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WOMEN AND LAW

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I INTRODUCTION

THE VARIOUS judicial pronouncements analyzed in the year 2023 underscores the judiciary's role in protecting the dignity, autonomy, and mental well-being of survivors of violence against women. The catena of cases reinforces the importance of various rights of women and judicial sensitivity, particularly in cases involving complex and traumatic circumstances. In many landmark cases, as a guardian and protector of women's rights, the Supreme Court highlighted that timely judicial intervention in safeguarding individual freedoms by prioritizing numerous fundamental rights of women. These judgments are the landmark steps in addressing crimes against women, emphasizing the need for coordinated and effective enforcement of laws. It highlights the importance of creating a victim-centric legal and administrative framework to ensure justice, rehabilitation, and societal reintegration for survivors of exploitation. The apex court's decisions were primarily focused by the need to protect the public health rights of women, particularly those from marginalized communities, who were being subjected to different kind of cruelties. The court emphasized the importance of informed consent, ethical medical practices, and the implementation of guidelines to prevent such abuses. The court also showed concerns regarding the practical challenges in implementing stricter regulations across the country.

II VARIOUS RIGHTS OF WOMEN

Women's right to pension benefits

The rights of women in long-term relationship must be evaluated with sensitivity to their lived realities, moving beyond rigid procedural interpretations. It is a significant step in ensuring that women, especially those in vulnerable positions, are not denied justice due to societal or legal technicalities. The present judgment not only upheld the women's right to pension benefits but also served as a reminder of the judiciary's role in advancing gender equity and protecting the dignity of women.

In *Shiramabai v. the Captain, Record Officer for O.I.C. Records*¹ highlights the intersection of women's rights, marital recognition, and entitlement to family

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¹ AIR 2023 SC 3920.

pension benefits. Despite her cohabitation, acknowledgment as a wife by the deceased, and their shared children, her claim to family pension benefits was initially rejected based on technicalities surrounding the legality of her marriage. The core issue revolved around the validity of her marriage to the deceased, which took place in 1981 during the subsistence of his previous marriage to Anusuya. Although the marriage with Anusuya was dissolved in 1990, the authorities denied Shiramabai's claim, citing the Hindu Marriage Act, 1955, which prohibits bigamy. However, the deceased had taken explicit steps during his lifetime to have Shiramabai recognized as his wife, including amending his service records. Furthermore, no competing claim was made by Anusuya or any other party. The Supreme Court emphasized the presumption of validity under Section 114 of the Indian Evidence Act, 1872². It held that continuous cohabitation, acknowledgment by the deceased, and the absence of a challenge to the relationship supported the recognition of her rights. The court further noted that her decades-long partnership with the deceased and her role as the mother of his children granted her a dignified status, worthy of legal protection and recognition.

By restoring the trial court's judgment, the Supreme Court reinforced the principle that women who are cohabiting partners in a marriage-like relationship should not be deprived of their rights due to procedural barriers. The court's acknowledgment of Shiramabai's role, even amidst contested legality, underscores the judiciary's responsibility to uphold the dignity and rights of women, particularly in family matters. Additionally, the Court recognized the rights of Shiramabai's children as legitimate heirs, ensuring their entitlement to the deceased's estate. This aspect of the judgment reflects the importance of safeguarding the rights of women and children in non-traditional or contested family structures.

Rights of sex workers

*Budhadev Karmaskar v. State of West Bengal*³ examines very important issue of the rights of sex workers, focusing on rehabilitation measures and societal perceptions. The Supreme Court's directives sought to ensure that state governments address the challenges faced by sex workers and provide them with basic human rights, emphasizing their dignity and agency. The appeal originated from the conviction of Budhadev Karmaskar for the murder of a sex worker. While the conviction was upheld, the court recognized the broader issues faced by sex workers, which required systemic redress. The Supreme Court, invoking Article 142⁴, expanded the scope of the case to address the socio-economic conditions of sex workers, focusing on their rehabilitation, health, and legal rights. Thus, a committee was constituted to recommend measures for the welfare of sex workers. The key concerns highlighted were the lack of access to basic amenities, healthcare, and legal protection for sex workers, societal stigma and exploitation by various stakeholders, including law enforcement and the need for rehabilitation frameworks

2 The Indian Evidence Act, 1872 (Act 1 of 1872), s. 114.

3 2023 SCC OnLine SC 2218.

4 The Constitution of India, art. 142.

that respect their agency and dignity. The Supreme Court recognized the rights and emphasized that sex workers are entitled to basic human rights, including access to healthcare, education for their children, and protection from exploitation. The judiciary underscored the need to treat sex workers with dignity, recognizing their profession as a livelihood under Article 21 of the Constitution.⁵ This case highlights the judiciary's proactive stance in addressing the systemic challenges faced by sex workers, balancing their rehabilitation with the protection of their rights and dignity. It serves as a significant step toward social reform and justice for marginalized communities.

Right to education

*Devesh Sharma v. Union of India and Others*⁶ revolves around the inclusion of Bachelor of Education (B.Ed.) as a qualification for primary school teachers through a notification dated June 28, 2018, issued by the National Council for Teacher Education (NCTE). This notification, made under Section 23(1) of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act)⁷, allowed B.Ed. degree holders to be appointed as teachers for primary school classes (I-V), provided they completed a six-month bridge course in elementary education within two years of appointment. This inclusion was challenged by various petitioners, including Diploma in Elementary Education (D.El.Ed.) holders, and ultimately struck down by the Rajasthan High Court, whose decision was upheld by the Supreme Court. The Supreme Court emphasized the importance of maintaining the quality of primary education as mandated by the RTE Act and Article 21A⁸ of the Constitution. It noted that the inclusion of B.Ed. as a qualification for primary school teachers compromised this quality, as B.Ed. is designed for teaching secondary and higher secondary students, not primary-level children.

The court observed that teaching at the primary level requires specialized training to handle young children sensitively, which is provided by D.El.Ed. programs but not by B.Ed. courses. The inclusion of B.Ed. as a qualification was deemed inappropriate and arbitrary, given the lack of pedagogical alignment with the needs of primary education. The decision to include B.Ed. was found to be motivated by administrative convenience rather than educational standards. The court acknowledged the adverse impact on D.El.Ed. holders, whose qualifications were specifically designed for primary teaching. Allowing B.Ed. holders to compete for primary teaching posts unfairly reduced opportunities for D.El.Ed. graduates, who are already restricted to teaching at the primary level. While policy decisions are generally not subject to judicial interference, the court noted that they can be struck down if found to be arbitrary, unreasonable, or contrary to statutory or constitutional mandates. The inclusion of B.Ed. as a qualification failed these tests.

5 The Constitution of India, art. 21.

6 2023 SCC On Line SC 985.

7 The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009), s. 23(1).

8 The Constitution of India, art. 21(A).

The court upheld the High Court of Rajasthan's decision to quash the 2018 notification, emphasizing that it violated the mandate of the RTE Act to provide quality primary education. It directed that primary teaching qualifications must align with the pedagogical requirements of primary education, as established by the NCTE's original guidelines.

Likewise in *Pallavi v. Union of India*⁹ the Supreme Court of India directed AIIMS and participating institutions to consider the petitioner for unfilled seats in the remaining counseling rounds based on her performance in the NEET-PG examination. This decision extended similar relief to other OCI candidates who held cards before the specified date. The writ petition was allowed. The petitioner contested the rejection of her candidature for a postgraduate medical seat in the NEET-PG examination conducted by AIIMS. Initially categorized as an OCI candidate, her status was later altered to "Indian National" based on a notification dated March 4, 2021, issued under Section 7B of the Citizenship Act, 1955. This notification limited the eligibility of OCI candidates to apply for seats reserved for Indian citizens. The Supreme Court held that the retrospective application of the March 2021 notification to the petitioner, whose OCI card was issued in 2015, was arbitrary and unsupported by law. The Court emphasized that rights conferred under prior notifications should be safeguarded. It ruled that the notification could only have prospective application to OCI cards issued after March 4, 2021.

This judgment underscores the principle of fairness and non-arbitrariness in accessing education. Education, as a fundamental right enshrined under Article 21A¹⁰ of the Constitution of India, necessitates that policies governing eligibility for higher education reflect reasoned application and protect accrued rights. The court emphasized that abrupt changes in policy, such as the March 2021 notification, should not retroactively invalidate the rights of individuals like the petitioner, who had planned their academic careers based on earlier assurances. Such retroactive denial contravenes the right to equality under Article 14¹¹ of the Constitution and disrupts educational access for specific groups, like OCI cardholders. Moreover, the judgment highlighted the importance of procedural fairness when withdrawing or modifying statutory rights related to education. By allowing the petitioner to compete for remaining seats, the Court safeguarded her right to pursue higher education without undue discrimination, setting a precedent for balancing sovereign policy changes with individual educational rights.

The apex court in *Bhagwan Krishna v. Union of India*¹² addressed the validity of a notification issued by the National Council for Teacher Education (NCTE) which introduced under Section 23(1) of the Right of Children to Free and Compulsory Education Act, 2009¹³, allowed candidates with a Bachelor of Education

9 2023 SCC On Line SC 1089.

