested whether they were married). The family was unhappy with this arrangement and the brother Vijender and the husband Om Prakash went to Zahir's house to "somehow correct the situation". They caught Zahir Alam and questioned him about the relationship. Zahir told them that they were married whereupon they attacked him. Then they caught hold of Anita and Om Prakash attacked her with a knife and Vijender with a *thapki*. She sustained severe injuries and was taken to the hospital where she was declared brought dead.

36 (2016) 12 SCC 490.
37 (2016) 3 SCC 62.
38 *State of Karnataka* v. *Shekhar V. Harikanth*, ILR 2016 Kar 3455.
39 2016 SCC On Line SC 1605; AIR 2017 SC 701.

The court was of the view that the killing was done in the heat of passion upon sudden quarrel and without acting in a cruel and unusual manner and hence upheld conviction under section 304 part II. The court, it is submitted, may have been swayed by cultural concerns of honour and so made it out to be a case of heat of passion! The court's remarks that the brother "must have felt ashamed at the situation in which his sister is living" actually make out a case of honour killing (for which India is infamous) rather than heat of passion.[40]

Similarly, in *Gurpal Singh* v. *State of Punjab,*[41] the court altered the conviction from section 302 to section 304 part I on the reasoning that "facts do not commend to conclude that the appellant had the intention of eliminating any one of those fired at, though he had the *knowledge* of the likely fatal consequences thereof."[42]

The trial court convicted the accused persons under section 302 for the death of Babu Lal who received large number of injuries caused by lathis.[43] The high court altered the conviction to section 304 part II IPC and reduced the life imprisonment to one of slightly more than five years. The apex court in appeal, after having "considered all the relevant materials", was of the view that the conviction be altered to section 304 part I as the "accused persons caused indiscriminate assault and some of the injuries proved fatal. By the rashness of their act, the accused persons must be treated to be fully in know of the consequences of their acts including possible death." And eight years imprisonment was ordered.

It may be worthwhile to recall the observation in *Rampal Singh* v. *State of U.P.*[44] that the "court has to perform the very delicate function of applying the provisions of the Code to the facts of case with a clear demarcation as to under which category of cases, the case at hand falls and accordingly punish the accused". However, the decisions in the cases regarding section 304 part I and part II remain quite blurred and no clear cut formulation can be delineated.

Burden of proof

In *Nathiya*,[45] where the wife was allegedly having an illicit affair, her attempt to kill the husband by suffocating him with a pillow was within the knowledge of a few persons in the village. There was also a confessional statement and a strong suspicion towards the guilt of the wife and the paramour in the death of the husband. However, the prosecution failed to "elevate the case from the realm of "may be true" to the plane of "must be true" as is indispensably required in law for *conviction* on a criminal charge.[46]

40 See generally for 'heat of passion', *B.D. Khunte* v. *Union of India* (2015) 1 SCC 286.
41 (2017) 2 SCC 365.
42 *Id.* at 368. Emphasis added.
43 *State of Rajasthan* v. *Poona Ram* (2016) 12 SCC 501.
44 (2012) 8 SCC 289 at 300.
45 *Nathiya* v. *State* (2016) 10 SCC 298.
46 *Id.* at 305 (emphasis added).

In *Dhal Singh Dewangan* v. *State of Chhattisgarh,*[47] five homicidal killings were the facts in issue. The only male member present in the house was the appellant. The charges were under section 302 IPC for having killed his wife and four daughters. The accused was found in an unconscious state and a knife was found near his left hand. The mother of the accused, on seeing the dead bodies, ran out of the house screaming that her son had murdered his wife and children. It is axiomatic to mention that the house was locked from inside. The majority judgment, however, was not convinced by these averments and overturned the guilty verdict of the trial and the high court. It is surprising that in cases where there is crime against a woman within the four walls of a house, the burden is cast on the house mates specifically the husband, to explain the death. And in case after case, convictions have been upheld. But this case was treated differently. The trial court which has the advantage to assess the demeanour of the witnesses (including the accused), had given a guilty verdict. The only other person who was in the house at the critical moment was the mother who turned hostile.

Prafulla C. Pant J gave a dissenting judgment and dealt with all issues of the majority judgment. The dissenting judge very crisply remarks "the reason as to why she has turned hostile is not difficult to be found out. She was going to lose the only son left with her".[48] How can we not but agree with this? The minority judgment not only upholds conviction but considering the brutality of the offence, confirmed death sentence. So much for the burden of proof beyond a reasonable doubt! It sometimes feels that the objectivity of the provisions gets shadowed by the subjectivity of the judges deciding the case. The minority judgment seems better reasoned.

The court in *Yogesh Singh* v. *Mahabeer Singh*[49] was categorical that "the guilt of the accused must be proved beyond all reasonable doubts. However, the burden on the prosecution is only to establish its case beyond all reasonable doubt and *not all doubts*."[50] The court in *C.Muniappan* v. *State of Tamil Nadu*[51] was clear that defect in investigation cannot be a ground for acquittal. If that is allowed then the confidence of the people in the criminal justice administration will be eroded.

What seemed as something akin to honour killings failed in convicting the accused due to charges not being proved beyond reasonable doubt for homicide killings in *Baby* v. *Circle Inspector of Police, Adimaly*[52] and *Narinder Pal Singh* v. *State of Punjab.*[53] Again, in *Shahid Khan* v. *State of Rajasthan,*[54] death was as a result of homicidal violence but the case against the accused could not be proved beyond reasonable doubt.

47 (2016) 16 SCC 701.
48 *Id*. at 724.
49 (2016) SCC OnLine SC 1163.
50 *Id.,* para 15, (emphasis added).
51 (2010) 9 SCC 567.
52 (2016) 13 SCC 333.
53 2016 SCC OnLine SC 1607.
54 (2016) 4 SCC 96.

Brijlal v. *State of Rajasthan*[55] the accused was charged for murder and the facts revealed that he and his friend had gone to one Mohan Lal's house armed, baying for his blood. Mohan Lal escaped by scaling the wall and the villagers gathered together (which included women and children) to dissuade them from carrying their nefarious designs. The accused fired gunshots at the crowd which resulted in the death of three persons. The accused took the plea of exception 2 to section 300 and the trial court gave them the benefit of this exception. But what is surprising is that the trial court acquitted them, whereas this is just a partial defense which bails one out of the murder charge and fixes liability for culpable homicide not amounting to murder. The high court, on appeal by the state, convicted the appellant under section 302 and the same was upheld by the apex court. Khehar CJI quoted extensively from *Rizan* v. *State of Chhattisgarh,* and [56] held that "an accused taking a plea of the right of private defense is not required to call evidence; he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The burden of establishing the plea of self defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of material on record."[57]

III OFFENCES AGAINST WOMEN AND CHILDREN

Rape

Rape not only results in physical violence but also mental violence and the victim needs all the support from the family and the society at large. But in India, the politicians and institutions for their petty politics do not shy away from showing insensitivity to the victim. The sorry state of affairs in India is such that the apex court had to pass orders to a public functionary to apologize to a rape victim (when he made disparaging remarks in public). Not only this, the court had to pass orders that "the school administration where the girl shall be admitted shall see to it that she is treated with respect, for the dignity of a woman is absolutely uncompromisable with any kind of thought or concept or idea, which some time notioned in fancy"[58] The offences against women are on the rise and the depraved individuals do not at times even spare tender girl child of 28 days old. In this context the court, while sharing the agony of the petitioners, hoped that Parliament would consider more stringent punishment.[59]

55 (2016) 13 SCC 347.

