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## WOMEN AND LAW

*Arya. A. Kumar\**

## I INTRODUCTION

GENDER JUSTICE, being a sophisticated concept, includes multifaceted legal rights of women. The array of significant apex court judgments has played a major role in advancing this cause, addressing historical inequalities, and fostering inequalities. The legal battles toward women's empowerment in India travelled through recent legislative measures, such as the Women's Reservation Bill, alongside progressive judicial pronouncements. These developments seek not only to enhance women's representation in political decision-making but also to address the broader social and economic challenges in the contemporary scenario. By advancing such initiatives, India reinforces the message that gender equality is not merely an aspiration but a concrete and attainable objective.

In 2024, the Indian judiciary, especially the Supreme Court of India, delivered a series of landmark judgments that reshaped key legal and constitutional landscapes on women's empowerment. These judgments not only enriched India's legal discourse but also had a profound impact on various sectors ranging from education and industry to constitutional governance. The enactment of the new Criminal Laws<sup>1</sup> in 2023 represents a significant overhaul of India's colonial-era criminal justice framework. While earlier laws were predominantly punitive in nature, the new legislative framework adopted a victim-centric approach, emphasizing rehabilitation and justice for survivors. These reforms are also intended to modernize legal processes and enhance the efficiency of justice delivery mechanisms. From the perspective of gender justice and women's rights, the revised statutes have retained crucial protections against crimes such as rape, sexual harassment, acid attacks, and dowry-related violence. However, the non-recognition of marital rape, the absence of a broader gender-sensitive lens, and the failure to address intersectional vulnerabilities such as caste, class, or disability signal that the reforms fall short of delivering substantive change for women.

\* Associate Professor, the Indian Law Institute, New Delhi.

1 Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinyam (BSA).

## II VARIOUS RIGHTS OF WOMEN

### **Women and child care leave**

In the present era, a significant number of women are part of the workforce, many of whom are also mothers. Balancing professional responsibilities with the demands of motherhood can be challenging, especially when a child requires additional care and attention. In such circumstances, it is essential for the state to provide child care leave to working mothers. Furthermore, recognizing that every child is unique, some needing more support than others, the government needs to implement supportive measures and benefits to enable mothers to fulfil both their professional and parenting responsibilities effectively. There may arise situations wherein a working mother might have to attend to the needs of the child. In such a scenario, the provisions of child care leave (CCL) play a pivotal role as it allows for paid leave to women to attend to the needs of their children. If such a provision is not granted to the women workforce, then a working mother might be compelled to leave employment to attend to the needs of the child, especially if such a child is a child with special needs which arose in the present context.

The Supreme Court cited Rule 43-C of the Central Civil Service (Leave) Rules, 1972, which addresses “Child Care Leave” for working mothers. The said rule allows for child care leave to female government employees who have minor children. During the period of child care leave, she would be paid a leave salary equal to the pay drawn immediately before proceeding on leave. The competent authority may provide such leave during the entire service tenure for a maximum period of time years. Further, the Union, subject to conditions from time to time, also permitted for Child Care Leave to working mothers of children with exceptional needs till the age of twenty-two years, by way of an Office Memorandum dated March 3, 2010.

In *Shalini Dharmani v. State of Himachal Pradesh*,<sup>2</sup> the division Bench of the then CJI Justice D.Y. Chandrachud and Justice J.B. Pardiwala directed the State of Himachal Pradesh to re-evaluate the entire aspect concerning the importance of granting CCL laws, while also making sure that the objectives of the Rights of People with Disabilities Act are also covered to ensure that even the working mother of differently-abled children is properly safeguarded under the Act. The Supreme Court emphasized that women being a part of the workforce is a constitutional right, not a privilege, by citing Articles 14, 15 and 21 of the Constitution of India; however, that does not eliminate the special areas of concern which might arise for women employees.

The Supreme Court has held that women’s participation in the workforce is a constitutional right, and this right must be upheld through enabling welfare measures such as Child Care Leave (CCL), particularly for mothers of children with disabilities. Denying such leave violates the fundamental rights guaranteed under Articles 14, 15, and 21 of the Constitution. The case arose when Shalini Dharmani,

2 2024 SCC OnLine SC 653.

an Assistant Professor in a government college and mother of a 14-year-old son with *Osteogenesis Imperfecta*, a rare genetic disorder, was denied CCL because Himachal Pradesh lacked an enabling law. She approached the Himachal Pradesh High Court under Article 226, seeking the application of Rule 43-C of the Central Civil Services (Leave) Rules, 1972. Her plea was rejected, prompting her to move to the Supreme Court *via* a Special Leave Petition. The central question was whether working mothers of children with disabilities are entitled to CCL in the absence of explicit state provisions.

Referring to Rule 43-C of the CCS (Leave) Rules, 1972, which grants two years of paid CCL to women government employees with minor children, and an Office Memorandum dated March 3, 2010 extending this benefit up to 22 years for children with disabilities, the Court stressed that supportive policies are essential to prevent women from facing the unfair choice between caregiving and employment. The Commissioner under the Rights of Persons with Disabilities Act, 2016, confirmed that while the Act contains no specific leave provisions, it endorses welfare obligations for persons with disabilities. The Bench underscored that constitutional rights must guide administrative frameworks and that gender-sensitive workplace policies are vital to ensuring dignity and equality for women employees. It held that constitutional equality cannot depend on state inaction, and recognized the dual responsibilities of motherhood and public service, particularly in cases involving children with disabilities. This ruling not only reinforces the guarantees of equality (Article 14), non-discrimination (Article 15), and the right to life and dignity (Article 21), but also signals to state governments the necessity of adopting inclusive leave policies in harmony with central rules, the Rights of Persons with Disabilities Act, 2016, and international commitments under the CRPD. It marks a progressive stride toward gender justice by acknowledging that true equality requires substantive institutional support for women balancing work and caregiving roles.