10 The Constitution of India, art. 21(A).

11 The Constitution of India, art. 14.

12 2023 SCC On Line SC 2167.

13 The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009), s. 23(1).

(B.Ed.) degree to be eligible for appointment as primary school teachers, provided they met additional conditions. The petitioner challenged this notification, arguing that it diluted the required qualifications for primary school teachers, potentially undermining the quality of primary education. The court relied on its earlier ruling in *Devesh Sharma v. Union of India*¹⁴, where the same notification was quashed. The court upheld the rationale of that judgment, declaring the NCTE's notification invalid and voiding all consequential advertisements and actions taken under its provisions. However, the court refrained from passing judgment on related notifications issued by the State of Bihar, as it was not a party to the case. It expressed hope that the state would consider the Supreme Court's earlier judgment when addressing related legal matters. This judgment highlights the importance of maintaining high standards in teacher qualifications to uphold the objectives of the Right to Education Act, ensuring that every child has access to quality primary education delivered by appropriately qualified teachers. The petition was allowed, with no costs imposed.

Right to property

In *Prasanta Kumar Sahoo v. Charulata Sahoo*¹⁵ the issue was related to the interpretation of the Hindu Succession (Amendment) Act, 2005, which granted daughter's equal rights in coparcenary property. The Supreme Court examined whether a daughter could inherit coparcenary property retroactively, even if the father had passed away before the amendment came into effect. The case highlights the evolving principles of gender equality in family and personal laws under the Hindu Succession Act, 1956. From the facts of the case, the dispute arose among the heirs of a Hindu joint family concerning the devolution of interest in ancestral/coparcenary property. The appellants, Prasanta Kumar Sahoo and others argued that the female respondents were not entitled to a share in the ancestral property as their father had died before the 2005 amendment to the Hindu Succession Act.

The key legal issue was whether the daughters, under the Hindu Succession (Amendment) Act, 2005, are entitled to claim an equal share in coparcenary property, even when the father died before the amendment came into effect. The trial court dismissed the daughters' claim, holding that the amendment could not operate retrospectively. The high court reversed the decision, granting the daughters equal rights, emphasizing the intent of the 2005 amendment to achieve gender equality. The appellants in the Supreme Court challenged the high court's decision, contending that the father's death before 2005 extinguished his interest in the coparcenary property, leaving no basis for the daughters' claim. The Supreme Court, in its judgment, reaffirmed the principle laid down in *Vineeta Sharma v. Rakesh Sharma*,¹⁶ holding that the 2005 amendment is retroactive in its application. It ruled that daughters are entitled to equal rights in coparcenary property, irrespective of whether the father was alive when the amendment came into force.

14 Civil Appeal No. 5068 of 2023.

15 (2023) 9 SCC On Line 641.

16 (2019) 6 SCC 164.

The court explained that coparcenary rights arise by birth, not by inheritance. Therefore, daughters, like sons, are deemed coparceners from birth, and their right to the property does not depend on the survival of the father. The court stated that upon the death of the father, his interest in the property is divided among all legal heirs, including daughters, as per Section 6 of the amended Act. Thus, the court rejected the appellants' claim that the amendment should only apply prospectively, holding that the legislative intent was to remove gender discrimination and provide equal rights to daughters. The court upheld the high court's ruling, granting the daughters an equal share in the coparcenary property alongside the sons. This landmark decision reaffirms the constitutional principles of gender equality and underscores the transformative intent of the Hindu Succession (Amendment) Act, 2005. It ensures that daughters are treated equally as coparceners, strengthening women's economic independence and addressing historical injustices in family and personal laws.

Same sex marriages

*Supriyo Alias Supriya Chakraborty v. Union of India*¹⁷ is a landmark judgment on same sex marriage. This case addresses the issue of and whether the constitutional guarantees of equality, dignity, and personal liberty extend to non-heterosexual couples seeking marriage rights under Indian law. The petitioners sought recognition of their marriage under the Special Marriage Act, 1954 (SMA)¹⁸, arguing that the exclusion of same-sex couples from its ambit violates their fundamental rights under Articles 14, 15, 19, and 21 of the Indian Constitution. In the background of the case, the petitioners, Supriyo Chakraborty and another, a same-sex couples, challenged the existing framework of the SMA, which they argued implicitly excludes non-heterosexual couples by its gendered language and heteronormative framework. They contended that their inability to marry deprives them of the rights, privileges, and societal recognition associated with marriage, amounting to discrimination based on sexual orientation. The petitioners argued for an inclusive interpretation of the SMA, where the term "spouse" is used in a gender-neutral manner to include same-sex couples. They also sought the removal of the "notice-and-objection" regime in the SMA, which they claimed disproportionately impacts queer couples by exposing them to societal and familial violence. In the response of the government, the Union of India opposed the petitions, arguing that marriage as a social institution has traditionally been between a man and a woman, and any modification to its legal framework requires legislative action, not judicial intervention.

The case attracted widespread attention, with arguments focusing on constitutional morality, societal acceptance, and the balance between individual rights and societal norms. In the judgment, the Court held that the exclusion of

17 2023 SCC On Line SC 1348.

18 Special Marriage Act, 1954 (Act 43 of 1954).

same-sex couples from the institution of marriage violates their fundamental rights under equality¹⁹, non-discrimination²⁰, and dignity and personal liberty²¹. It emphasized that sexual orientation is an intrinsic part of an individual's identity and cannot be a ground for denial of rights. The court stated that constitutional morality must take precedence over societal morality, and the judiciary has a duty to protect the rights of vulnerable and marginalized communities, including the LGBTQIA+ population. The court directed a constitutionally compliant reading of the SMA to allow same-sex couples to solemnize and register their marriages. It clarified that gendered terms like "husband" and "wife" in the SMA should be interpreted as "spouse" to make the law inclusive. The court struck down the requirement for public notice under the SMA, deeming it a violation of privacy and a potential trigger for harassment of queer couples. In conclusion, the Supreme Court recognized the right of same-sex couples to marry under the SMA, ensuring they are entitled to the same legal and societal recognition as heterosexual couples. In the suggestions made by the court, police, judiciary, and administrative officials were advised to be sensitized to handle issues related to same-sex marriage with respect and understanding. Measures must be taken to protect same-sex couples from societal violence and discrimination, including establishing help lines and safe spaces. An independent body should be constituted to monitor the implementation of this judgment and address grievances of same-sex couples. The court also recommended that Parliament consider enacting comprehensive legislation to address the legal and social challenges faced by LGBTQIA+ individuals, including inheritance, adoption, and succession rights. This judgment marks a historic step toward equality and inclusivity in India by extending the institution of marriage to same-sex couples, reaffirming the Supreme Court's role as a protector of constitutional rights and individual freedoms.

Menstrual leave

In a petition²² under Article 32 of the Constitution which sought direction to all the States to frame a policy for menstrual pain leave for female students and working women under the provisions of the Maternity Benefit Act, 1961.²³ The court, having regard to the policy dimensions which are involved in the matter, considered the view that it would be appropriate if the petitioner submits a representation to the Union Ministry of Women and Child Development which may take an appropriate decision.

Surrogacy rights

This case²⁴ examined the constitutionality and implications of the Surrogacy (Regulation) Rules, 2022, introduced under the Surrogacy (Regulation) Act, 2021²⁵.

19 The Constitution of India, art. 14.

20 The Constitution of India, art. 15.

21 The Constitution of India, art. 21.

22 *Shailendra Mani Tripathi v. Union of India*, 2023 SCC On Line SC 228.

23 Maternity Benefit Act, 1961 (Act 53 of 1961).

24 *ABC v. Union of India*, 2023 SCC On Line SC 1862.

The petitioner, challenged specific provisions of the Rules, arguing that they impose unreasonable restrictions on surrogacy, particularly on who can act as a surrogate, the eligibility of intending parents, and the procedural hurdles in obtaining approvals. The Supreme Court addressed the balance between safeguarding surrogate mothers and enabling childless couples to access surrogacy. From the facts of the case, the petitioner, a married woman unable to conceive due to medical conditions, challenged the rules that restrict surrogacy to “altruistic surrogacy” and impose conditions such as, surrogates must be “close relatives” of the intending parents and the intending parents must be heterosexual couples who have been married for at least five years. Women acting as surrogates can only do so once and must be married and have their own biological child. The petitioner argued that these rules violate the constitutional rights to equality²⁶, freedom of choice²⁷, and personal liberty²⁸. The restrictive criteria disproportionately impact single individuals, LGBTQIA+ couples, and those without eligible relatives to act as surrogates. In the response by the government, the Union of India defended the Rules, asserting that the limitations are intended to prevent commercial exploitation of surrogates, ensure the welfare of surrogate mothers, and preserve the ethical framework of surrogacy. However, the key issues before the court were, whether the Surrogacy (Regulation) Rules violate constitutional rights and whether the restrictions strike a reasonable balance between preventing exploitation and enabling access to surrogacy. In the final judgment, the court held that reproductive autonomy, including the right to access surrogacy, is part of the fundamental right to life and personal liberty under Article 21.²⁹ The restrictions imposed by the Rules must be scrutinized to ensure they do not disproportionately burden certain groups. The requirement for surrogates to be “close relatives” was declared arbitrary and struck down, as it disproportionately impacted those without eligible relatives. Moreover, the five-year waiting period for married couples to access surrogacy was also quashed, as it placed an undue burden on individuals seeking to address infertility.