56 (2003) 2 SCC 661.

57 *Supra* note 55 at 359.See *Munshi Ram* v. *Delhi Admn,* AIR 1968 SC 702; *State of Gujarat* v. *Bai Fatima* (1975) 2 SCC 7; *State of U.P.* v. *Mohd. Musheer Khan* (1977) 3 SCC 562; *Mohinder Pal Jolly* v. *State of Punjab* (1979) 3 SCC 30.

58 *Kaushal Kishor* v. *State of U.P.* (2017) 1 SCC 406 at 409.

59 *Supreme Court Women Lawyers Association* v. *Union of India* (2016) 3 SCC 680.

Raja v. *State of Karnataka*[60] is another disturbing case insofar as it smacks of class hierarchies. The woman who was alleging rape in this case was a maid – a strata of society which is most vulnerable and least protected. And that was why perhaps her testimony was scrutinized way beyond a point (in contrast to other rape victims). So much so that the court almost spelt out a course of conduct for her such as, since she was not threatened by "any weapon", she perhaps ought to have screamed and cried for help which she didn't. The fact that she ate food perhaps also did not go well with the court.[61] Nowhere does the rape law suggest that the woman has to cry and scream for help, and so on and so forth. It is a crime to have sexual intercourse with a woman without her consent.

The court interpreted her conduct post the alleged rape as her "vengeful attitude in the facts and circumstances, as disclosed by her, if true, demonstrably evinces a conduct manifested by a feeling of frustration stoked by an intense feeling of deprivation of something expected, desired or promised."[62] The court it seems had made up its mind that she is a woman of loose morals and needs no protection – hence perhaps the use of words 'desired' or promised. The court again missed the point that in India a section of the population lives on the streets and so the observation "her confident movements alone past midnight, in that state are also out of the ordinary."[63] Her being accustomed to sexual intercourse and separated from her husband were factors which may have unconsciously weighed in the mind of the court while acquitting the accused of rape charges.

Rape and cheating

A woman of 40 years alleged that her friend of two years on the promise of marriage had raped and ravished her.[64] The trial court acquitted the accused but the high court confirming the acquittal under section 376 IPC found the appellant guilty of other charged offences *i.e.*, offence of cheating punishable under sections 417 and 506 part I IPC. But instead of imposing sentence, released him under section 4 of the Probation of Offenders Act, 1958. The apex court, after perusal of the facts and the circumstances of the case and a scrutiny of sections 417 and 506 IPC, was of the opinion that the case as set up by the prosecution was highly unrealistic and unbelievable. The prosecutrix was 40 years of age and approximately 10 years older than the appellant, was a government servant and was in a relationship for two years after the alleged rape and ravishment. Hence it reversed the judgment of the high court and acquitted the accused of all charges.[65]

60 (2016) 10 SCC 506.

61 It reminds one of Albert Camus' *The Outsider* where the protagonist had coffee and made love after his mother's death and which was considered a relevant factor for his guilt in a murder case.

62 *Supra* note 60 at 515.

63 *Ibid*.

64 *Tilak Raj* v. *State of Himachal Pradesh*, Cr. App no. 13 of 2016. Decided on Jan.6, 2016.

65 It may be also mentioned that in *Mahesh Balkrishana Dandane* v. *State of Maharashtra*, 2014 SCC OnLine Bom 348, it was held that a subsequent withdrawal of a bonafide promise of

In *Tekan* v. *State of M.P.,*[66] a visually challenged girl was cajoled to have sexual intercourse on the false promise of marriage. When she became pregnant the accused stopped meeting her. In cases of sexual intercourse on a false promise of marriage the courts in India have been dilly dallying.[67] However, in this case the accused exploited the vulnerability of the girl and hence was rightly held guilty under section 376 IPC.

Outraging the modesty of a woman

Keeping up the shameful statistics, a minor girl who was a sports enthusiast tragically ended her life due to the 'ignominy' of molestation at the hands of a senior police officer. The alleged incident took place in 1990 and the girl ended her life in 1993.[68] There was lot of public outcry and media reporting of the case. The police officer was unapologetic and fought his way right up to the apex court which delivered the judgment in 2016. The judgment is fully on the side of the victim (since deceased), and the text of the judgment is alive to the fact of shame and humiliation to which a woman is subjected, even when she is the victim though it is the culprit who needs to be shamed. The court observed thus:[69]

> In a tradition bound non-permissive society in India it would be extremely reluctant to admit that any incident which is likely to reflect upon the *chastity of a woman* had occurred, being conscious of the danger of being ostracized by the society or being looked down by the society.

The court empathised with her "terribly embarrassed state" and her being "overpowered by a feeling of shame" which made her end her life prematurely and found the super cop guilty of the offence after a very detailed discussion. But after all this empathy, the final verdict fell short of its rhetoric stand when it came to conviction. The cop was found guilty under section 354 IPC for outraging the modesty of a woman. However, the court did not allow framing charges under section 306 IPC and the *staus quo* remained. If this was not enough, the court while reiterating the mitigating factors advanced by the appellant accused's counsel – old age, heart ailment, unmarried daughters, past meritorious service and prolonged trial – desisted from sending him back to jail and reduced the sentence to the period already undergone as a special case!

Actually if one analyses the case carefully, all these factors should have been considered as aggravating rather than mitigating factors: unmarried daughter –being father of daughters the act should have been considered as unpardonable; prolonged

marriage cannot bring the act of consensual sexual intimacy under the purport of section 375 IPC *i.e*., rape".

66 (2016) 4 SCC 461.

67 See *Uday* v. *State of Karnataka* (2003) 4 SCC 46; *Deepak Gulati* v. *State of Haryana* (2013) 7 SCC 675; *State of U.P.* v. *Naushad*, Cr. App. No. 1949 of 2013 (Non Reportable)

68 *S.P.S. Rathore* v. *CBI* (2017) 5 SCC 817, decided on 23.9.2016.