### **Employment rights of women**

In *Union of India v. EX.LT. Selina John*,<sup>3</sup> the Supreme Court held that terminating a woman's employment solely due to marriage constitutes gender discrimination and violates the right to dignity, non-discrimination, and fair treatment under Article 14<sup>4</sup> and 21 of the Constitution.<sup>5</sup>

“Terminating employment because the woman has married is a coarse case of gender discrimination and inequality. Acceptance of such [a] patriarchal rule undermines human dignity, right to non-discrimination and fair treatment”<sup>6</sup>

Selina John, a former lieutenant and Permanent Commission Officer in the Military Nursing Service, was discharged in 1988 for marrying. The policy at the

3 CA NO-001990/2019 (June, 2024).

4 Constitution of India, Art. 14.

5 Constitution of India, Art. 21.

6 *Selina John v. Union of India*, Supreme Court of India, 2024.

time prohibited only **women nursing officers** from continuing service after marriage. She challenged her dismissal before the Supreme Court, which found the action **“wrong and illegal.”** A bench led by **Sanjiv Khanna J.**, directed the **Union Government to pay 60 lakh** in compensation within eight weeks.<sup>7</sup> The Court observed that the **marriage rule was discriminatory**, as it applied **only to women officers**, not men, and was rooted in **patriarchal norms**. The Court reiterated that **gender cannot be a ground for dismissal** and that policies must uphold the **principles of equality and dignity**.

This judgment is a **landmark affirmation of workplace gender equality** in the military, striking down **discriminatory service rules** that penalize women for marriage. It aligns with **prior judgments granting permanent commission to women in the Armed Forces** in 2020 and 2021.<sup>8</sup> The case also highlights broader systemic challenges faced by Indian women in employment, as evidenced by the **alarming female labour force participation rate of just 19.9% as per the October–December 2023 Periodic Labour Force Survey (PLFS)**.<sup>9</sup> The *Selina John* verdict is a **crucial milestone** in India’s gender justice jurisprudence as it challenges structural inequalities and reaffirms that **marital status cannot dictate professional rights**.

In a similar vein, the **High Court of Uttarakhand**<sup>10</sup> held that denying **public employment to a woman solely on the ground of pregnancy** is **discriminatory, unconstitutional**, and contrary to the values of **gender justice** under **articles 14, 15, and 21** of the Constitution.<sup>11</sup> The Court emphasized that a woman who is eligible for maternity leave after joining service should **not be denied appointment merely because she is pregnant** at the time of joining. The petitioner received an **appointment letter dated 23.01.2024** for the post of **Nursing Officer (Female)** issued by the **Director General of Medical Health and Family Welfare, Dehradun**. Upon reporting, her **medical certificate** stated she was **“temporarily unfit”** due to being **13 weeks pregnant**, and she was denied joining. She then filed a **writ petition** seeking to quash the rejection order and praying for permission to join the post. The court questioned: *“If a woman becomes pregnant after joining, she is entitled to maternity leave. Then why can’t a woman, already pregnant, be allowed to join and later avail of the same benefit?”*<sup>12</sup>

It noted that the **State’s reasoning was parochial and patriarchal**, ignoring the fact that **women constitute half of the population** and that **pregnancy is not a disability**. The Court remarked that **motherhood is central to Indian society**, yet many women are **forced out of employment** when balancing professional and familial responsibilities. The **denial of employment** for being pregnant was held to be

7 *Ibid.*

8 *Secretary, Ministry of Defence v. Babita Puniya*, (2020) 7 SCC 469.

9 Ministry of Statistics and Programme Implementation, Periodic Labour Force Survey Bulletin (Oct- Dec 2023), Govt. of India.

10 *Misha Upadhyay v. State of Uttarakhand*, WP (S/S No.241 of 2024).

11 Constitution of India, Arts. 14, 15 and 21.

12 *Misha Upadhyay v. State of Uttarakhand*, 2024 SCC On Line Utt 1024.

**unconstitutional and unjust**, and **relief was granted** to the petitioner.<sup>13</sup> This ruling is a **progressive and gender-sensitive affirmation of pregnancy rights in public employment**. The Court rightly identified the inherent discrimination in denying women equal opportunity due to natural biological processes. By rightly **drawing from the constitutional principles of equality and dignity**, this judgment sets a strong precedent against patriarchal employment practices. It also reaffirms that **pregnancy cannot be a valid ground for denying a woman the right to earn a livelihood**, a right guaranteed under **article 21** of the Constitution.<sup>14</sup>

Similarly, in *Priyanka Tyagi v. Union of India*,<sup>15</sup> the **Supreme Court of India** held that the **non-availability of permanent commission for women officers** in the **Indian Coast Guard (ICG)**, even after years of service, amounted to **gender discrimination** and violation of the principles of **equality and fairness enshrined under Articles 14 and 15** of the Constitution of India.<sup>16</sup> The Court emphasized the need for the government to evolve a **gender-neutral policy** and address the **disparities in treatment between male and female officers**. Priyanka Tyagi, a woman officer serving in the ICG since **2009**, applied for **permanent commission in 2021** with recommendations from senior officers. Her request was denied because **ICG did not have a provision for permanent commission** for short-service women officers. After denial of interim relief by the High Court, she approached the **Supreme Court**.<sup>17</sup> The then **Chief Justice of India**, strongly criticizing the government's stand, stated:

*"You speak of 'Nari Shakti'. Now show it here... Why are you being so patriarchal? You don't want to see the faces of women in the Coast Guard?"*<sup>18</sup> The Court questioned why, unlike the **Indian Navy**, the ICG had **not introduced permanent commission for women** post-2009. The Union Government argued that **Tyagi was in the Short Service Commission stream**, while a permanent commission was only available to a different branch. The **bench directed** the Union to **frame a gender-neutral policy** at the earliest, recognizing the long-standing **exclusion of women** from permanent roles.

The judgment serves as a **significant milestone in the march towards gender parity** in military and paramilitary forces. By **rejecting the patriarchal justification** for denying women permanent commission in the ICG, the Court reiterated that **gender-based exclusion from career benefits** is unconstitutional. It also affirmed that women officers deserve **equal pay, status, and progression opportunities** as their male counterparts.<sup>19</sup> This ruling is a step forward in dismantling systemic gender bias in the defense sector and ensuring **institutional accountability** in creating inclusive workplaces.

13 *Ibid.*

14 *Ibid.*

15 (SLP (C) 3045 OF 2024).

16 Constitution of India, Arts. 14 and 15.

17 *Priyanka Tyagi v. Union of India*, 2024 SCC OnLine SC 438.