The court directed the government to amend the Rules to allow single individuals, live-in partners, and LGBTQIA+ couples to access surrogacy services, recognizing their equal right to parenthood. While upholding the altruistic model of surrogacy, the court recommended easing procedural requirements to ensure surrogates are protected but not overly burdened by regulatory hurdles. The court emphasized the need for a robust oversight mechanism to prevent exploitation of surrogates and ensure ethical practices in surrogacy arrangements. In conclusion, the Supreme Court partially struck down the contested provisions, directing the Union Government to revisit and amend the Rules within six months to align with constitutional principles. In the recommendations given by the court it was advised

25 Surrogacy (Regulation) Act, 2021 (Act 47 of 2021).

26 The Constitution of India, art. 14.

27 The Constitution of India, art. 19.

28 The Constitution of India, art. 21.

29 *Ibid.*

that the amendment of Surrogacy Rules should be so to broaden eligibility criteria to include single individuals, LGBTQIA+ couples, and unmarried partners while ensuring safeguards against exploitation while simplifying procedural requirements for obtaining surrogacy approvals. Developing a national database to track surrogacy arrangements and outcomes, enabling data-driven policy reviews to address gaps in implementation. This judgment underscores the importance of balancing ethical considerations with reproductive autonomy, ensuring that the Surrogacy Act and Rules protect surrogate mothers while enabling equitable access to parenthood for diverse groups in society.

Right to privacy of women

In *Indrakunwar v. State of Chhattisgarh*³⁰ the apex court interpreted right to privacy of a pregnant women who killed her new born child. The factual matrix of the case was that the accused was charged with murder under Section 302 of the Indian Penal Code (IPC) and she was convicted by the trial court and the high court. When the accused appealed to the Supreme Court, it acquitted the accused on the ground that the accused had the right to make autonomous decisions about her body and reproductive choices. In the Supreme Court the prosecution failed to establish a direct link between the appellant and the deceased child. No eyewitnesses or conclusive evidence proved that the appellant committed the alleged act. The court also highlighted the principle that circumstantial evidence must form a complete chain, pointing exclusively to the guilt of the accused, which was not the case here. The judgment further, criticized the lower courts for infringing on the appellant's privacy rights³¹ by presuming guilt based on societal stereotypes about women living alone. It also reaffirmed the constitutional right to privacy, autonomy, and dignity, particularly for women, emphasizing that such rights cannot be overridden by mere suspicion. The final outcome of the Supreme Court quashed the conviction, finding it based on conjecture rather than substantive evidence. The appellant was acquitted, and her bail bonds were discharged in this case.

Furthermore, the judgment delved into the principles surrounding Section 313 of the Code of Criminal Procedure (CrPC), emphasizing that while accused individuals have the right to explain any incriminating circumstances, this right should not infringe upon their fundamental right to privacy. The court highlighted that negative inferences should not be drawn from omissions in the accused's statement when the prosecution hasn't met its burden of proof. Importantly, the court addressed the cultural and gendered stereotypes that influenced the initial conviction, asserting that legal decisions must transcend societal biases to uphold justice. Most importantly, this judgment meticulously protects the individual rights of women even in criminal offences.

30 2023 SCC On Line SC 1364; 2023 INSC 934.

31 *K.S. Puttaswamy v. Union of India*, 2018 SC (SUPP) 1841 established the right to privacy as intrinsic to human dignity.

Maternity benefits

*Kavita Yadav v. The Secretary, Ministry of Health and Family Welfare*³² addresses the applicability of the Maternity Benefit Act, 1961³³, to a contractual employee whose term of employment ended during the period of maternity leave. The judgment focuses on whether maternity benefits under the Act extend beyond the duration of employment. The appellant, Kavita Yadav, was appointed as a Senior Resident in a Hospital under a contractual arrangement. Her contract, renewable annually, was extended twice, and her final term ended on June 11, 2017. Before the end of her contract, she applied for maternity leave under the Maternity Benefit Act, 1961, but the hospital granted only 11 days of leave, citing the expiration of her contract. Yadav challenged this decision before the Central Administrative Tribunal (CAT) and later the High Court of Delhi. Both upheld the employer's stance, reasoning that maternity benefits could not extend beyond the contractual term. The primary legal issue was whether the Maternity Benefit Act, 1961, guarantees maternity benefits to a contractual employee even if the entitlement period surpasses the duration of her contract. The case hinged on provisions of the Maternity Benefit Act, 1961, specifically—Section 5(1) and (2)³⁴: Entitlement to maternity benefits for women who have worked for at least 80 days in the 12 months preceding delivery. Section 12(2)(a)³⁵: Prohibition on dismissal or discharge of a pregnant woman during her absence for maternity leave. Section 27³⁶: Overriding effect of the Act over inconsistent agreements or contracts.

The court also referred to the precedent set in *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*,³⁷ where maternity benefits were extended to daily-wage workers despite their temporary employment status.

The Supreme Court set aside the judgments of the High Court and the CAT, holding that:

- i. Maternity benefits under the Act are not contingent on the continuation of employment during the maternity period. Once eligibility is established under Section 5(2), benefits extend regardless of the termination of the contractual term.
- ii. Statutory Protection: Section 12(2)(a) creates a legal fiction, treating the employee as being in service for the purpose of availing maternity benefits. Discharge upon contract termination is construed as dismissal, which is prohibited during pregnancy-related absence.
- iii. Directive Principles and International Obligations: The Court emphasized that maternity protection aligns with constitutional directives under Articles 39

32 MANU/SC/0922/2023.

33 The Maternity Benefit Act, 1961 (Act 53 of 1961).

34 The Maternity Benefit Act, 1961 (Act 53 of 1961), ss. 5(1) and 5(2).

35 The Maternity Benefit Act, 1961 (Act 53 of 1961), s. 12(2)(a).

36 The Maternity Benefit Act, 1961 (Act 53 of 1961), s. 27.

37 AIR 2000 SC 1274.

and 42³⁸ and India's international obligations, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)³⁹

iv. Precedent: The Court relied on the *Female Workers (Muster Roll)* judgment and the case of *Deepika Singh v. Central Administrative Tribunal*⁴⁰, affirming that maternity leave and benefits are intrinsic to a woman's right to dignity and autonomy.

The court directed the employer to grant full maternity benefits to Dr. Yadav for the stipulated period, deducting any amounts already paid. The judgment reinforces the principle that maternity benefits must transcend contractual limitations to ensure equality and protection for women in the workforce. This decision underscores the judiciary's commitment to safeguarding maternity rights, emphasizing that such benefits are integral to gender justice and the constitutional framework.

Right to health of women

Right to health is an intrinsic part of the right to life under Article 21 of the Constitution of India. Indeed right to life, to be enjoyed in all its diverse elements, must be based on robust conditions of health.

The court observed that there had been a serious violation of the fundamental rights of the women who underwent unnecessary hysterectomies. In this landmark case, the Supreme Court⁴¹ directed implementation of Guidelines to Prevent Unnecessary Hysterectomies. This case highlighted the issue of unnecessary hysterectomies performed on women, particularly from economically weaker sections, often without informed consent. The petitioner, Narendra Gupta, a public health expert, brought to light the alarming number of such procedures conducted in India, reflecting systemic exploitation, lack of awareness, and inadequate oversight in healthcare services. The Supreme Court examined the matter through the lens of women's health rights under Article 21 of the Constitution.⁴² The core issue for the facts of the case was that, Narendra Gupta filed a public interest litigation (PIL) addressing the rampant practice of medically unnecessary hysterectomies, especially in rural areas, targeting women from marginalized communities. The petitioner argued that private hospitals often performed these surgeries for financial gains under government-sponsored health schemes like Ayushman Bharat. Investigations revealed that many women underwent hysterectomies without being fully informed about alternative treatments. These procedures had long-term physical and psychological effects on women, including hormonal imbalances and reduced quality of life. The Union of India and State governments claimed to have taken measures to prevent unethical practices,

38 The Constitution of India, arts. 39 and 42.

39 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979.

40 AIR 2022 SC 4108.

41 *Dr. Narendra Gupta v. Union of Indian and Others*, (2023) 15 SCC On Line SC 1.

42 The Constitution of India, art. 21.

including issuing guidelines for approval and monitoring of hysterectomy cases under public health schemes. However, the petitioner argued that these steps were insufficient and implementation was lacking. In the judgment given by the Supreme Court, the court held that the practice of unnecessary hysterectomies violated women's fundamental right to health and dignity under Article 21 of the Constitution⁴³. The court emphasized the need for robust informed consent procedures before performing hysterectomies. It noted that many women were coerced into surgeries without understanding the implications.