69 *Id.* para 46 (emphasis added).

trial – the accused tried every trick in the trade to prolong the trial and brought in the IAS-IPS tiff, the sports control controversies and did everything to malign the girl and the family so much so that it led the young girl to end her life. Actually, as a special case, the punishment should have been beyond the two year mandate of section 354. But ironically, it was not even for two years but just a few months. Even after adjudication of guilt, a sense of justice eludes this case.[70]

Acid attack

In spite of having stringent laws and stricter punishments prescribed, the crime against women is on the rise. First, it was dowry death and domestic violence and amendments were made to the code. Then, started a new spate of offence where, when a female refused overtures by someone who was smitten by her, he would seek revenge by throwing acid on her with the intention of disfiguring her for life. This sort of violent assault on women being on the rise the 2013 amendments recognized acid attack as a separate offence in sections 326 A and 326-B. However, by merely recognizing it as an offence in no way proved a deterrent and the apex court further directed the government to check the free availability of acids.[71] The court, in order to give relief to the victims, gave further directions regarding treatment, aftercare and rehabilitation of acid attack victims.[72] The court has been monitoring the situation and the bench of Madan Lokur and U.U. Lalit JJ, in its order dated 10-4-2015,[73] sought compliance of its order[74] of minimum compensation of Rs. 3,00,000 to acid victims and asked the Member-Secretary of the State Legal Services Authority to take up the issue with the state governments and comply with the direction. Apart from the compensation, the court directed that medical assistance be provided to the victims of acid attack and private hospitals should also be co-opted for this. The court sensing that private hospitals may not be willing to share this burden, directed the state governments to take up this matter with them so that they are under an obligation to treat the acid victims and their refusal will attract action under section 357-C of Cr PC 1973.

Again, the apex court in a writ petition[75] had to grapple with the issue of treatment and compensation in an acid attack case. Two dalit girls of Bihar were assaulted by acid attack while they were sleeping on the roof top. The accused had been making sexual advances towards the elder girl and demanded sexual relations. She was threatened that if she did not agree, the accused would damage her face. On the fateful

70 See also *Rupan Deol Bajaj* v. *KPS Gill* (1995) 6 SCC 194 wherein similarly for offences under sections 354 and 509 IPC a meagre sentence of rigorous imprisonment for three months and simple imprisonment for two months was reduced to probation in appeal by the apex court.

71 *Laxmi* v. *Union of India,* WP (Crl.) No. 129 of 2006, order dated 30-10-2009.

72 *Laxmi* v. *Union of India* (2016) 3 SCC 669 at 675.

73 *Laxmi* (2014) 13 SCC 743.

74 *Laxmi* (2014) 4 SCC 427.

75 *Parivartan Kendra* v. *Union of India* (2016) 3 SCC 571.

night, in a most gruesome manner, one of the accused covered her mouth so that she was not able to scream and the other two caught her legs to prevent her from escaping and to cause maximum damage as one of them poured acid on her body and face. When he was doing so, it also fell on the younger sister and her arm got burnt. The girl suffered 90% burns on her face and 28% burns on the body which meant that her face was completely burnt and the girl required multiple corrective and curative surgeries. The *Laxmi* compensation of Rs. 3 lakhs seemed too inadequate in this case. Not only was Rs. 5 lakhs already spent on the treatment, but she also needed more corrective surgeries for nose, arms, forehead, ears, breasts and elbow. Apart from this, the court also considered that she would not be in a position to take up a job which requires physical exertion; would not be able to lead a normal life as the skin had become fragile; would need constant treatment and might suffer humiliation and social stigma. Taking into consideration all these, the court opined that the *Laxmi* order was proper, except for the compensation amount. The court ordered a compensation of at least Rs.10 lakhs to be paid to the main victim and Rs. 3 lakhs (in light of *Laxmi* order) to the victim's sister. The state was further directed to take full responsibility for the treatment and rehabilitation of the victims in accordance with *Laxmi* guidelines.The court acknowledged the financial burden that it was imposing but reminded the state that the safety and security of individual is the paramount duty of the state. And when that gets violated it is the state which will have to come forward and recompense.

Domestic violence

Domestic violence leading to killing of a woman is another crime which has nothing to do with social background or educational qualification of the parties. The patriarchal mindset which treats wife as a chattel to be treated with disdain has no class or education or social barriers. *State of H.P.* v. *Rajiv Jassi*[76] exemplifies this state of affairs as the victim of repeated domestic violence was a qualified doctor and the accused husband also a professional (doctor). On the fateful day, he killed her by administering poison and beat her and also kicked her on the womb (which had an 8 month foetus). The trial court convicted the husband but on appeal the high court shockingly came up with the most bizarre arguments as to the quality of the poison. In the words of the court, "the accused being a doctor and posted at different places could have purchased a better poison of sophisticated nature from elsewhere, he would not have created the evidence against him"[77]. The high court ignored the fact that the post mortem report revealed that there were lot of injuries on the person of the deceased and hence its observation that 'circumstances were not of conclusive nature' was totally erroneous. The apex court on a reappreciation of facts set aside the acquittal passed by high court and restored the conviction passed by the trial court under section 302 IPC.

76 (2016) 12 SCC 682.
77 *Id.* at 692.

Immorality is not *per se* punishable – an extra marital affair may be construed as cruelty for the purposes of divorce but in a penal statute the ambit of 'cruelty' under section 498 A or for that matter, abetment under section 306 cannot be stretched to include immorality within its ambit. *K.V. Prakash Babu* v. *State of Karnataka*[78] dealt with this aspect. It was a case of marriage gone sour as the husband got involved in an extra marital affair. The wife, unable to come to terms with it, committed suicide. The husband was booked for her death. The trial court and the high court did not find him guilty under section 302 (he was charged for it) but found him guilty of the offence under sections 498 A and 306 of the IPC. The apex court was categorical (and marshalled case law for the same) that "extra-marital relationship *per se*, would not come within the ambit of section 498 A IPC. It would be an illegal or immoral act, but other ingredients are to be brought home so that it would constitute a criminal offence."[79] The court acknowledged that the incident of suicide was very unfortunate but law has to take into account human *failings*. The apex court, allowing the appeal, set aside the conviction under sections 306 and 498A of the IPC

A woman died within seven years of marriage[80] and the trial court convicted the husband, his brother and father and mother. On appeal, the high court acquitted the brother, the father and the mother. The state went in appeal against the acquittal and the reasoning of the court that there was no dowry demand and there was only a customary exchange of gifts. This actually even exonerates the husband but since it was an appeal against acquittal, the apex court merely upheld the high court verdict.