18 *Ibid.*

19 *Ibid.*

In a significant ruling<sup>20</sup> under the Motor Vehicles Act, 1988, the Supreme Court of India emphasized the invaluable and equal contribution of homemakers in a family, highlighting the need to recognize their economic value in compensation claims.<sup>21</sup> The judgment was delivered by a Division Bench comprising Justices Surya Kant and K.V. Vishwanathan, while adjudicating an appeal filed by the husband and children of a 50-year-old woman who died in a car accident. The deceased was a homemaker, and her family initially approached the Motor Accident Claims Tribunal (MACT), which awarded a sum of Rs. 2,50,000/- as compensation.<sup>22</sup> Dissatisfied with this low amount, they appealed to the high court, which dismissed the appeal. The family then filed a further appeal before the Supreme Court, leading to the present decision.<sup>23</sup> The Supreme Court began by identifying serious factual and legal errors in the high court's judgment. *Firstly*, it was wrongly noted that the deceased was 55 years old, while she was actually 50. *Secondly*, the high court mistakenly held that the appellants were not dependent on the deceased, which the apex court corrected as a patent error. *Thirdly*, it incorrectly recorded that the deceased was travelling in a bus, whereas she was actually a car passenger at the time of the accident.<sup>24</sup>

The core of the Supreme Court's reasoning centered on the recognition of homemakers' unpaid work. The court stressed that the economic contribution of a homemaker is substantial and essential, stating:

The role of a homemaker is as important as that of a family member whose income is tangible... the contribution is of a high order and invaluable.<sup>25</sup>

Addressing the issue of the deceased's employment, the court held that even if she was not formally employed, her notional income must be considered equivalent to that of a daily wage worker under the Minimum Wages Act, especially in the state of Uttarakhand.<sup>26</sup> On this basis, the Court concluded that her monthly income could not have been less than Rs. 4,000/-. However, recognizing that the vehicle involved in the accident was not insured, and considering the close relationship between the parties and other practical factors, the Supreme Court decided not to calculate compensation under multiple heads. Instead, it awarded a lump sum compensation of Rs. 6,00,000/- to the appellants.<sup>27</sup> The court directed the respondents to pay the balance amount of Rs. 3,50,000/- (over and above Rs. 2,50,000/- already paid) within six weeks, failing which interest would be imposed as per the tribunal's original direction.<sup>28</sup> This judgment is crucial in setting a precedent

20 *Arvind Kumar Pandey v. Girish Pandey*, (2025) 2 SCC 145.

21 Motor Vehicles Act, No. 59 of 1988, § 166, India Code (1988).

22 *Ibid.*

23 *Ibid.*

24 *Ibid.*

25 *Id.*, at para 12.

26 Minimum Wages Act, No. 11 of 1948, § 3, India Code (1948).

27 *Arvind Kumar Pandey v. Girish Pandey*, Civil Appeal No. 3542 of 2024, Supreme Court of India (unreported, judgment dated May 2024).

28 *Ibid.*

for the valuation of unpaid domestic labour. It recognizes that homemakers contribute significantly to family welfare and deserve just compensation when their role is lost due to untimely death. By grounding the notional income in the Minimum Wages Act, the Court also offers a tangible method for future compensation assessments in similar cases.

**A woman is the absolute owner of ‘Stridhan’**

The Supreme Court, in an appeal<sup>29</sup> against the High Court’s of Telangana refusal to quash criminal proceedings under section 406 IPC and Section 6 of the Dowry Prohibition Act, 1961, reaffirmed the long-standing legal position that *stridhan* is the exclusive property of a woman whether wife or former wife with neither the husband nor the father having any rights over it while she is alive and capable of acting on her own behalf. Relying on precedents such as *Rashmi Kumar v. Mahesh Kumar Bhada* and the recent *Mala Kar v. State of Uttarakhand*, the Court reiterated that a woman has absolute authority over her *stridhan*, and any recovery action must be initiated by her or by someone authorised through a valid power of attorney.

The case arose from a complaint filed in 2021 by the father of a woman who had married in 1999, divorced in the United States in 2016 through a mutual settlement, and remarried in 2018. He alleged that her former in-laws had failed to return gold ornaments and other articles given at the time of marriage. The court found that the complaint suffered from multiple defects: it was lodged more than 20 years after the marriage and five years after divorce; the daughter had not authorised her father to act; there was no proof of entrustment or dishonest misappropriation; and the FIR’s allegations of non-return of gifts were later reframed in the charge-sheet as dowry demands without basis. Holding that the essential ingredients of section 406 IPC and section 6 of the Dowry Prohibition Act were not made out, the court quashed the FIR and all consequential proceedings under section 482 Cr PC, observing that criminal law cannot be used to pursue stale claims or personal vendettas. Bottom of Form

### III OFFENCE OF RAPE

In *Bilkis Yakub Rasool v. Union of India*,<sup>30</sup> the two-judge Bench of the Supreme Court set aside remission orders granting premature release to 11 convicts in the Bilkis Bano gang rape case. The judgment centered around issues of maintainability of petitions, the authority of the Gujarat government to grant remission, and the personal liberty of the convicts. In writ petitions against the Orders dated 10-08-2022, granting remission and early release of 11 convicts guilty of committing heinous crimes during the large-scale riots in Gujarat on February 28, 2002, which occurred in the aftermath of the burning of the train incident in Godhra in Gujarat on 27-02-2002, the division bench of BV Nagarathna and Justice Ujjal Bhuyan, while setting aside the impugned orders of remission, held that the

29 *Mulakala Malleshwara Rao v. State of Telangana*, 2024 INSC 639.

30 2024 INSC 24.

Government of the State of Gujarat had no jurisdiction to entertain the applications for remission or pass the orders of remission on 10-08-2022 in favour of the convicts as it was not the appropriate Government within the meaning of Section 432(7) of the CrPC. The court added that the court's order dated 13-05-2022, being vitiated and obtained by fraud as it was sought by suppression of material facts as well as by misrepresentation of facts, is therefore a nullity and non-existent in law.