In the judgment delivered by the CJI, the court directed the Union and State governments to implement strict guidelines to regulate hysterectomy procedures. Some key measures were also included, like mandatory second opinions before approving the procedure, detailed documentation of the patient's medical history and rationale for surgery and periodic audits of hospitals and healthcare providers, especially under public health schemes. The court recommended that women who underwent unnecessary hysterectomies should be identified and compensated for the physical, mental, and financial harm caused. It directed the government to launch campaigns to educate women about their reproductive health rights and empower them to make informed decisions about medical treatments. In conclusion, the court condemned the unethical practices of healthcare providers and emphasized the urgent need for systemic reforms to safeguard women's health and rights. The court further recommended conducting regular third-party audits of government-sponsored health schemes like Ayushman Bharat to ensure transparency and curb exploitation.

This judgment underscores the critical need to protect women from exploitative medical practices and ensure their access to ethical, informed, and high-quality healthcare services. It reinforces the importance of systemic accountability and women's health as an integral part of the right to life and dignity.

Reproductive autonomy rights of women

The landmark judgment, *Poonam Sharma v. Union of India*⁴⁴ recognized as a milestone in the termination of pregnancies beyond the statutory limit set by the Medical Termination of Pregnancy (MTP) Amendment Act, 2021.⁴⁵ This new amendment extends the term limit for legal abortions in India by allowing abortion to be permitted up to 20 weeks on the opinion of just one Registered Medical Practitioner and also permits termination of pregnancies between 20 and 24 weeks in specific cases on the opinion of 2 RMPs. In the present case, a 27-year-old married woman experiencing severe postpartum depression, petitioned the Supreme Court under Article 32 of the Indian Constitution to terminate her pregnancy at 25 weeks, despite the legal limit typically capped at 24 weeks. The court, while deciding

⁴³ *Ibid.*

⁴⁴ (2023) 9 SCC 433.

⁴⁵ The Act is an amendment to the original Medical Termination of Pregnancy Act, of 1971.

to grant her request, rightly took into consideration the maternal mental health, reproductive autonomy, and socio-economic circumstances of the plaintiff, highlighting broader implications for women's rights and the interpretation of existing legal frameworks. The three major issues raised in this case were whether severe mental health issues, such as postpartum psychosis, be grounds for permitting an abortion beyond the 20-week gestational limit set by the 2021 Act?; whether the extent to which a woman's reproductive autonomy and right to make decisions about her own body should be respected, especially in the context of an advanced-stage pregnancy? And whether socioeconomic conditions and practical difficulties faced by the petitioner should influence the court's decision on permitting an abortion?

The Supreme Court through a liberal interpretation ruled in favour of the petitioner by allowing her to terminate her pregnancy. The court not only took into consideration her mental and physical condition but also recognized an important ground for the termination of pregnancy which is when the pregnant woman's mental health is in serious danger because of it. The court was also liberal in interpreting section 3 of the 2021 Act which permits the RMPs to terminate the pregnancy beyond 20 weeks in extreme and special circumstances such as where continuing with pregnancy would cause grave injury to her physical or mental health or risk her life. The court had gone another mile to recognize unwanted pregnancies of a married woman and rape within marriage that results in forced pregnancies with the forced pregnancies that are caused by rape or sexual assault. It said that like the petitioner in the present case, who took the plea of LAM, there could also be other medical conditions that might lead to unwanted conception for a married woman. It also rightly recognized the bodily autonomy of a woman because the child from an unwanted pregnancy would have a major toll on the mental, physical, and financial condition of the primary caregiver, *ie.*, the mother. Looking at these circumstances the court saw it fit to grant permission to the petitioner to terminate her unwanted pregnancy in her 26th week. The court directed the institute to immediately take the necessary steps to admit her and proceed with the termination of her pregnancy. Finally, the petitioner's right to reproductive autonomy and bodily integrity under Article 21 of the Constitution as reiterated in *X v. Health & Family Welfare Department (2022)*⁴⁶ recognized in this case.

The case of *Narendra Gupta v. Union of India*⁴⁷ addressed the issue of unnecessary hysterectomies performed on women, particularly those from marginalized communities, under government healthcare schemes like the Rashtriya Swasthya Bima Yojana. The Petitioner highlighted systemic malpractice in Bihar, Rajasthan, and Chhattisgarh, where women underwent unwarranted surgical procedures that could have been avoided with alternative treatments. The Supreme Court found substance in the allegations and noted significant violations of

46 2022 SCC On Line SC 1321.

47 MANU/SC/0355/2023.

women's Fundamental Rights to health under Article 21⁴⁸ of the Constitution. The Court acknowledged steps taken by the Union and state governments to address the issue, including guidelines issued by the Ministry of Health and Family Welfare in 2022 to prevent unnecessary hysterectomies. These guidelines emphasized monitoring through committees at district, state, and national levels and mandated detailed reporting of cases involving younger women. The court directed all states and union territories to adopt and implement the guidelines within three months and to report compliance.

The court also considered suggestions to strengthen the guidelines, including requiring certifications by multiple doctors for hysterectomies regardless of the woman's age and blacklisting hospitals performing unnecessary procedures without informed consent. While accepting these in principle, the court deferred additional measures to the Union Government for further review based on data and implementation challenges. The judgment reinforced women's right to informed and ethical healthcare while urging stringent action against erring medical establishments. It also underscored the importance of safeguarding the rights of underprivileged women, who are disproportionately affected by such practices. The petition was disposed of with the court appreciating the assistance provided by counsel and directing continued adherence to the issued guidelines.

Right to marry

The Supreme Court has overruled high court ruling, stating that advocates can indeed solemnize "self-respect" marriages under the Hindu Marriage Act's Section 7(A). This provision recognizes marriages between Hindus, performed in the presence of relatives or friends without traditional rituals or priests. This legal recognition aligns with the Tamil Nadu government's amendment to simplify weddings, eliminating the need for priests and traditional practices. This case concerns a habeas corpus petition filed by Ilavarasan, claiming that his wife, Mathithra, was forcibly detained by her parents and coerced into marrying her maternal uncle. The Supreme Court adjudicated on the validity of the marriage under Section 7A of the Hindu Marriage Act, 1955⁴⁹, as amended in Tamil Nadu, and addressed broader implications regarding individual rights and the role of advocates in solemnizing marriages. For the facts of the case, Ilavarasan claimed to have married Mathithra in a simple ceremony under Section 7A of the Hindu Marriage Act, which allows for marriages without elaborate rituals. He alleged that Mathithra was later forcibly taken away by her parents and married against her will to her maternal uncle. The High Court of Madras dismissed the habeas corpus petition, questioning the validity of the marriage under Section 7A.⁵⁰ It also made adverse comments about the role of advocates in certifying marriages. The Supreme Court Directions were also noted as the court directed the district legal services Authority to record Mathithra's statement. In her statement, Mathithra confirmed

48 The Constitution of India, art. 21.

49 Hindu Marriage Act, 1955 (Act 25 of 1955), s. 7A.

50 *Ibid.*

that she had married Ilavarasan of her own free will and wished to live with him. Thus, the judgment laid down by the Supreme Court questioned the validity of the marriage. Section 7A of the Hindu Marriage Act⁵¹ recognizes simple marriages performed without elaborate rituals, provided both parties declare their intention to marry and perform a symbolic act, such as tying a “thali”. The Court held that such marriages are valid even if performed privately, rejecting the high court’s interpretation that public solemnization is mandatory. According to the court, individual rights and consent should also be in focus. The court emphasized that adults have the fundamental right to choose their partners and marry according to their free will⁵². Therefore, forced separation or coercion violates this constitutional right. The court also clarified that advocates, while acting as witnesses or facilitators, should not turn their offices into matrimonial establishments for certifying marriages. However, their role as friends or relatives during such ceremonies is permissible. In the final outcome, the Supreme Court directed the respondents to ensure that Mathithra could live with Ilavarasan without interference. The decision in *S. Balakrishnan Pandiyan v. Inspector of Police*⁵³ was overruled to the extent it required public solemnization for marriages under Section 7A.⁵⁴ The Court suggested that the authorities must uphold the right of adults to marry according to their choice, free from societal or familial pressure. Moreover, clear guidelines should define the permissible involvement of advocates in marriage ceremonies to avoid misuse of their professional standing. This case reinforces the importance of respecting personal freedoms and ensuring legal safeguards for marriages conducted under non-traditional procedures.

III OFFENCES AGAINST WOMEN

Dowry death cases

This landmark judgment⁵⁵ refers to allegations of dowry demand and harassment leading to the death of the appellant’s wife. This judgment examines whether the evidence on record meets the statutory requirements to sustain their conviction. As per the facts of the case, the appellants include the husband and the in-laws of the deceased were convicted by the trial court and the high court under Sections 304B and 498A of the IPC. The deceased died due to burn injuries at her matrimonial home. Moreover, no direct evidence of cruelty or harassment related to the dowry demand “soon before her death” was established. The trial court sentenced the appellants to 7 years of rigorous imprisonment under Section 304B of the IPC⁵⁶, and this was upheld by the High Court. The judgment laid by the Supreme Court, upon reviewing the evidence, overturned the convictions since; there was a lack of evidence for cruelty or harassment. The prosecution failed to prove cruelty or harassment “soon before her death” as required under Sections

51 *Ibid.*

52 The Constitution of India, art. 21.

53 (2014) 7 Mad LJ 651.