Cases of women being set on fire by the in-laws continue unabated in spite of very strict laws. In *Ramesh* v. *State of Haryana*[81] a woman who had been married for 20 years and had faced continuous harassment and torture, was burnt alive allegedly by the husband and in-laws. The court of sessions framed charges under sections 302, 498A read with 34 IPC. There was a dying declaration implicating the accused persons. The trial court refused to place reliance on the dying declaration as some of the witnesses turned hostile and acquitted the accused persons as the case was not proved beyond a reasonable doubt. However, in appeal, the high court relied on the dying declaration. The apex court concurring with the high court, also dealt with the issue of hostile witnesses and the whole 'culture of compromise'. The court took note of sociological studies along with the Law Commission reports to appreciate the gravity of the problem. Quoting from studies, the court held that the witnesses become hostile due to many factors including peer pressure, solidarity with family, economic compensation and so on. The instant case, the court pointed out was a case "stung by culture of compromise".

78 2016 SCC OnLine SC 1363.
79 *Id*., para 16.
80 *State of Karnataka* v. *Dattaraj* (2016) 12 SCC 331.
81 (2017) 1 SCC 529.

Unnatural death of a woman within seven years of marriage raises a strong presumption of offence under section 304 B IPC. But this presumption "gets activated only upon the proof of the fact that the deceased lady has been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death." In *Baijnath* v. *State of M.P*.[82] the prosecution could not prove so beyond a reasonable doubt and hence the appellants were acquitted.[83]

Jamanadas v. *State of M.P.*[84] is a shocking case of extreme diabolism. A young bride was killed within six months of marriage inside the matrimonial home. Her body was then chopped into two pieces and packed. The mother-in-law disposed these packets in the park as nonchalantly as one would dispose trash. The father in law and the husband took the *alibi* that they were in the shop. The court quoting from *Trimukh Maroti Kirkan* v. *State of Maharashtra*[85] held thus:[86]

> Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

Since they were not able to discharge this burden they were held guilty under section 302 read with section 34 IPC for having a common intention with the mother-in-law of the deceased for homicidal killing of the deceased.

IV OBSCENITY

The issue in *S. Tamilselvan* v. *State of Tamil Nadu,*[87] decided by the High Court of Madras, related to a Tamil Novel *Madhorubagan* authored by Perumal Murugan,

82 (2017) 1 SCC 101 at 110.

83 See also *H.D. Sikand* v. *CBI* (2017) 2 SCC 166, the prosecution failed to prove the charge. The contributing factor may have been shoddy investigation but the nonetheless the burden on the prosecution is to prove a guilt beyond a reasonable doubt and convictions cannot based on conjectures and surmise.

84 (2016) 13 SCC 12.

85 (2006) 10 SCC 681.

86 *Supra* note 84, para 23.

87 (2016) 4 SCC 561.

translated into English as *One Part Woman*, recipient of literary awards, was alleged to contain dangerous and damaging materials. The facts of the case narrate the general culture of intolerance and the humiliation which a learned literary figure was made to face by extra–judicial organization/individuals who do not have any respect for the constitutional right of freedom of speech and expression of the citizens. The novel, as discussed in para 84 of the judgment, brings out the pain and pathos of a childless woman in India. It brings out the dilemma into stark light. It was acknowledged by the court that the fictional incident has been crudely presented and not sanitized. However, it is a known fact that in literary works a modicum may be exaggerated to have the desired effect on the reader. It is part of a literary device. The court examined to ascertain whether the novel bordered on obscenity or was so obscene to attract penal provisions. The language used in the novel is crass and rustic and the court in this case did a hand-holding exercise for the readers by taking them through the obscenity narrative one by one and demolishing it.

Speaking of language, the court remarked, "we cannot lose sight of the fact that the story is of the people who are both socially and economically backward. The language therefore has to be contextual."[88] The court then examined the 'impression' which one may carry after a complete reading of the novel. Does it evoke 'prurient interests'? The court, after reading the text of the novel, was of the view that what comes to the mind is "a heart rending story of a husband and wife, who are at peace with themselves but are constantly reminded by the society of their status of being childless".[89] The 14th day ritual of free sex only adds to the pathos of the novel and the travails of the couple. The court reminded the vigilantes of 'morality' that ancient literature of India discusses sex mores liberally but in the present times people have become very conservative and narrow minded.

The court castigated the mob which humiliated the author to an extent that he put up a status on his facebook page: 'Author Perumul Murugan has died". [90] The court reminded the societal members that "if you do not like a book, simply close it". The people who do not like these writings must not read them. They have a choice not to read literature which offends them. One cannot ban a publication based on sensitive and irrational moralities of a group. It is axiomatic to mention that presently the test in India is the "community standard test"[91] which implies that 'obscenity' has to be tested from the lens of the community standard. This judgment steers clear of it and does not get trapped in the test which may have resulted in 'obscenity' being judged from the point of view of the community which was represented in the novel. And the court ended with a brilliant observation. "Let the author be resurrected to what he is best at write."

88 *Id*. at 633.
89 *Id*. at 635.
90 *Id*. at 593.
91 *Devidas Ramachandra Tuljapurkar* v. *State of Maharashtra* (2015) 6 SCC 1; *Aveek Sarkar* v. *State of West Bengal* (2014) 4 SCC 257.

Obscenity in electronic form

The issue before the apex court in *Sharad Babu Digumarti* v. *Govt. (NCT of Delhi)*[92] was whether the appellant could have been proceeded against under section 292 IPC after having been discharged under section 67 of the IT Act[93] for an activity emanating from electronic form. Section 67 of the IT Act specifically deals with obscenity in the electronic form, whereas section 292 in general deals with obscenity in books, papers, drawing, or any object, *etc*. The court reiterated the position that once a special provision is enacted, the offender gets out of the net of IPC. The special law shall prevail over the general and prior laws as section 81 of the IT Act is self explanatory that the provisions of the Act will have overriding effect on other laws.

V JOINT LIABILITY

For a case of joint liability under section 34, common intention is a must. Even if several persons simultaneously attack a man and each one of them has an intention to kill and each one inflicts a separate fatal blow and yet none would have the common intention required by the section.[94] Distinguishing once again common intention from joint intention, the court held in *Mewa Ram* v. *State of Rajasthan*[95] that "essence of liability under section 34 is simultaneous conscious mind of persons participating in the criminal action to bring about a particular result." Again the court in *Sudip Kumar Sen* v. *State of W.B.,*[96] reaffirmed and reiterated that a pre-concert in the sense of a distinct previous plan is not necessarily to be proved. What is to be proved is a conscious mind of persons participating in the criminal action to bring about a particular result.[97]

Uday Singh v. *State of M.P.*[98] was again a reiteration of the fundamental principle of joint liability that "merely because some persons assembled, all of them cannot be condemned 'ipso facto' as being members of the unlawful assembly."[99] The prosecution has to discharge the onus of proving that the commission of the offence was by a member of the unlawful assembly and such offence must have been committed in pursuance of the unlawful assembly or such that the members knew that it was likely to be committed.