The Judgment upheld the maintainability of Bano's petition. It stated that article 32 is the "soul of the Constitution" used for the enforcement of fundamental rights. Bano approached the top court for the enforcement of fundamental rights under articles 14(right to equality) and 21 (right to life and personal liberty). Nagarathna J., wrote that Bano's petition could not be dismissed on the grounds of an alternative remedy. Justice Nagarathna further pointed out that Radhe Shyam, one of the convicts, had approached the Supreme Court under article 32, praying for the Gujarat government to consider his remission. On 13 May 2022, the Supreme Court directed the Gujarat government to consider remission under the 1992 Gujarat Policy. Relying on the above facts, the judgment stated that the High Court of Gujarat would not have been in a position to entertain the petition in light of the Supreme Court direction issued in May 2022. The Supreme Court held that the "appropriate government" for considering remission under Section 432(7) Cr PC is the state where the trial and sentencing occurred, not where the crime happened or the sentence is served. In Bilkis Bano's case, that state was Maharashtra, not Gujarat. The convicting court's judge's opinion is essential for deciding remission. The court cited *Ratan Singh* (1976) and *v. Sriharan* (2016) to support this interpretation. Justice Nagarathna stated that Gujarat should have rejected the remission request outright based on these legal grounds. The judgment held that the Supreme Court's May 2022 order was *per incuriam*, as it ignored key precedents like the *v. Sriharan* case. Convict Radheshyam suppressed crucial facts, including prior rejections by Maharashtra authorities and misrepresented a High Court of Bombay case unrelated to remission. The court found that only Radheshyam initiated the remission process, not the other convicts. His false claims and omissions misled the court. As the 2022 order was declared a nullity, the Gujarat government's remission decision based on it was quashed. The Supreme Court held that the convicts' release, though initially valid, could not continue once the remission orders were quashed. It ruled that liberty under Article 21 must align with the rule of law, accepting Bilkis Bano's argument that the convicts must return to prison. The court emphasized that the rule of law is essential for fundamental rights to have meaning. Emotional appeals about liberty were dismissed as hollow when abuse of legal process is involved. The convicts were ordered to surrender within two weeks.

In *Kolkata Rape and Murder case*<sup>31</sup> Supreme Court orders constitution of National Task Force to give recommendations on modalities ensuring safety at workplace In the *Suo Motu* matter concerning the rape and murder of a doctor at

31 2024 SCC OnLine SC 2056.

the RG Kar Medical College Hospital at Kolkata, the three Judge Bench of DY Chandrachud, CJI, JB Pardiwala and Manoj Misra, JJ. said that it was deeply concerned about the absence of conditions of safety for doctors and medical professionals across the country, and ordered the constitution of a ten-member National Task Force, comprising doctors all over the country to give recommendations on the modalities to be followed all over the country to ensure safety at the workplace.

The factual matrix of the case was that on August 9, 2024, a thirty-one-year-old postgraduate doctor at R.G. Kar Medical College Hospital, Kolkata, who was on a thirty-six-hour duty shift, was murdered and allegedly raped inside the hospital's seminar room. Writ petitions were subsequently filed before the High Court of Calcutta seeking, *inter alia*, a court-monitored investigation into the crime and the conduct of the hospital authorities, including the principal and other officials, by a special investigative team. It was alleged that the parents of the deceased were initially misinformed that their daughter had committed suicide, were allowed to see her body only after several hours, and that the first information report (FIR) was lodged belatedly by the police. By its order dated August 13, 2024, the high court transferred the investigation to the Central Bureau of Investigation (CBI). The incident triggered widespread protests and agitations by doctors' associations, student groups, and civic organizations across the country. On the eve of Independence Day, several parts of Kolkata witnessed demonstrations under the 'Reclaim the Night' campaign.

About this brutal incident, the Supreme Court expressed grave concern over the circulation of the victim's name and graphic images on social media, terming it a violation of her privacy and dignity. The Court criticized the West Bengal Government for failing to prevent vandalism at the hospital during ongoing protests, despite being aware that a sensitive investigation was underway. It was observed that the incident had exposed the lack of institutional safety for doctors nationwide, especially women, who are vulnerable to both sexual and non-sexual violence due to systemic and patriarchal biases. Drawing on *Aruna Ramachandra Shanbaug v. Union of India*,<sup>32</sup> the court highlighted specific risks faced by female medical professionals, including harassment from colleagues, superiors, and patients' relatives. The Bench noted that State laws in several jurisdictions dealing with violence against doctors fail to address underlying systemic issues. It stressed that punitive measures alone are insufficient without institutional reforms. The court recorded several deficiencies in working conditions, absence of adequate restrooms (especially separate facilities for women), long duty shifts up to 36 hours without basic hygiene or sanitation, inadequate security, poorly lit hospital areas, unrestricted public access, lack of CCTV surveillance, insufficient screening for weapons, distant accommodation for staff, and poor transport facilities.

32 (2011) 15 SCC 480.

To address these systemic gaps, the court constituted a ten-member National Task Force (NTF)<sup>33</sup>, headed by Surgeon Vice Admiral Arti Sarin, AVSM, VSM, Director General Medical Services (Navy), with five *ex officio* members. The NTF was authorized to make additional recommendations, suggest timelines for implementation, and submit an interim report within three weeks and a final report within two months. All State and Union Territory Governments, as well as the Union Ministry of Health and Family Welfare, were directed to provide detailed data on security arrangements, infrastructure, access control, CCTV coverage, grievance-handling systems, training for dealing with patient grief, social worker deployment, and compliance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Court also directed the CBI to submit a status report on the murder investigation and the State of West Bengal to file a report on the vandalism probe, both by 22 August 2024.

In *Mahesh Damu Khare v. State of Maharashtra*,<sup>34</sup> the Supreme Court quashed the criminal proceedings against the appellant, who faced charges under Sections 376, 420, 504, and 506 of the IPC, arising from allegations that a false promise of marriage had vitiated the complainant's consent to a long-standing physical relationship. The Bench clarified that under Section 375 IPC, consent can be said to be vitiated on the ground of a false promise of marriage only when the promise is made from the very inception with no intention of fulfilling it. In this case, the parties had been in a consensual relationship for several years, without any objection from the complainant during that time. The FIR appeared to have been lodged only after the relationship deteriorated due to financial disputes, suggesting that the criminal complaint was an afterthought. Citing *Pramod Suryabhan Pawar v. State of Maharashtra*<sup>35</sup> and *Uday v. State of Karnataka*<sup>36</sup>, the Court reiterated that a mere breach of promise, absent fraudulent intent from inception, does not constitute rape. The complainant's own statements did not indicate a lack of consent induced by deception, and the continuation of the relationship over an extended period was inconsistent with the allegation of initial fraudulent intent. Exercising its inherent powers under Section 482 CrPC, the Supreme Court held that the FIR and subsequent proceedings were an abuse of the process of law. It observed that the continuation of such proceedings would amount to harassment and cautioned against the misuse of criminal provisions in disputes arising out of failed consensual relationships, as this undermines genuine cases and burdens the judicial system. The appeal was allowed, and all proceedings against the appellant were quashed.