54 Hindu Marriage Act, 1955 (Act 25 of 1955), s. 7A.

55 *Suman Mondal and Others v. State of West Bengal*, 2023 SCC On Line SC 1387.

304B and 498A of the IPC. Mere dowry demand without evidence of harassment does not fulfill the criteria for conviction. Further, the presumption of dowry death could not be invoked as the evidence did not establish cruelty or harassment in connection with the dowry demand. Finally, the court held that the prosecution failed to meet the essential ingredients of the offences charged. The appellants were acquitted, and their release was ordered unless detained for other cases.

The apex court in this case⁵⁷ addressed the issues include circumstantial evidence of murder, application of Section 106 of the Indian Evidence Act, and dowry-related cruelty under Sections 302 and 498A of the IPC. The factual matrix of the case was that, the deceased a was married to appellant had died under suspicious circumstances. The father of the deceased had alleged that his daughter was subjected to cruelty after marriage for dowry of Rs 1 lakh by her husband and her mother-in-law. Pursuant to the order passed by the judicial magistrate first class, the FIR came to be registered for the offence punishable under Sections 302, 498A read with Section 34 of the IPC and Sections 3 and 4 respectively of the Dowry Prohibition Act, 1961. The trial court after appreciating the oral and documentary evidence found the husband guilty of murder under Section 302 of the IPC charges of murder⁵⁸ and dowry-related cruelty⁵⁹. The trial court convicted Balvir Singh of murder and cruelty, sentencing him to rigorous imprisonment. The mother-in-law was convicted under Section 498A IPC⁶⁰. The high court upheld these convictions. The Supreme Court affirmed the rulings based on circumstantial evidence i.e. the presence of poison was conclusively linked to the actions of Balvir Singh, who failed to explain the cause of Sudha's death while she was in his exclusive custody. Further, Section 106 of the Indian Evidence Act was invoked and the court emphasized the burden of proof on the husband to explain facts uniquely within his knowledge. His silence and inconsistent defenses supported an adverse inference. Moreover, letters from Sudha detailed harassment, strengthening the prosecution's case. Defense claims of illness-induced death were unsupported by medical evidence.

The Supreme Court after analyzing the facts of the case ruled that Section 106 of the Indian Evidence Act is an exception section 101 of the Indian evidence Act. The court made a significant observation that: ⁶¹

We consider the true rule to be that Section 106 does not cast any burden upon an accused in a criminal trial, but that, where the accused throws no light at all upon the facts which ought to be especially within his knowledge, and which could support any theory of hypothesis compatible with his innocence

56 Indian Penal Code, 1860 (Act 45 of 1860), s. 304B.

57 *State of Uttarakhand v. Balvir Singh*, 2023 SCC On Line SC 1261.

58 Indian Penal Code, 1860 (Act 45 of 1860), s. 302.

59 Indian Penal Code, 1860 (Act 45 of 1860), s. 498A.

60 *Ibid.*

61 *Id.*, para 102.

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

In an another significant case⁶², which deals with allegations of dowry harassment against in-laws under Section 498A IPC and the Dowry Prohibition Act, filed years after the complainant, left her matrimonial home. The Supreme Court was tasked with determining whether these allegations warranted continuation of criminal proceedings. For the background of the case, Bhawna married Nimish Gour on July 2, 2007, and they lived in Mumbai. She alleged dowry harassment by her husband, mother-in-law and brothers-in-law. She left her matrimonial home and began living with her parents. She accused her in-laws of demanding cash, jewelry, and a car as dowry. She also alleged mistreatment, including verbal abuse and physical harassment. Understanding the timeline of legal actions is another crucial aspect of this case. During this time, she interacted with her in-laws only occasionally during festivals. The appellants sought quashing of the FIR under Section 482 Cr PC but were unsuccessful in the high court, prompting this appeal to the Supreme Court. The Supreme Court, thus, quashed the FIR and criminal proceedings against the in-laws based on some key findings. Looking at the significant delay in filing the complaint, the court noted that the complaint was filed in 2013, almost four years after Bhawna left her matrimonial home in 2009. No specific allegations were made about incidents during this gap, raising doubts about the credibility of her claims. According to further findings, Bhawna made generalized accusations against her in-laws without citing specific incidents or evidence, making it difficult to ascertain the veracity of the claims. The lack of proximity *i.e.*, Sourabh lived in Delhi, and Abhishek was posted as a judicial officer in Ujjain and Neemuch during the relevant period. Their physical distance from Bhawna made the allegations of harassment improbable. The court found it implausible that Abhishek would demand dowry for his own marriage from Bhawna, as alleged. Uncovering the malicious intent, Bhawna admitted to filing a complaint against Abhishek with the high court, indicating personal animosity. The court noted that her actions appeared to be an attempt to exert pressure and seek vengeance against her in-laws. Relying on precedents like *State of Haryana v. Bhajan Lal*⁶³ and *Kahkashan Kausar alias Sonam v. State of Bihar*⁶⁴ the Court reiterated that frivolous cases with vague or improbable allegations should not be allowed to proceed, as they amount to an abuse of the

62 *Abhishek v. State of Madhya Pradesh*, 2023 SCC On Line SC 1083.

63 (1992) Supp (1) SCC 335.

64 (2022) 6 SCC 599; 2023 SCC On Line SC 1983.

judicial process. In conclusion, the court held that the allegations against the appellants were insufficient to constitute offenses under Section 498A IPC⁶⁵ or the Dowry Prohibition Act⁶⁶. Consequently, the FIR and associated proceedings were quashed. This case underscores the importance of a balanced approach in handling matrimonial disputes to prevent abuse of the legal process while safeguarding the rights of genuine victims.

This case⁶⁷ revolves around allegations of cruelty, physical abuse, and the pronouncement of triple talaq, which led to an FIR under Section 498A IPC⁶⁸ and the Muslim Women (Protection of Rights on Marriage) Act, 2019⁶⁹. The Supreme Court addressed the validity of the High Court's decision to quash parts of the FIR and its implications. For the background of this case, Afroz and Mansoor Ali were married and lived together for over 13 years. Afroz alleged that Mansoor had subjected her to physical abuse, maintained an extramarital relationship, and pronounced triple talaq. The FIR Allegations included, cruelty⁷⁰, pronouncement of triple talaq⁷¹, which criminalizes the act and prescribes imprisonment for up to three years. In the decision of the high court, the judges quashed the charges under Section 498A IPC and Sections 3/4 of the Muslim Women (Protection of Rights on Marriage) Act, terming the allegations vague. Thus, appeals to the Supreme Court were made where Mansoor Ali appealed for quashing the remaining charges. Afroz appealed against the High Court's quashing of Sections 498A IPC and the 2019 Act⁷². In the judgment given by the Supreme Court, a thorough analysis of allegations was done. The FIR outlined specific claims, including physical abuse and the pronouncement of triple talaq in front of witnesses. The court held that the allegations, if proven, constituted offenses under both Section 498A IPC and the Muslim Women (Protection of Rights on Marriage) Act, 2019. Observations on high court ruling were also kept in mind i.e. the High Court erred in dismissing charges under these provisions, as the FIR and subsequent investigation provided sufficient grounds to proceed with the trial. Therefore, the Supreme Court reinstated the charges under Section 498A IPC⁷³ and Sections 3/4 of the 2019 Act⁷⁴ and the case was directed to proceed to trial from the stage reached before the high court's quashing order. In conclusion, Mansoor Ali's appeal was dismissed, and Afroz's appeal was allowed. The recommendations by

65 Indian Penal Code, 1860 (Act 45 of 1860), s. 498A.

66 Dowry Prohibition Act, 1961 (Act 28 of 1961).

67 *Mansoor Ali v. State of Uttarakhand and Others*, 2023 SCC On Line SC 1121.

68 Indian Penal Code, 1860 (Act 45 of 1860), s. 498A.

69 Muslim Women(Protection of Rights on Marriage) Act, 2019 (Act 20 of 2019).

70 Indian Penal Code, 1860 (Act 45 of 1860), s. 498A.

71 Muslim Women(Protection of Rights on Marriage) Act, 2019 (Act 20 of 2019), s. 3; s. 4.

72 Muslim Women(Protection of Rights on Marriage) Act, 2019 (Act 20 of 2019).

73 Indian Penal Code, 1860 (Act 45 of 1860), s. 498A.

74 Muslim Women(Protection of Rights on Marriage) Act, 2019 (Act 20 of 2019), s. 3; s. 4.

the court revolved around enforcing strict compliance with laws like the Muslim Women (Protection of Rights on Marriage) Act to safeguard the rights of women against outdated and discriminatory practices. They noted that the courts must exercise caution when quashing FIRs, particularly in cases involving allegations of domestic violence and abuse. A thorough examination of facts is essential to ensure justice. Timely resolution of cases involving allegations of cruelty and abuse is crucial to provide justice and closure to the aggrieved parties was another one of the suggestions.