92 (2017) 2 SCC 18.

93 S.67. Publishing of information which is obscene in electronic form. Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.

94 *Arjun Pawar* v. *State of Maharashtra* (2016) 16 SCC 727.

95 2016 SCC OnLine SC 608.

96 (2016) 3 SCC 26.

97 *Id.* at 32.

98 2016 SCC OnLine 1586.

99 *Id*., para 10.

Bharwad Navghanbhai Jakshibhai v. *State of Gujarat,*[100] was a case of unlawful assembly where the assailants got together to teach a person a lesson and attacked him while he was sleeping. A total of eight injuries were found on the person and they were charged under section 326/149. The contention of the appellants was that there was exaggeration as 13 persons were charged for eight injuries. The high court decision which was upheld by the apex court, drew attention to the fact that the accused were members of an unlawful assembly and it is the settled position that "to attract the provisions of section 149 IPC, once membership of an unlawful assembly is established, it is not incumbent on the prosecution to establish whether any specific overt act has been assigned to any accused. In other words mere membership of the unlawful assembly is sufficient and every member of an unlawful assembly is vicariously liable for the acts done by others either in the prosecution of the common object of the unlawful assembly or such which the members of the assembly knew were likely to be committed."[101]

VI SENTENCING

The sacrosanct nature of administration of criminal justice system was the subject of discussion in *State of M.P.* v. *Rajveer Singh.*[102] Endorsing *Shambu Kewat,*[103] the apex court held that crime is not against an individual but against the society as a whole and criminal law "is designed as a mechanism for achieving social control and its purpose is the regulation of conduct and activities within the society."[104] The court was constrained to make these observations as the high court, in a serious case involving section 307/34 IPC, had quashed the FIR based on a compromise. Another issue is of delay – which has been an eyesore in the otherwise celebrated Indian judicial system. An attempt to murder in 1989 came to be finally decided by the apex court in 2016.[105] And after having put a seal on his guilt, the court showed leniency and awarded three years imprisonment and what weighed in the mind of the court was that the incident took place in 1989, the accused was of 50 years of age (that is not much!) and the sole bread winner of the family. The sentencing policy of the court has been very erratic and the rights of the victim to get justice get diluted in this scenario.

The court in *Raj Bala* v. *State of Haryana*[106] was constrained to reiterate the principles of sentencing. The court was categorical that misplaced sympathy is an anathema to criminal justice administration. The instant case started with the issue of eve-teasing. The girl's family assaulted the boy and he allegedly hanged himself. Initially, FIR was under section 302, but during the course of investigation, the investigating agency converted the offence to section 306. The trial court found the

100 (2016) 9 SCC 346. See also, *Saddik* v. *State of Gujarat* (2016) 10 SCC 663.
101 *Id.* at 350.
102 (2016) 12 SCC 471.
103 *State of Rajasthan* v. *Shambhu Kewat* (2014) 4 SCC 149.
104 *Id.* at 155-156.
105 *Illathody Beeran* v. *State of Kerala* (2016) 14 SCC 286.
106 (2016) 1 SCC 463.

accused guilty under section 306, but taking into account that the accused were first time offenders and belonged to the weaker section of society imposed a sentence of three years rigorous imprisonment and a fine of Rs.3000 each, and in default of payment thereof, to undergo rigorous imprisonment for another six months. The high court in appeal shockingly reduced it to the period already undergone which was a meagre four months and 20 days. The apex court, deprecating this uncalled for leniency, gave a discourse on the principle of proportionality and also cautioned against using discretion in a whimsical manner. The court also showed surprise at the trial court's mitigating factors. If the courts use their discretion in such a whimsical manner the public trust would be lost. The deceased was assaulted and there are conclusive findings on that and then he committed suicide and so it is astonishing as to how the courts could deal with the case in such a perfunctory manner.

Adequate punishment

It is the duty of the court awarding sentence to ensure justice to both the parties and therefore undue leniency in awarding sentence needs to be avoided because it does not have the necessary effect of being a deterrent for the accused and does not reassure the society that the offender has been properly dealt with.[107] Keeping the same tempo as regards sentencing, the court in *Abdul Sharif* v. *State of Haryana*[108] reiterated that the punishment prescribed under section 304 A IPC is inadequate and needs a revisit by Parliament.[109] The perils of using mobile phones while driving were also pointed, and it was held that prosecution under section 184 of the Motor Vehicles Act, 1988 is inadequate.

The issue before the court in *Mohd. Hashim*[110] was the mandatory minimum punishment in section 4 of the Dowry Prohibition Act, 1961 and whether release on probation was permissible. The court held that when the legislation prescribes a minimum but also by way of proviso provides discretion to the court to award punishment below the minimum then the court can even decide not to send the accused to the prison at all and invoke the provisions of Probation of Offenders Act, 1958.

In *S.P.S. Rathore*[111] the accused was given a term already served (six months) due to his age *etc*., even though his crime led a young girl to end her life. But a land grab case—the fudging of revenue records was taken much more seriously by the courts.[112] The mitigating factors put forth by the appellant accused that he was around 75 years; out of the three accused two had expired; litigation was pending for quite some time; incident took place in 1994 and the accused had served five months in jail did not move the court as in *Rathore* but it was lenient enough to reduce the sentence from two years to one year.

107 *State of Madhya Pradesh* v. *Udaibhan* (2016) 4 SCC 116 at 118.
108 (2016) 15 SCC 204.
109 *State of Punjab* v. *Saurabh Bakshi* (2015) 5 SCC 182.
110 *Mohd. Ashim* v. *State of U.P*. (2017) 2 SCC 198.
111 *Supra* note 68.
112 *Nirmal Dass* v. *State of Punjab* (2016)13 SCC 201.

In a case under sections 468 and 471 IPC, the counsel for the appellant prayed for reduction of sentence of imprisonment on the plea that the "appellant is more than 75 years of age and is suffering from severe ailments." The court, however, took a serious view of the siphoning of public money and refused reduction of sentence (six months imprisonment). It is pertinent to mention that the incident had taken place in 1983-1986![113]

Imprisonment – concurrent or consecutive

The court in *Benson* v. *State of Kerala,*[114] endorsed section 427 Cr PC that if a person undergoing imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he is previously sentenced unless the court directs the consequent sentence to run concurrently with the previous sentence. U.U. Lalit J gave this judgment and ordered that the sentences which were remaining (in four cases) to be undergone by the convict (he was convicted separately in 12 cases and was serving sentence for crime No.8) concurrently. The court granted this benefit in respect of substantive offences but maintained the sentence of fine and the default sentences. The court took into account the fact that the maximum sentence in respect of the crimes in which he had appealed was two years rigorous imprisonment and the crimes were committed on the same day.