33 The NTF's mandate includes:

- i. Preventing violence, including gender-based violence, against medical professionals;
- ii. Formulating a national protocol for safe and dignified working conditions for all categories of healthcare workers.

34 2024 INSC 897.

35 (2019) 9 SCC 608.

36 (2003) 4 SCC 46.

## IV DOWRY DEATH

In *Shabeen Ahmad v. State of Uttar Pradesh*,<sup>37</sup> the Supreme Court allowed the appeal of Shabeen Ahmad, whose sister Shahida Bano died within two years of marriage under suspicious circumstances, and whose in-laws had been granted bail by the High Court of Allahabad in a dowry-death case under Sections 498A and 304B IPC, read with Sections 3 and 4 of the Dowry Prohibition Act. The apex court held that where serious allegations include persistent dowry demands initially for a motorcycle and later for a car, and medical evidence reveals ante-mortem injuries and a ligature mark indicative of strangulation, bail must not be granted mechanically. It found a strong prima facie case connecting the father-in-law and mother-in-law to cruelty and coercion; their bail was consequently cancelled. Conversely, bail for the sisters-in-law was maintained in view of their lesser involvement and personal circumstances (one recently married, the other pursuing education while employed).<sup>38</sup> The Court emphasized that dowry deaths are a grave social concern and that granting bail without deep scrutiny risks undermining public confidence in the justice system. The accused were directed to surrender, and the trial court was urged to expedite proceedings consistent with legislative intent.<sup>39</sup>

The High Court of Delhi in *Vinay v. State Govt of NCT of Delhi*<sup>40</sup> held that the phrase “soon before her death” under section 304B IPC must be interpreted **dynamically**, reflecting the **continuity of harassment in matrimonial relationships** rather than an immediate time frame. A contextual and flexible lens is vital to ensure justice in dowry death cases involving evolving patterns of cruelty.<sup>41</sup> The accused sought **bail** in a case related to the **dowry-linked suicide** of his wife. Allegations revealed a **consistent chain of harassment** since the early days of marriage. The wife had returned to her **parental home**, yet evidence indicated that **dowry demands and cruelty continued**. Vinay’s plea for bail was **rejected by the High Court of Delhi** based on both factual scrutiny and statutory interpretation under Section **304B of the IPC**. Given the transient nature of societal expectations and justice, the statutory framework must be viewed through the lens of continuity and the overall matrimonial context, rather than a fixed or immediate time frame. The following interpretations were underscored:

- i. **Continuity of Matrimonial Relationship:** The court emphasized that the **existence of matrimonial ties** persists even when the wife resides at her

37 2024 INSC 307.

38 *Available at:* <https://www.livelaw.in/top-stories/granting-bail-in-dowry-death-cases-despite-evidence-of-direct-involvement-shakes-public-confidence-in-judiciary-supreme-court-285511> (last accessed on May 30, 2025).

39 <https://www.barandbench.com/news/litigation/courts-must-undertake-deeper-scrutiny-before-granting-bail-in-dowry-death-cases-supreme-court><https://www.livelaw.in/top-stories/granting-bail-in-dowry-death-cases-despite-evidence-of-direct-involvement-shakes-public-confidence-in-judiciary-supreme-court-285511> (last accessed on May 18, 2025).

40 *Vinay v. State (NCT of Delhi)*, 2024 SCC On Line: Del 298 CRL MC 2019.

41 Indian Penal Code, 1860, s. 304B.

parental home, and this continuity is crucial for evaluating cruelty and dowry demands.<sup>42</sup>

- ii. **Interpretation of “Soon Before”:** The Court clarified that the term does **not mean “immediately before death”**. It includes a **reasonable period of sustained harassment**, provided there is no **intervening peaceful period**. Precedents were cited to support this non-rigid approach.<sup>43</sup>
- iii. **Evaluation of Evidence:** The Court examined **phone records, witness statements**, and timelines. The pattern of harassment satisfied the threshold under **Section 304B**, justifying rejection of bail.<sup>44</sup>
- iv. **Legislative Intent:** The Court traced the **origin of Section 304B** in IPC, stating that a **narrow interpretation** would defeat its **core objective** to address the social evil of **dowry-related deaths** effectively.<sup>45</sup>

This judgment promotes a **victim-centric and justice-oriented interpretation** of dowry death laws. By focusing on the **continuum of abuse** rather than strict timelines, the court empowered future benches to adopt a **more holistic and humane approach** in cases involving cruelty and dowry-linked suicides.

#### V CONSTITUTIONAL RIGHTS OF SEX WORKERS

In *Budhadev Karmaskar v. State of West Bengal*,<sup>46</sup> the Supreme Court upheld that sex workers are entitled to a life of dignity under Article 21, emphasizing that life under the Constitution means more than mere survival; it includes respect, opportunity, and rights equal to any citizen. It held that prostitution is often a consequence of poverty, not personal choice, and affirmed that sex workers must not be treated as criminals but as individuals in need of protection and rehabilitation. Pursuant to its *suo moto* jurisdiction, the court constituted a panel chaired by Mr. Pradip Ghosh including members from Durbar Mahila Samanwaya Committee and other stakeholders to recommend measures on (i) prevention of trafficking, (ii) rehabilitation of sex workers wishing to exit the trade, and (iii) ensuring conditions conducive to dignified work for those who continued in it, as mandated under Article 21.

Between 2011 and 2012, the court issued progressive instructions, including: setting up helplines and legal aid through State Legal Services Authorities; ensuring sex workers are not harassed during brothel raids; and allowing consenting adult sex workers to work without criminal sanction.<sup>47</sup> It also directed the Union and State governments to implement the panel’s recommendations, with binding interim directions under article 142, pending formal legislation. In 2022, reiterating these principles, the Court held that all adult consenting sex workers must be treated with dignity and that police and media must not violate their rights or expose their

42 *Ibid.*

43 *Ibid.*

44 *Ibid.*

45 Law Commission of India, 91st Report on Dowry Death and Law Reform 211 (1983) .

46 (2011) 11 SCC 538.