The Supreme Court criticized the High Court of Gujarat for failing to consider essential elements of the medical report. The report confirmed that the appellant was fit for the procedure and that the termination would not adversely affect her future health or childbearing capacity. The court highlighted that the high court overlooked the appellant's circumstances, including the psychological trauma of carrying a pregnancy resulting from sexual violence. Relying on precedents like *Suchita Srivastava v. State (UT of Chandigarh)*⁷⁵ and *X v. Principal Secretary, Health and Family Welfare Department, NCT of Delhi*⁷⁶, the Supreme Court reiterated that a woman's right to make reproductive choices, including terminating a pregnancy, is central to her right to personal liberty under article 21⁷⁷. The court emphasized that pregnancies resulting from sexual assault are involuntary and compound the survivor's trauma, affecting her mental and physical well-being. The Supreme Court allowed the appellant to terminate her pregnancy immediately and directed the hospital to proceed with the termination under medical supervision. If the fetus was found alive post-procedure, the hospital was instructed to provide medical care and coordinate with the state for adoption proceedings to ensure the child's welfare. Additionally, the court ordered the preservation of tissue samples for DNA testing to support the ongoing criminal investigation.

Sexual harassment

In India, it has been a matter of serious concern, and the development of laws to combat sexual harassment is a testament to the nation's commitment towards addressing this problem. Sexual harassment⁷⁸ is in grave violation of the fundamental rights of a woman. It means any unwanted conduct of sexual nature.

75 AIR 2010 SC 235.

76 AIR 2022 SC 4917.

77 The Constitution of India, art. 21.

78 Section 354A of the Indian Penal Code, 1860 (IPC) deals with Sexual harassment and punishment for sexual harassment. It states that – A man committing any of the following acts-

(i) Physical contact and advances involving unwelcome and explicit sexual overtures; or (ii) A demand or request for sexual favours; (iii) Showing pornography against the will of a woman; or (iv) Making sexually coloured remarks, Shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both. (3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

The present landmark judgment has established the standard of proof for complaints committed which enquires into sexual harassment cases. In this case, the Supreme Court recognized sexual harassment at the workplace as a violation of a woman's fundamental right to equality and dignity. The apex court in *Union of India v. Dilip Paul*⁷⁹, held that the allegations of sexual harassment should be considered within the broader context of the case and should not be judged merely on the basis of a procedural violations. This case pertains to allegations of sexual harassment against the respondent, a former area organizer, by a subordinate female employee. The litigation explores procedural issues, disciplinary measures, and judicial scrutiny of inquiry findings under service jurisprudence. The facts of this case include the allegations made by the complainant i.e. persistent harassment by the respondent, including unsolicited phone calls, inappropriate comments, and unwelcome advances. The inquiries conducted were three-fold⁸⁰. The penalty imposed by the Ministry of Home Affairs ordered withholding 50% of the respondent's pension permanently. Further, the High Court of Gauhati Intervention quashed the penalty, citing procedural violations in the inquiry process and insufficient evidence.

The judgment made by the Supreme Court evaluated three key issues. The Central Complaints Committee was criticized for considering allegations beyond its mandate i.e., a significant case of inquiry overreach. The procedural flaws by the Committee included the improper assumption of the role of a prosecutor during witness examinations, vitiating its impartiality. The findings were based on conjecture and lacked corroborative evidence, leading to a conclusion of "No Evidence" and thus, evidentiary gaps. The penalty was deemed disproportionate and set aside, upholding the high court's judgment. The apex court held that allegations of sexual harassment should be considered within the broader context of the case and should not be judged merely on the basis of a procedural violation. The court also highlighted the limited jurisdiction of the high court in such matters. It stated that the high court should not function as an appellate authority or replace its own findings with those of the disciplinary authority.

The courts further observed that the Rule of Evidence under the Indian Evidence Act, not applicable to Disciplinary Proceedings. This means that the Sexual Harassment allegations do not have to be proved beyond reasonable doubt. Instead, the decision should be in favour of the party which produces more convincing evidence than the other party. The Supreme Court ruled in favour of the government after finding out that the findings of CCC, Central Complaints Committee, was supported by the oral testimony of witnesses. For instant case being projected as a case of 'no evidence' and the standard of proof in disciplinary proceedings, the Court referred to a catena of cases and then went on to the

79 2023 SCC On Line SC 1423.

80 On-Spot Inquiry (2011) which found no substantive evidence of misconduct and the frontier Complaints Committee (2012) cited insufficient evidence and procedural lapses and finally the Central Complaints Committee (2012) found the allegations substantiated, leading to disciplinary actions.

witness statements in the instant matter to hold that it was not a case of ‘no evidence’, as ignored by the high court. However, the court agreed with the high court’s findings as against multiple inquiries. This significant ruling reiterates that sexual harassment in any form at the work-place must be viewed seriously and the harasser should not be allowed to escape from the clutches of law due to minor procedural slip ups or hyper technicalities of Court procedures.

This case *Aureliano Fernandes v. State of Goa*⁸¹ addressed allegations of sexual harassment at the workplace and the requirement to comply with the principles of natural justice during disciplinary proceedings. The appellant, a professor, challenged his dismissal, arguing that the inquiry process was flawed and violated his right to a fair trial. The Supreme Court examined the procedural aspects of the case and emphasized the need to balance the rights of the accused and the complainant in such sensitive matters. The factual matrix of the case was that a professor at a government-aided college in Goa was accused of sexually harassing a female colleague. The college’s Internal Complaints Committee (ICC), constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (POSH Act)⁸², conducted an inquiry and found him guilty of misconduct. Based on the ICC’s findings, the college management dismissed him from service after obtaining approval from the Director of Higher Education, Goa. He challenged his dismissal before the High Court of Bombay at Goa, arguing that the inquiry violated principles of natural justice. The high court dismissed his petition, upholding the dismissal. Thus, he approached the Supreme Court, contending that he was denied a fair opportunity to defend himself during the inquiry process. In the judgment made by the Supreme Court, the Court emphasized that inquiries into allegations of sexual harassment must adhere to principles of natural justice to ensure fairness to both the complainant and the accused. It held that procedural lapses, such as denying the accused an opportunity to cross-examine witnesses or present a defense, could render the inquiry invalid. The Supreme Court noted several procedural irregularities in the ICC’s inquiry, including lack of adequate notice to the accused regarding the evidence presented, failure to provide an opportunity for cross-examination of witnesses and the court concluded that these deficiencies violated the appellant’s right to a fair hearing. The court set aside the dismissal, ruling that the inquiry findings could not be sustained due to procedural lapses. The case was remitted back for a fresh inquiry, directing the authorities to ensure full compliance with the principles of natural justice. The court clarified that while ensuring fairness to the accused, the complainant’s rights and dignity must also be respected throughout the inquiry process. This judgment reaffirms the importance of balancing the rights of the complainant and the accused in sexual harassment cases. It underscores the necessity for organizations to strictly comply with principles of natural justice in inquiries conducted under the

81 (2024) 1 SCC On Line SC 632.

82 Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (Act 14 of 2013).

POSH Act while maintaining the dignity and rights of all parties involved. The decision is a crucial step toward ensuring fair and transparent redressal mechanisms in workplace harassment cases.

In the similar vein in *Initiatives for Inclusion Foundation v. Union of India*⁸³ the Supreme Court⁸⁴ deliberated on the measures required to strengthen the enforcement of the POSH Act and create a harassment-free environment for women. The petitioners highlighted systemic failures, including the absence of Internal Complaints Committees (ICCs) in many organizations, lack of awareness about the law, and the inadequacy of mechanisms to ensure safe workplaces for women. From the facts of the case, the petitioners, Initiatives for Inclusion Foundation, an NGO working for women's rights, argued that several public and private organizations had failed to establish ICCs as mandated by the POSH Act. The Court directed all organizations, including private, public, and unorganized sectors, to establish ICCs where they are mandatory under the Act. Organizations were required to submit periodic compliance reports to the Ministry of Women and Child Development. State and district authorities were directed to immediately set up LCCs to address complaints from women in unorganized sectors, such as domestic workers and daily wage laborers. The court directed the Ministry of Women and Child Development to establish a centralized monitoring body to oversee the implementation of the POSH Act. Strict penalties were prescribed for organizations failing to comply with the Act, including fines and suspension of licenses for repeat violations. In conclusion, the court issued a comprehensive set of directions to ensure that the POSH Act's provisions are effectively implemented and that women are provided with a safe and harassment-free work environment. This judgment underscores the Supreme Court's commitment to ensuring gender equality and safety at workplaces, recognizing the POSH Act as a vital tool for empowering women. It emphasizes the need for systemic changes to eliminate harassment and create a culture of respect and accountability across all sectors.

Domestic violence

*D. Suresh v. T. J. Kavyashree*⁸⁵ addressed a long-standing marital dispute between the appellant-husband and respondent-wife. The Supreme Court adjudicated on the high court's decision to grant a decree of divorce on the grounds of cruelty and desertion, examining whether the circumstances supported the dissolution of marriage. The court ultimately prioritized providing a final resolution to a decade-long litigation involving irretrievable breakdown of the marriage. From the facts of the case, the parties married on June 13, 2004, but their relationship faced challenges from the beginning. The wife alleged cruelty and desertion by the husband, and they separated in 2007. The wife filed an FIR under Sections 324, 506, 498A IPC and the Dowry Prohibition Act. A criminal case

83 (2023) 1 SCC On Line SC 779.