The appellants in *Muthuramalingam* v. *State,*[115] were found guilty and sentenced to suffer varying sentences, including 'life imprisonment for life' for each one of the murders committed by them. And importantly, the sentence of 'imprisonment for life' for each one of the murders was directed to run consecutively. The outcome of this punishment meant that the appellants would have to undergo 'imprisonment for life' ranging from two to eight, depending on the murders committed by them. Every human being has only one 'life' but the retributivist psyche of the state wanted one life each for one murder! Interestingly, the courts used the precise words in section 53 of the IPC - "imprisonment for life" while awarding the sentence. Could it be that the courts, perhaps, expected the man to rise like a phoenix every time to pay with his (new)life for every murder committed by him? The courts, no doubt, have the power to pronounce sentences for offences in a single trial which may run consecutively or concurrently. However, there is a legal impossibility of 'imprisonment for life' to run consecutively to another 'imprisonment for life'.

Life imprisonment is currently the most severe penalty (leaving aside the 'rarest of rare' capital punishment) in the Penal Code. Its severity is due to the fact that it entails the end of freedom in a convict's life. How the procedural law operates is a

113 *Sukh Ram* v. *State of H.P.* (2016) 14 SCC 183.

114 (2016) 10 SCC 307.

115 2016 SCC OnLine SC 713. Jyoti Dogra Sood, "Case Comment" XVIII *ILI Newsletter*12-13 (July-Sep. 2016).

different domain altogether. The convict may earn remission and may be considered for early release before his 'end of life', but legally speaking, as has been reiterated in so many cases, life imprisonment lasts 'until the last breath of the convict'. In the face of such authoritative pronouncements as precedents, it is indeed mind boggling that the courts pronounce sentences which are 'legally impossible' to be carried out. For example, in *State of Rajasthan* v. *Jamil Khan,*[116] the court gave life imprisonment for murder and another life imprisonment for rape and ordered the sentences to run consecutively!

In *Muthuramalingam*, the apex court, through a constitution bench, rightly stressed that life being one; no two life imprisonments can be carried out by the convict. The courts may award life imprisonment for different offences but they would have to be super imposed on one another and made to run concurrently. Even in cases where the commission of the offences is in different transactions the accused remaining the same, only one life imprisonment can be served by him – as that is the law of nature – he/she is having only one life to live.

As far as the question whether life sentence and term sentence could run consecutively, the court was of the opinion that it was legally tenable as the convict can be directed to undergo the fixed term first and the life imprisonment can then run consecutively. The court's observation is in keeping with the spirit of section 31, Cr PC.

Death penalty

Post *Mohd. Arif* ,[117] a review petition has to be considered by a bench of three judges in an open court in cases of capital punishment. Death sentence was given to the accused who were involved in killings in the violence that was let loose after Jayalalitha's conviction by AIADMK sympathizers.[118] The review petitioners had sprinkled petrol in a bus full of girl students and threw a lit matchstick inside the bus. Three girls died in the ensuing mayhem and many suffered burn injuries. The contention in this review petition was that the gruesome killings were a consequence of mob frenzy without premeditation and all that occurred happened in the flash of a moment. The court agreeing to the contention commuted death penalty to life imprisonment.

In *Shyam Singh* v. *State of M.P.,*[119] death penalty was commuted to life imprisonment subject to the provisions of revision *etc*., under the Cr PC The court held that reformation cannot be ruled out. It would be interesting to really examine the material on record which led the court to believe in reformation while in many other cases of death penalty and fixed term imprisonment, the court probably did not believe that they could be reformed. How do the courts arrive at these conclusion may be an interesting fact of the judicial process worth examining.

It is only in cases where death penalty is substituted by life imprisonment that a restriction of life imprisonment may be imposed. In the earlier case, the charges under

116 (2013) 10 SCC 721.
117 *Mohd. Arif* v. *Supreme Court of India* (2014) 9 SCC 737.
118 *C. Muniappan* v. *State of T.N.* (2016) 12 SCC 325.
119 2016 SCC OnLine SC 1131.

section 302 failed in the apex court's estimation and hence life imprisonment was not qualified. However, in *Tattu Lodhi* v. *State of M.P.*,[120] a minor girl was kidnapped, raped and murdered. The accused was convicted on all counts and was sentenced to death by the trial court and the high court. The apex court commuted death penalty to life imprisonment and using *Sriharan's*[121] dictum, sentenced the accused to life imprisonment with a direction that the accused shall not be released from prison till he completes actual period of 25 years of imprisonment.

VII VICTIMOLOGY

In one case court gives compensation and it becomes a celebrated case but it is at the cost of many others who are left uncompensated. The court in *Rini Johar* v. *State of M.P.*[122] took a very serious view when a doctor and a practicing advocate were arrested flagrantly violating all guidelines and procedures put forth by the apex court from time to time. They were arrested from their residence in Pune, and were taken in an unreserved train compartment from Pune to Bhopal without being produced before the local magistrate. They were compelled to lie on the cold floor of the compartment without any food or water. The bench, placing dignity at a very high pedestal, ordered the State of Madhya Pradesh to grant a sum of Rs. 5 lacs towards compensation to each of the petitioner. The court, in its order, allowed the state, if it so wished, to proceed against the erring officials.

A visually challenged girl was coaxed into sexual intercourse on the pretext of marriage. The man was held guilty of rape and since the accused was not in a position to compensate, the state was ordered to pay Rs. 8000/- per month till her life term. The court, very consciously, did not give her a lump sum amount as her vulnerabilities would have been more exploited.[123]

In a case under sections 279 and 304 A of IPC,[124] the court directed the appellant to implead the injured victim as also the legal representatives of the deceased as respondents. Since an affidavit was filed by these victims and the legal heirs that adequate compensation had been made, the court, while also taking into account the fact that the appellant had removed the injured to the hospital, set aside the imprisonment. This is a welcome judgment given the fact that it is the age of fast moving vehicles and there has been an unprecedented increase in road accidents. In this regards, it is incombent to make the drivers responsible to ensure the provision of immediate first aid to the victims.