47 *BudhadevKarmaskar v. State of West Bengal*, (2011) 11 SCC 538.

identities, and reaffirmed the ongoing need for rehabilitation schemes and systemic reform. The judgment stands as a landmark in recognizing the constitutional rights of sex workers, acknowledging the structural forces of poverty, exploitation, and stigma that drive the profession, and issuing enforceable directions to ensure sex workers live with dignity and receive access to health, education, vocational training, safe shelter, and protection from abuse.<sup>48</sup>

VI PCPND ACT, 2003

In *Anant Ram v. State of Haryana*,<sup>49</sup> a renowned obstetrician operating in Hisar and Barwala, was denied anticipatory bail by the Punjab and Haryana High Court in multiple FIRs registered under the PCPNDT Act, accused of conducting illicit prenatal sex-determination tests using portable ultrasound machines and blindfolding clients to conceal identities. The FIR arose on the information of a decoy client coordinated by health authorities; illegal transactions for tests were allegedly recorded, and relevant equipment was seized. Despite Ram's argument that he had cooperated and that all registered ultrasound devices were accounted for under his two hospitals, the high court emphasized the serious nature of female feticide and found prima facie evidence of wrongdoing, including unethical conduct by a medical professional. It reiterated that under Section 28 of the PCPNDT Act, only the *Appropriate Authority* is empowered to lodge a complaint and initiate an investigation, and the police's role is limited. The court refused relief, noting custodial interrogation was necessary, especially in view of non-cooperation and the importance of recovering equipment for investigation. It held that anticipatory bail is an "exceptional concession," not a right, especially in serious matters like sex-selective practice implicating medical ethics and public health. The petition was accordingly dismissed, underscoring that regulatory and criminal accountability must be enforced to curb this persistent societal ill.<sup>50</sup>

The Supreme Court in *A (Mother of X) v. State of Maharashtra*<sup>51</sup> held that pregnancy resulting from sexual assault on a minor girl may be terminated even beyond the statutory limit of 24 weeks under the Medical Termination of Pregnancy Act, 1971, if continuation endangers the mental or physical health of the minor. The Court emphasized that in such exceptional circumstances, fundamental rights under Article 21 of the Constitution, including bodily autonomy and dignity, override procedural statutory limitations. A 14-year-old girl was raped in September 2023, and the resulting pregnancy was discovered only in March 2024, by which time she was approximately 25 weeks pregnant. The mother filed a petition before the Bombay High Court seeking medical termination of pregnancy under the MTP

48 Available at: <https://ijlr.iledu.in/case-commentary-budhadev-karmaskar-versus-the-state-of-west-bengal-ors/> (last visited on August 13, 2024).

49 2024PHCC :041284.

50 "Female infanticide in Punjab & Haryana is 'deeply disturbing': HC rejects prearrest bail of doctor accused of running sex-determination racket" (28 Aug 2024), detailing the court's reasoning on non-cooperation, gravity of offence under PCPNDT Act, and necessity for custodial interrogation.

51 *A (Mother of X) v. State of Maharashtra*, [2024] 5 S.C.R. 470; 2024 INSC 371 (SC).

Act. The High Court denied permission, citing the statutory ceiling of 24 weeks and a medical board report that found no fatal abnormalities. The matter was taken to the Supreme Court, which ordered a fresh medical board examination at Sion Hospital, Mumbai, which recommended termination due to the adverse impact on the minor's physical and mental health.<sup>52</sup> Although the parents initially had conflicting views, they ultimately agreed to carry the pregnancy to term, which the Court accepted, while reiterating the primacy of the minor's well-being.

The court opined that mental trauma arising out of child sexual assault must be given equal importance as physical trauma under Section 5 of the MTP Act.<sup>53</sup> It reaffirmed that Article 21 of the Constitution guarantees bodily autonomy, privacy, and dignity, and these must guide all reproductive rights decisions. It criticized the narrow functioning of medical boards that rely solely on fatal abnormality without assessing the psychological condition of the victim. The Court called for a victim-centric and rights-based approach and underscored that delayed reporting of pregnancy (common in rape survivors) should not deny access to reproductive care. The Bench also directed that medical boards must adopt a holistic view of trauma while issuing reports in such sensitive cases.

This judgment marks a progressive shift in Indian reproductive rights law. By allowing termination beyond 24 weeks in the interest of a minor rape survivor's mental and physical health, the Court rightly reinforced constitutional protections above statutory barriers. It reiterates that reproductive autonomy is intrinsic to the right to life and dignity, especially in cases involving minor girls and sexual abuse. The case sets a transformative precedent for judicial discretion and empathetic application of the MTP Act.

#### VII POCSO ACT, 2013

In *Just Rights for Children Alliance v. S. Harish*,<sup>54</sup> a division Bench comprising Chief Justice D.Y. Chandrachud and J.B. Pardiwala J., held that the mere viewing, downloading, or possession of material depicting minors in sexual acts constitutes an offence under Section 15 of the POCSO Act, 2012 and Section 67B of the IT Act, 2000. The judgment resolved conflicting interpretations among High Courts and expressly overturned the High Court of Madras ruling in *S. Harish v. Inspector of Police*,<sup>55</sup> which had controversially held that possession without distribution was not punishable. Clarifying the scope of Section 15, the Court identified three distinct and independent offences: (i) mere possession without deletion or reporting, (ii) possession with intent to distribute, and (iii) possession with commercial intent. It further ruled that under Section 30 of the POCSO Act, once possession is established, the presumption of a culpable mental state applies, shifting the burden of proof to the accused. Interpreting Section 67B

52 *Ibid.*

53 Medical Termination of Pregnancy Act, 1971, s 5 (exceptions for threat to life of the woman).

54 2024 INSC 716.

55 CRL RC(MD).135/2021 (18-8-2022).

of the IT Act, the Court emphasized that the provision criminalizes not only dissemination but also the creation, possession, consumption, and even passive viewing of exploitative material involving children, with each subsection addressing a separate offence.