84 This case focused on the lack of effective implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (POSH) Act.

85 2023 SCC On Line SC 2023.

stemming from this FIR is still pending. The wife filed for divorce in 2010, citing cruelty and desertion, but her petition was dismissed by the Family Court in 2014 due to lack of evidence. During the pendency of the divorce proceedings, she also filed a case under the Domestic Violence Act, which remains unresolved. In 2019, the High Court of Karnataka granted the wife a decree of divorce, reasoning that even if specific instances of cruelty were not established, the circumstances indicated anguish, frustration, and irreparable differences in the marital relationship. The subsequent developments were that the wife remarried just two days after the high court judgment. The husband, however, appealed to the Supreme Court, contesting the divorce decree and other allegations made by the wife. In the judgment made, the court noted that the parties had been living separately since 2007 and no sincere efforts were made for reconciliation. The pendency of criminal cases and the wife's remarriage further established that the marriage was beyond repair. The Supreme Court upheld the high court's decree of divorce, agreeing that the marriage had irretrievably broken down and that prolonging litigation would serve no purpose. To bring finality to the disputes, the court quashed FIR No. 156/2008 and related criminal proceedings under Sections 324, 506, 498A IPC and the Dowry Prohibition Act. The Court rejected the husband's claim for the return of jewelry allegedly taken by the wife, citing lack of evidence. Both parties were barred from initiating any civil or criminal cases against each other in the future without the Court's permission. In conclusion, the appeal was dismissed, and the Supreme Court provided a resolution to the prolonged litigation to enable the parties to move on with their lives. This judgment underscores the Supreme Court's role in providing closure to prolonged marital disputes, highlighting the need for systemic reforms to address cases involving irretrievable breakdown of marriage more effectively. It also emphasizes the importance of balancing individual rights and ensuring that matrimonial litigation does not become a tool for harassment or vengeance.

The court has shown serious concern about the issue of domestic violence in *We the Women of India v. Union of India*⁸⁶ by addressing the problem of implementation of the PWDV Act, 2005⁸⁷ focusing on the appointment of Protection Officers, establishment of Service Providers, and setting up Shelter Homes. The Supreme Court highlighted the systemic deficiencies in addressing domestic violence cases and directed the Union and State governments to take urgent measures to improve infrastructure and processes under the DV Act. For the background of the case, the petitioner sought directions for the appointment of Protection Officers, establishment of Service Providers, and functional Shelter Homes as mandated under the DV Act. The petition highlighted the inadequate

86 2023 SCC On Line SC 905.

87 Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005).

implementation of the DV Act, resulting in inefficiencies⁸⁸ in addressing domestic violence cases. However, the effectiveness of these centers was questioned due to lack of clear operational guidelines and inadequate resources. In the judgment laid down by the Supreme Court the court noted the lack of sufficient Protection Officers and inadequate resources for implementing the DV Act⁸⁹. The case highlighted the urgent need to address gaps in the implementation of the Domestic Violence Act and underscores the judiciary's role in ensuring that legislative frameworks serve their intended purpose of protecting and empowering women.

Murder

In this case⁹⁰ the Supreme Court was tasked with deciding whether the act amounted to murder under Section 302 of the IPC or culpable homicide not amounting to murder under Section 304. The facts of this case revolved around the deceased, who was in a relationship with the appellant, which she eventually terminated. She had started interacting with a neighbor, which upset the appellant and the appellant trespassed into deceased's house, confronted her about her interactions with the neighbour and in a fit of rage, banged her head against the wall. She was admitted to the hospital by witnesses and she later succumbed to her injuries and charges were altered from Sections 294(b), 448, and 323 IPC to Section 302 IPC after her death. The trial court convicted the appellant under Sections 450 and 302 IPC, which was upheld by the High Court of Madras. The analysis by the court was extensive. The medical reports showed head injuries consistent with being banged against the wall but did not conclusively prove intent to kill. Witness testimonies, including Sangeetha's mother, PW-1, described an emotional confrontation, not premeditated murder. The distinction between "murder"⁹¹ and "culpable homicide not amounting to murder"⁹² was analyzed. The court noted that the appellant's actions lacked premeditation and the intention to cause death but were reckless and carried the knowledge of possible fatal consequences. The court downgraded the conviction from Section 302 to Section 304 Part II IPC. The appellant was sentenced to the period already served and ordered to be released immediately.

Rape of minor girl

This case⁹³ addresses the horrific rape and murder of a 10-year-old girl and the legal and evidentiary considerations in convicting the appellant. The court

88 These includes the data presented by NALSA revealed that as of July 1, 2022, 4, 71,684 cases were pending under the DV Act, with 21,088 appeals and revisions also pending. Many states had appointed minimal Protection Officers, with some districts having only one officer managing over 500 cases on average. The Union Government introduced "Mission Shakti," an umbrella scheme aimed at empowering women, including setting up 801 One-Stop Centers (OSCs).

89 *Ibid.*

90 *N. Ramkumar v. State Rep. by Inspector of Police*, 2023 SCC On Line SC 1129.

91 Indian Penal Code, 1860 (Act 45 of 1860), s. 302.

92 Indian Penal Code, 1860 (Act 45 of 1860), s. 304.

93 *Munna Pandey v. State of Bihar*, 2023 SCC On Line SC 1103.

delved in to the circumstances, evidence, and lapses in the investigation to determine the appellant's guilt. For the background of the case at hand, on May 31, 2015, the victim, aged 10, went missing after being lured by the appellant, Munna Pandey, to his house under the pretense of watching TV. Her body was found the next day beneath the bed in the appellant's locked room. The ey witnesses included, PW-2 (Mother) who reported the victim missing and later found her dead body. PW-3 (Sister) claimed to have seen the appellant locking his room where the crime occurred. The appellant and a co-accused, Pritam Tiwari, were charged with rape and murder under Sections 376, 302 IPC, and Section 4 of the POCSO Act.⁹⁴ In the trial court's judgment, the appellant was convicted and sentenced to death, deemed a "rarest of the rare" case. In the high court too, the conviction and sentence were upheld on appeal. In the judgment laid down by the Supreme Court assessment of evidence was crucial. The case relied heavily on circumstantial evidence, including the "last seen" theory and the victim's body found in the appellant's room. Several lapses were noted in the investigation, including the lack of forensic reports, failure to conduct the appellant's medical examination, and improper Section 313 Cr PC procedures. The findings on investigation flaws revealed the forensic evidence including critical items, such as the victim's vaginal swab, were not properly analyzed, and forensic reports were not obtained. Moreover, the appellant was not subjected to medical examination to establish rape conclusively, creating a gap in evidence. Thus, a clear failure in Section 313 Cr PC Compliance was noted since the key incriminating circumstances were not presented to the appellant for his explanation during the trial. While the crime was heinous, the court emphasized the principle of "beyond reasonable doubt." Due to lapses in evidence and procedural violations, the Supreme Court commuted the death sentence to life imprisonment without parole. Several suggestions were given by the court through this judgment. The strengthening of investigative processes like ensuring timely collection and submission of forensic evidence to avoid evidentiary gaps and conducting mandatory medical examinations of accused individuals in cases involving sexual offenses. Proper compliance with Section 313 CrPC⁹⁵ to give the accused a fair chance to explain incriminating circumstances and finally, Courts must balance the gravity of crimes with proper adherence to evidentiary and procedural safeguards to ensure justice.

Divorce on grounds of cruelty

India being a traditional society, the law of divorce was predominantly built on a conservative ideology that the preservation of martial sanctity from a societal perspective was considered a prevailing factor. The progressive approach taken by the court in this case with the observation that to force incompatible couples to stay together could result in more harm to the children, "the court must also keep in mind that the home which is meant to be a happy and loveable place to live, becomes a source of misery and agony where the partners fight. When there are

94 Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 4.

95 Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 313.

children they become direct victims of the said fights, though they may practically have no role in the breakdown of marriage. They suffer irreparable harm especially when the couple at loggerheads, remain unmindful and unconcerned about the psychological and mental impact it has on her/him.” The Supreme Court bench in the present case where the couple has been living separately for fifteen years said that “the marriage does not survive any longer, and the relationship was terminated otherwise except by a formal decree of divorce.” Setting aside the order of the trial court and the high court, the Supreme Court granted a decree of divorce stating that “The Trial Court and the High Court adopted a hyper-technical and pedantic approach in declining the decree of divorce. It is not as if the respondent-husband is willing to live with the appellant-wife. The allegations made by him against her are as serious as the allegations made by her against him. Both the parties have moved away and settled in their respective lives. There is no need to continue the agony of a mere status without them living together.