Vikas Yadav v. *State of U.P.*[125] is a detailed approval of the *Sriharan*[126] dictum. The court, through elaborate discussion, endorses the position of fixed term life

120 (2016) 9 SCC 675.
121 *Union of India* v. *V. Sriharan* (2014)11 SCC 1.
122 (2016) 11 SCC 703.
123 *Tekan* v. *State of M.P.* (2016) 4 SCC 461.
124 *Nair Mohan Sivaram* v. *State of Kerala* 2016 SCC OnLine 1623.
125 (2016) 9 SCC 541.
126 *Supra* note 121.

imprisonment without remission. It also, in very strong words, condemns honour killings. What is striking though is the high court's detailed order of sentencing where a new impetus to victimology has been given. The order says "In case an application for parole or remission is moved by the defendants before the appropriate government, notice thereof shall be given to Nilam Katara as well as Ajay Katara by the appropriate government and they shall also be heard with regard thereto before passing of orders thereon".[127] The apex court settled the remission issue but the parole remained intact. And as per the high court orders, notice shall have to be given to Nilam Katara as well as Ajay Katara whenever parole application is moved by the convict. There is no discussion on this point (as the issue may not have been raised) in the apex court judgment.

Locus standi

In a criminal case the victim is represented by the state and it is generally believed that the defendant is pitted against the might of the state and it is the state which files appeals against acquittal. But article 136 of the Constitution gives wide powers to the court to let the court decide the *locus standi* to file an appeal. The court in *Amanullah* v. *State of Bihar*[128] held that "the court should be liberal in allowing any third party, having *bona fide* connection with the matter, to maintain the appeal with a view to advance substantive justice."[129]

VIII CONSTITUTIONALITY

Unnatural offences

In *Naz Foundation Trust* v. *Suresh Kumar Koushal,*[130] which was on the maintainability of curative petition, the court in its order opined that "since the matter is of considerable importance and public interest and some of the issues have constitutional dimensions including para 3 whether the curative petitions quality for consideration", the matter must be placed before a constitutional bench of five judges.

Defamation

The constitutionality of sections 499 and 500 was the issue before the court in *Subramanian Swamy* v. *Union of India.*[131] It must be kept in mind that Macaulay's IPC has stood the test of time and for more than 150 years we have been following the Code with some tinkering here and there. However, the historical context of the Code must never be lost sight of. Keeping this in mind certain provisions of the Penal Code, which includes defamation, were enacted to protect and safeguard the British

127 *Supra* note 125 at 558.
128 (2016) 6 SCC 699.
129 *Id.* at 713.
130 (2016) 7 SCC 485.
131 (2016) 7 SCC 221.

Empire. In the democratic set up that we adopted after India gained independence, any unreasonable restraint on free speech is uncalled for. The section on defamation is very broadly legislated along with its explanations and exceptions. It gives lot of power in the hands of the privileged and the powerful to bring criminal charges even when truth is spoken, given the fact that truth as an absolute defence is not recognized except when it is for the 'public good'. The public good test, it is submitted, is a very facile one. All the arguments regarding right to reputation *etc*., may be grounds for making it a civil offence but retaining criminal provision is not being alive to the demands of liberal democracies which are votaries of free speech and expression with least restrictions.

It may be axiomatic to mention that England – Macaulay's home country has long decriminalized defamation so much so that the Human Rights Committee in *Adonic* v. *Phillipines*[132] held the criminalization is incompatible with article 19(3) of ICCPR (which India also has ratified).

A joint declaration by the Special Rapporteur held thus:[133]

> Criminal defamation is not a justifiable restriction on freedom of expression, all criminal defamation laws should be abolished and replaced, where necessary with appropriate civil defamation laws.

In *Subramanian Swamy* the court witnessed passionate arguments from both sides of the fence. The court also quoted extensively from literature from international law and other jurisdictions and from Constitutional Assembly Debates. The court has, over the years, radicalized constitutional interpretation keeping in view the challenges and the demands of the time. But sadly, in the instant case the court, after a brilliant exercise, got stuck in the balancing of fundamental rights and the conservative original intention of the legislature. Of course, balancing is to be done – no one denies that but the entities must be worthy of being pitted against each other. In *S. Rangarajan* v. *P. Jagjivan* [134] in the context of freedom of speech and expression the court observed thus:[135]

> Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered.

The interest in defamation suits is personal and not community based and the court, perhaps, missed a historical opportunity to decriminalize this anachronistic

132 Communication No. 1815/2008.

133 A joint declaration by the Special Rapporteur on the Promotion and protection of the right to freedom of opinion and expression, the OSCE Representative on freedom of the Media and the OAS Special Rapporteur for freedom of expression of Dec-10, 2002.

134 (1989) 2 SCC 574.

135 *Id*. at 595.

provision of the Penal Code. The fraternity discourse in the judgment seems misplaced in the context of defamation![136] The court sought to cast a heavy duty on the magistrate to scrutinize the complaint from all aspects. This, the magistrate, already overburdened, may not be able to discharge, it being an onerous responsibility!

IX MISCELLANEOUS

Attempt

A suicide note alone cannot hold a person guilty of abetment to suicide. To prove the charges, the intention and involvement of the accused to aid or instigate the suicide is imperative. The court in *Gurcharan Singh* v. *State of Punjab,*[137] categorically held that "contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment.[138]

Adultery

In a divorce case the Bombay High Court[139] held that the "allegation of voluntary sexual intercourse should be proved from the circumstantial evidence that excludes the presumption of innocence in favour of the person against whom it is alleged." [140] The burden cannot be cast on the woman to prove a negative fact that she did not have intercourse.

DNA profiling

DNA profiling and DNA proof remains an under addressed area in India. In *Sunil* v. *State of M.P.,*[141] it was reiterated quoting *Krishna Kumar Malik* v. *State of Haryana*[142] that "a positive result of the DNA test would constitute clinching evidence against the accused if, however, the result of the test is in the negative *i.e*. favouring the accused or if DNA profiling had not been done in a given case, the weight of the other materials and evidence will still have to be considered."[143] What is intriguing is that positive result ends up in conviction and negative result is viewed with suspicion!

Investigation

Voice sample

In *Sudhir Chaudhary* v. *State (NCT of Delhi),*[144] the issue was regarding voice matching for the offences under sections 384, 511, 420 and 120-B of IPC. A sting operation was conducted and the accused were arrested. They gave their consent for

136 *Supra* note 131, paras 152-56.
137 (2017) 1 SCC 433.
138 *Id.* at 440.
139 *Sangeeta* v. *Sushil* (2016) 6 AIR Bom R 120.
140 *Id*., para 26.
141 (2017) 4 SCC 393.
142 (2011) 7 SCC 130.
143 *Supra* note 141 at 395.
144 (2016) 8 SCC 307.

voice sample. However, the grievance of the appellants was that they were being made to read out inculpatory material drawn from the audio recording of the alleged sting operation. The state agreed to provide a different text which also had some inculpatory material. This was again challenged before the high court as violation of article 20 (3). In appeal the apex court held that they had given their consent and what needs to be ensured is that the process for drawing the voice samples is fair and reasonable, having due regard to the mandate of article 21. And for that the court directed that the text which the appellant would have to read for giving their voice sample will not have sentences from the inculpatory text but will only contain words from the disputed conversation. The court brilliantly balanced the concerns of the accused with that of the investigating officer.