Pardiwala J., objected to the continued use of the term “child pornography,” stating that it trivialises the gravity of the crime, and recommended the adoption of the term “Child Sexual Exploitative and Abuse Material” (CSEAM), urging Parliament to amend the POCSO Act accordingly. The Court observed that the existence, sharing, and viewing of such material perpetuates harm by re-traumatising victims. It directed the Union Government and concerned ministries to establish an expert committee, strengthen reporting mechanisms, ensure victim rehabilitation, mandate sex education programmes, and hold social media intermediaries accountable. The Court also clarified that “safe harbour” protections under Section 79(3)(b) of the IT Act do not apply to intermediaries that fail to promptly remove such content. This landmark judgment marks a decisive step in protecting children’s rights in the digital sphere and ensuring uniform enforcement of the law.

In *Sunshine Kharpan v. State of Meghalaya*,<sup>56</sup> the Supreme Court dismissed the Special Leave petition filed by Sunshine Kharpan, who had challenged the Meghalaya High Court’s affirmation of his conviction under Sections 6 and 4 of the POCSO Act, section 376(2) IPC, and section 506 IPC. While the Court saw no grounds to overturn the conviction, it took strong judicial notice of the continued use of the “two-finger test” during a rape victim’s examination a procedure previously condemned as regressive and invasive in *Lillu alias Rajesh v. State of Haryana*<sup>57</sup> The incident occurred in October 2013 after the Court’s ban the Supreme Court asked the Meghalaya Government to clarify its compliance with earlier judgments, including *State of Jharkhand v. Shailendra Kumar Rai*<sup>58</sup> which reiterated the prohibition on conducting the test and made it clear that medical personnel found to violate this ban would face misconduct proceedings. The State submitted a circular dated 27 June 2024, formally banning the two-finger test, requiring compliance with the Ministry of Health and Family Welfare’s medico-legal protocols, and stipulating disciplinary consequences, including suspension or penalties for non-compliance. The Supreme Court expressed confidence that these measures would be implemented fully and dismissed the SLP, emphasizing that article 21 demands bodily autonomy and dignity, and that invasive practices have no place in modern medico-legal procedure.<sup>59</sup>

56 2024 SCC On Line Ori 826.

57 (2013)/14 SCC/643.

58 (2022)/14 SCC 299.

59 Available at: <https://www.livelaw.in/supreme-court/supreme-court-asks-meghalaya-govt-to-issue-clear-instruction-about-ban-on-two-finger-test-in-rape-cases-258036> (last visited on January 12, 2025).

### Sexual governance of minors

In *Probhat Purkait v. State of West Bengal*,<sup>60</sup> the Supreme Court ruled that consensual sex is not a statutory exception under the Protection of Children from Sexual Offences Act, 2012 (POCSO).<sup>61</sup> The Court overturned the Calcutta High Court's acquittal of a man convicted of raping and kidnapping a 14-year-old girl simultaneously, setting aside the controversial observations made in *Probhat Purkait v. State of West Bengal*.<sup>62</sup> The POCSO Act does not recognize "consensual" sex with a minor as a legal exception.<sup>63</sup> High Courts cannot use Section 482 CrPC to bypass express provisions of a special statute like POCSO. Romantic relationships or marriages with minors cannot override the statutory bar imposed under the POCSO Act or IPC.<sup>64</sup> Victim's autonomy must be protected, but the law cannot be compromised in the process.

According to the factual matrix, in 2018, a 14-year-old girl went missing and was later found to have married a 25-year-old man. The man was convicted under sections 363, 366, 376(3), and 376(2)(n) IPC and section 6 of the POCSO Act. In 2023, the High Court of Calcutta overturned the conviction, citing a consensual relationship and using section 482 Cr PC. The high court made moralistic remarks about female adolescent sexuality. The Supreme Court took *Suo motu* cognizance of the judgment and later admitted the State of West Bengal as a party.<sup>65</sup> The Apex Court rightly noted and interpreted that Section 482 Cr PC cannot override special statutes like POCSO. It also reiterated that penetrative sex with a minor is statutory rape, regardless of consent. It also hauled up the "sweeping generalizations" and victim-shaming comments made by the High Court. It clearly laid down that judgments must be written without personal opinions and with a clear, concise structure. It also directed the creation of a three-member expert committee to aid the victim's rehabilitation. Lastly, it ordered all states to implement Sections 19(6) of POCSO and 30–43 of JJ Act, 2015, effectively.<sup>66</sup>

This landmark ruling by the Supreme Court is highly appreciated as it reasserts the protective intent, aim and objective of the POCSO Act by clarifying that consent of a minor is legally irrelevant in sexual activities. It sets aside a judgment blemished by unwarranted and uncalled stereotypes and moralistic bias, the Court reaffirms that judicial reasoning of the court must be neutral, statutory, and victim-sensitive. Such a case shifts the goalpost in the right direction by focusing on rehabilitation, autonomy, and victim-sensitive decision-making. It rightly focuses on substantial justice while respecting the legal procedure.

The Protection of Children from Sexual Offences Act, 2012 (POCSO), was enacted to safeguard children from sexual abuse. However, as adolescent sexual

60 *State of West Bengal v. ProbhatPurkait*, Civil Appeal No. 3892 of 2024.

61 *Ibid.*

62 *ProbhatPurkait @ Provatv. State of West Bengal*, Calcutta HC, 2023.

63 Protection of Children from Sexual Offences Act, 2012, § 6.

64 Code of Criminal Procedure, 1973, § 482.

65 *Suo Motu* Writ Petition (Criminal) No. 12 of 2023, Supreme Court Registry.

66 POCSO Act, 2012, § 19(6); JJ Act, 2015, §§ 30-43.

agency and autonomy continue to evolve in Indian society, 2024 has witnessed scholarly and judicial calls for the introduction of a “Romeo-Juliet” or close-in-age exemption to prevent the criminalization of consensual adolescent sexual relationships. The debate strikes the right balance between protecting minors and respecting sexual and bodily autonomy. A “Romeo-Juliet” exemption refers to a legal carve-out that protects adolescents who engage in consensual sexual acts with peers close in age from being prosecuted under statutory rape laws. Such provisions exist in countries like Canada, the US, and parts of Europe, where they unambiguously distinguish between exploitative abuse and non-coercive peer relationships.