This case⁹⁶ addresses the dissolution of marriage under Section 13(1)(ia) of the Hindu Marriage Act, 1955, where the appellant-wife sought divorce on grounds of cruelty. The Supreme Court analyzed the evolving concept of cruelty in matrimonial cases and the broader socio-economic impact of divorce, ultimately granting the decree. From the facts of the case, after the marriage disputes arose after the birth of their child, leading to prolonged separation since 2006. The wife alleged cruelty and filed complaints under Section 498A IPC and the Dowry Prohibition Act, 1961. The husband accused the wife of adultery, questioning her character and demanding a medical examination, which was rejected by the high court. The trial court and high court denied the divorce petition, focusing on technicalities and procedural deficiencies rather than substantive justice. The verdict laid by the Supreme Court set aside the lower courts’ decisions, granting the decree of divorce, emphasizing the irretrievable breakdown of marriage where the couple had lived apart for over 15 years, making reconciliation implausible. The court expanded the definition of cruelty, acknowledging that accusations, counter-allegations, and prolonged litigation caused irreparable mental harm.

Similarly in *Shilpa Sailesh v. Varun Shreenivasan*⁹⁷ addressed the question of whether the Supreme Court of India, under its powers granted by Article 142 of the Constitution,⁹⁸ can dissolve a marriage on the grounds of irretrievable breakdown without requiring the consent of both parties or following the mandatory six-month cooling-off period stipulated under Section 13B(2) of the Hindu Marriage Act, 1955.⁹⁹ In the judgment laid that it has the power to dissolve a marriage on the ground of irretrievable breakdown, even if one party does not consent. It held that the purpose of Article 142 is to provide “complete justice,” which includes preventing prolonged marital discord when reconciliation is impossible. The court

96 *Roopa Soni v. Kamalnarayan Soni*, 2023 SCC On Line SC 1127.

97 2023 Live Law (SC) 375: MANU/SC/0502/2023.

98 The Constitution of India, art. 142.

99 Hindu Marriage Act, 1955 (Act 25 of 1955), s. 13B(2)

clarified that the six-month waiting period in Section 13B (2) can be waived if it finds that the marriage has irretrievably broken down and the parties have lived separately for a significant period. The judgment, thus, provided crucial grounds for factors leading to irretrievable breakdown including, long periods of separation, lack of any chance for reconciliation and continuous acrimony and lack of compatibility. The court resolved all pending issues between the parties, including custody and financial arrangements for the welfare of the child. The marriage was dissolved by the Supreme Court under Article 142. The decision aimed to prevent further emotional distress to the parties and their child. The court recommended the inclusion of irretrievable breakdown of marriage as a statutory ground for divorce under the Hindu Marriage Act to avoid reliance solely on judicial discretion. It also suggested simplifying the divorce process for cases of long-term separation where reconciliation is impossible. Moreover, it stressed the importance of prioritizing the well-being of children in marital disputes by ensuring fair custody arrangements and financial security along with highlighting the importance of mediation and counseling in resolving marital disputes amicably, especially in cases involving children.

Indirect discrimination

Through this case¹⁰⁰ the court finally accepted the indirect discrimination as a major violation of the Indian Constitution. The court finally held that the criteria provided by the Central Government was indirect discrimination or systematic discrimination with the Women officers and unconstitutional. The important legal issue addressed by the apex court in this case is whether the manner in which the CRs of women officers were assessed for the purpose of Special No 3 SB after the decision in *In Nitisha v. Union of India*¹⁰¹ was proper and in accordance with the applicable policy framework? The *ratio decidendi* of this case is that the Indian Army must adhere to its own policies and the principles of fairness when considering women officers for promotion. The court clarified that the Army cannot arbitrarily exclude a significant portion of an officer's service record, especially when it is contrary to its own policies and the spirit of the Supreme Court's earlier judgments. This case reinforces the principle of non-discrimination and equal opportunity for women officers in the armed forces. There is no change in the previous position of law, but this case clarifies the implementation of the same.

The Supreme Court's ruling highlights a critical development in ensuring equality and fairness within the Indian Army's promotion processes, especially for women officers. By finding the Army's exclusion of certain Confidential Reports (CRs) arbitrary and discriminatory, the court has reinforced the principles of fairness enshrined in Article 14 of the Constitution. The Supreme Court held that the manner in which the Indian Army assessed the Confidential Reports (CRs) of

100 *Nitisha v. Union of India*, 2023 INSC 985.

101 (2021) 15 SCC 125. The case dealt with the denial of PC to Women Short Service Commission Officers (WSSCOs) of the Indian Army. The court emphasized that the last ACR ought to be considered and the quantitative performance for the entire record of service must be assessed.

women officers for promotion to the rank of Colonel was arbitrary and discriminatory. The Court found that the Army had improperly excluded a significant portion of the women officers' CRs, particularly those earned after their ninth year of service. The court noted that while the Army's argument for a three-look review process had merit, the arbitrary cut-off dates for CRs were not justified. The court also rejected the argument that a lack of vacancies justified the denial of promotions, pointing out that 108 vacancies had been filled. The court emphasized that the approach taken by the Army authorities was violative of the fundamental principles of fairness embodied in Article 14 of the Constitution. The court directed the Army to conduct a fresh review of the women officers' cases, using a common cut-off date of June 2021 for all CRs. The court also clarified that the officers who had already been promoted would not be affected by this order. This ruling is a landmark in addressing gender-based inequities and reaffirms the judiciary's commitment to upholding constitutional values of equality and fairness in institutional practices.

IV MISCELLANEOUS

*Bachpan Bachao Andolan v. Union of India*¹⁰² brought by the NGO Bachpan Bachao Andolan, focused on the alarming rise in crimes against women and children, particularly trafficking, sexual exploitation, and forced labor. The Supreme Court was tasked with examining the adequacy of existing laws, their implementation, and the need for additional safeguards to protect vulnerable groups. The judgment aimed to ensure comprehensive measures to prevent exploitation, prosecute offenders, and rehabilitate victims. From the facts of the case, Bachpan Bachao Andolan, an NGO committed to protecting children's rights, filed the petition in 2006, citing increasing instances of trafficking and exploitation of women and children. The petition highlighted deficiencies in the implementation of laws like the Immoral Traffic (Prevention) Act, 1956, and the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). Specific concerns included lack of rehabilitation measures, inadequate investigations, and delays in trials of cases involving women and children. The key issues raised were the Inadequate implementation of laws to combat trafficking and exploitation, absence of a centralized database to track missing children and victims of trafficking and insufficient rehabilitation programs for rescued women and children. In the government's response, the Union of India outlined measures like the Track Child portal, Anti-Human Trafficking Units (AHTUs), and initiatives under the National Commission for Protection of Child Rights (NCPCR). The petitioners argued that these measures were poorly implemented and lacked coordination between states. In the judgment given, the court affirmed that crimes against women and children violate their fundamental rights under Articles 14, 15, 19, and 21 of the Constitution. It emphasized the State's constitutional obligation to ensure the safety, dignity, and welfare of women and children. Some comprehensive directions were also laid out like creation of a National Anti-Trafficking Bureau. The Court directed the

102 (2023) 9 SCC On Line SC 133.

establishment of a centralized authority to coordinate efforts to combat trafficking, ensure inter-state collaboration, and oversee investigations. The government was instructed to operationalize a real-time, nationwide database to track missing and rescued children, linking police stations, shelters, and other stakeholders. And strengthening rehabilitation frameworks. State governments were ordered to set up or upgrade rehabilitation homes with adequate infrastructure, psychological counseling, vocational training, and healthcare facilities. The court directed the establishment of special fast-track courts to handle cases involving trafficking, sexual abuse, and exploitation of women and children directed the Ministry of Women and Child Development (MWCD) to submit periodic status reports on the implementation of these measures. The Court tasked the NCPCR to monitor compliance at the state level and report gaps. The Court warned that failure to implement these directions would invite strict action, including contempt proceedings against official. In conclusion, the judgment reinforced the urgency of addressing systemic failures to protect women and children and laid out a robust framework for enforcement and accountability.

V CONCLUSION

In the year 2023, the Supreme Court has shown real commitment in ensuring procedural fairness in cases of sexual harassment. While rectifying procedural missteps, the court have taken a broader view, assessing whether the punishment meted out was equitable and just for both the victim and the respondent. The inherent limitations of financial consequences within the organizational structure raise questions about their impact on the well-being of the victim and their ability to act as a genuine deterrent to potential offenders. The punishment given by court by imposing of withholding of 50% of a government employee's pension appears to be a model set for preventing any sort of sexual harassment at workplace. Likewise, the Supreme Court's judgment in *Nitisha v. Union of India* (2023) is a significant step towards ensuring fair and equal opportunities for women officers in the Indian Army. The court's decision emphasizes the critical need for fairness and equality in promotions, reinforcing the principle that policies must align with constitutional values. This ruling is a significant step in ensuring that women officers in the Army not only grant Permanent Commission but are also treated equitably in their career progression. It highlights the Army's responsibility to eliminate discrimination and uphold the integrity of merit-based evaluations, fostering a truly inclusive environment.

Likewise, the most celebrated judgment on right to privacy of women (*Indra kunwar v. State of Chhattisgarh*, proved the impartiality of judiciary involving women accused of serious criminal offences. By reinforcing the sanctity of privacy and the necessity for robust evidence beyond mere circumstantial links, the court sets a higher standard for convictions, ensuring that personal biases do not overshadow impartial justice. Additionally, it reinforces the judiciary's role in safeguarding individual rights against societal prejudices, promoting gender equality, and upholding the dignity of every person within the legal framework.