X RULE OF LAW

The judiciary of the country has been doing stellar service in the administration of criminal justice in the country within the limitation of procedural and evidentiary rules. The court of Madan Lokur and Uday U. Lalit JJ[145] dealt with a writ petition under article 32 regarding fake encounters or executions allegedly carried out by the Manipur police and the armed forces of the Union Government including the Army. A narrative of insurgency and militancy was put forth by the state. So much so that the Attorney General built up a narrative of war like situation in Manipur and tried to convince the court that it is to control this situation (and he asserted they have in fact not let it deteriorate but rather improved[146]) that vast powers have been given to the armed forces under the AFSPA. The court would have nothing of it and reiterated that "in the event of an offence having been committed by any person in Manipur police or the Armed Forces through the use of excessive force or retaliatory force, resulting in the death of any person, the proceedings in respect thereof can be instituted in a criminal court subject to the appropriate procedure being followed."[147] The court ordered an inquiry into all cases of death which may be a judicial enquiry or an enquiry by NHRC or an inquiry under the Commission of Inquiry Act,1952. The right to know was upheld by the court. It is a laudable step of the apex court in upholding the rule of law.

Closely related to the issue of crimes and punishment is the issue of treatment of prisoners – both as undertrials and as convicts - after adjudication of guilt. Human rights concerns have been present in all civilized societies. It may be underlined that for human rights to become effective there needs to be an edifice of a comprehensive criminal justice system. The substantive criminal law, the procedural law and the sentencing, all work for the cause of human rights. But once the man is behind bars, either as an undertrial or as a result of sentencing, fundamental human rights get violated and the highest court of the land has, time and again, stepped in to check this

145 *Extra Judicial Execution Victim Families* (2016) 14 SCC 536.
146 *Id*. at 607.
147 *Id*. at 632.

aberration. A letter by former Chief Justice R.C. Lahoti J, relating to conditions of prisons in India, was registered as a public writ petition – *Inhuman Conditions in 1382 Prisons, In re.*[148] The court took serious note of the fact that even after *Bhim Singh's* case,[149] the situation has not improved significantly and directed that the undertrial review committee in every district should meet quarterly and strictly implement sections 436 and 436A Cr PC. The court emphasized that poverty should not be an impediment in their release! It meant that the undertrials who cannot furnish bail bonds are not subjected to incarceration only for that reason. The court not only stressed on the implementation of the Model Prison Manual, 2016 but also issued a notice to the Secretary, Ministry of Women and Child Development to prepare a similar Manual in respect of juveniles who are in custody, either in observation homes or special homes or places of safety, in terms of the Juvenile Justice (Care and Protection of Children) Act, 2015.

XI CONCLUSION

As in previous years, the gruesome crimes against women were brought before the courts for adjudication. However, in some of the cases, a detailed engagement with the statutory provisions was found lacking. Both *Govindaswamy*[150] and *Rajesh*[151] did not engage intellectually with the contours of criminal law jurisprudence and so failed to restore the faith of the common man. An issue which was sought to be raised by these cases in the Survey was regarding 'expert' evidence in the form of doctor's report. How much credence must be given to a doctor's report is a debatable issue. It must be kept in mind that the doctor's report is an opinion which has to be tested , examined and interpreted by a judicially trained mind *i.e*., by the judge. A mechanical endorsement of the doctor's report does not augur well and may be against the fundamental canons of criminal law.

In contrast in *Goloo,*[152] the conviction was reversed from section 304 part I to section 302 given the totality of circumstances as the court did not just rely on the medical report. And in *Prem Sagar,*[153] the court made a profound observation that the expert opinion, no doubt, is to be taken into consideration but it is only to help the court to "form its own conclusion". This observation must be taken seriously by the courts and over reliance on expert evidence may prove problematic as was seen in *Govidaswamy* and *Rajesh* cases.

Burden of proof is a very important facet of criminal law and the Malimath Committee had proposed a dilution of proof beyond a reasonable doubt to 'clear and

148 (2016) 3 SCC 700.
149 *Bhim Singh* v. *Union of India* (2015)13 SCC 605.
150 *Supra* note 18.
151 *Supra* note 17.
152 *Supra* note 28.
153 *Supra* note 32.

convincing standard', which was critiqued by many, including Upendra Baxi.[154] The court in *Yogesh Singh,*[155] while dealing with some discrepancy in investigation, clarified that the case is to be proved beyond all reasonable doubts and not all doubts. It is clear from the case that the court is not diluting the standard of proof by merely clarifying that frivolous doubt need to be ignored.

Sentencing remained a contentious area. It may be worthwhile to mention that there is a lot of variation in punishment in part I and part II of section 304. Part I mentions imprisonment for life, or imprisonment of either description for a term which may extend to ten years *and* shall also be liable to fine whereas part II, which is separated by a semi colon the punishment is imprisonment of either description for a term which may extend to ten years, *or* with fine, *or* with both.[156] In *Shekhar V. Harikanth*[157] conviction was under part II and seven years rigorous imprisonment was ordered , whereas in *Gurpal Singh*[158] conviction was under the more severe (in terms of punishment) part I and eight years rigorous imprisonment was given. The seven-eight years formula in these two cases is not very easy to comprehend.

SPS Rathore[159] is a blatant example of misplaced sympathy. The police officer who should have been given exemplary punishment was allowed to go almost scot free even though not only did he commit a heinous crime but also misled the process of court in whatever way he could. The constitution bench in *Muthuramalingam*[160] put to rest the controversy regarding life imprisonment.

Victim rights are an area where the courts have been very proactive. However, in *Vikas Yadav*[161] the court went a little too far when it ordered that the mother of the victim is to be given a notice even in case of parole. It is felt that victimology has been taken to a level which does not portend well for a civilized society.

The courts also, it is submitted, lost a historic opportunity to decriminalize defamation. On the other hand it showed exemplary fortitude in ordering inquiry in extra judicial killings under the provisions of AFSPA. The court also gave very important directions regarding prisoner's rights and children in conflict with law. By and large, the court lived up to its reputation of being the apostle of justice.

154 Upendra Baxi, "An Honest Citizen's Response to Criminal Justice Report. A Critique of the Malimath Report" (Amnesty International, 2004).
155 *Supra* note 49.
156 S. 304 IPC (emphasis added).
157 *Supra* note 38.
158 *Supra* note 41.
159 *Supra* note 68.
160 *Supra* note 115.
161 *Supra* note 125.