Indian courts have increasingly incorporated this exemption to prevent unjustified legal action against young lovers, destigmatize engaging in sexual activity, and adhere to the aim of POCSO’s strict framework. The Madras High Court in June 2024 quashed a case involving a 17-year-old girl and a 19-year-old boy, calling it a “Romeo-Juliet” situation, and emphasizing the lack of coercion or abuse.<sup>67</sup> Several high courts (like Delhi and Kerala) have also asked legislatures to consider disproportionate punishment in such contexts. However, the Supreme Court in *State of West Bengal v. Probhat Purkait*<sup>68</sup> reaffirmed that consent is irrelevant when one party is below 18 under the current POCSO law. The judgment criticized high court’s tendency to rely on social morality over statute.

The Law Commission of India (283rd Report) has maintained that the age of consent must remain at 18, citing:<sup>69</sup>

- i. Risk of normalizing early sexual activity.
- ii. Cultural sensitivities.
- iii. Potential exploitation masked as consent.

However, the Commission did recommend judicial discretion in sentencing in cases involving minors aged 16–18, implicitly acknowledging the need for calibrated responses. The Supreme Court, while recognizing these complexities, has urged Parliament to debate the issue legislatively, not judicially, respecting the separation of powers. These complexities have led to a comprehensive paper on the exception to paint a bigger picture, which projects safeguarding the bodily autonomy of youngsters and reducing social stigma surrounding engagement in sexual activities.<sup>70</sup> The proposed Romeo-Juliet exception offers a middle ground between preserving the protective purpose of POCSO while ensuring that young love is not punished as a crime.

67 *XYZ v. State, Madras HC*, W.P. No. 15634 of 2024 (June 2024).

68 *Supra* note 59.

69 Law Commission of India, 283rd Report, “Age of Consent under the POCSO Act,” Ministry of Law and Justice (2019).

70 National Law University Odisha, “Close-in-Age Exemption in POCSO: A Comparative and Reform-Based Framework,” [Unpublished Paper, 2024].

## VIII IMMORAL TRAFFIC (PREVENTION) ACT, 1956

In *Bikash Kumar Jain v. State of Odisha*,<sup>71</sup> the High Court of Orissa quashed the cognizance of offences under Sections 370(3) and 370A (2) IPC, as added under the Immoral Traffic (Prevention) Act, 1956, against the petitioners who were accused of acting as customers at a spa alleged to be a brothel. Justice Siboo Sankar Mishra held that sexual intercourse for consideration by itself is not illegal *per se*; it becomes punishable only when there is trafficking, inducement, or exploitation. The Court found no evidence that the petitioners were involved in trafficking or knowingly engaging in sexual exploitation. All alleged victims were adult foreign nationals who entered prostitution voluntarily. In view of this, sections 370(3) and 370A (2) IPC were inapplicable. However, the court permitted the continuation of trial proceedings for other offences under the charge-sheet. The FIR was thus partly quashed, relieving the petitioners from the aggravated trafficking charges while maintaining charges under lesser sections of the Act and IPC for further trial procedures.<sup>72</sup>

IX PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT (PWDVA),  
2005

In *S. Vijikumari v. Mowneshwarachari C*, the Supreme Court delivered an important ruling on the interpretation of Section 25(2)<sup>73</sup> of the Protection of Women from Domestic Violence Act, 2005 (PWDVA), clarifying the scope for modifying or revoking orders under the Act, including maintenance orders. The case arose from a dispute in which the wife, S. Vijikumari, filed a petition under Section 12 of the PWDVA seeking protection and maintenance. The Magistrate awarded her 12,000 per month as maintenance and 1,00,000 as compensation. The husband's appeal was dismissed by the Appellate Court for delay, thereby giving finality to the order. Subsequently, the husband moved an application under Section 25, alleging that the wife had concealed her employment details and sought to set aside the order and recover maintenance already paid. The Magistrate rejected the application, but the appellate court remanded the matter for reconsideration. The high court affirmed the remand, prompting the wife's appeal to the Supreme Court.

The central question was whether Section 25(2) permits reopening of final orders or recovery of maintenance based on alleged fraud or misrepresentation. The wife contended that the provision allows only prospective alterations due to changes in circumstances occurring after the original order, and cannot be used to unsettle finalised orders or seek refunds. The husband argued that fraudulent

71 CRLMC No. 3390 of 2023.

72 <https://www.scconline.com/blog/post/2024/02/16/for-offence-under-s-370-a-of-ipc-customer-of-sex-worker-must-procure-women-for-another-legal-news/> (*last visited* on May 20, 2025).

73 S. 25(2) in The Protection of Women from Domestic Violence Act, 2005 reads that if the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.

suppression of facts justified revisiting the original order. Allowing the wife's appeal, the Supreme Court held that section 25(2) empowers a Magistrate to alter, modify, or revoke an order only prospectively, and solely in response to post-order changes in circumstances. The Court clarified that "change in circumstances" is a flexible concept covering variations in income, living costs, health, or other life conditions, but these must arise after the order was passed. Section 25(2) cannot be used to challenge settled orders or act as a substitute for appeal, and refunds of maintenance already paid are impermissible, as such payments are meant to ensure financial security for the aggrieved woman. The judgment underscores the need to respect the finality of judicial orders, prevents misuse of Section 25 to reopen concluded matters, and safeguards the integrity of maintenance provisions under the PWDVA. Bottom of Form

The Supreme Court clarified that the Protection of Women from Domestic Violence Act, 2005 (PWDVA) is a secular, civil welfare legislation applicable to all women irrespective of religion or social background.<sup>74</sup> The judgment also interpreted the conditions under which modification or revocation of protection orders may be sought under Section 25(2) of the Act. The factual Matrix consists of a complaint filed by the appellant-wife under Section 12 of the PWDVA. The Magistrate granted her 12,000/month maintenance and 1,00,000 compensations. The respondent-husband's appeal under Section 29 was dismissed due to delay, and the orders became final. In 2020, the respondent filed a fresh application under Section 25 before the Magistrate, seeking to revisit the 2015 order. The Magistrate dismissed the application. The respondent appealed again under Section 29. The appellate court allowed the appeal and remanded the matter for reconsideration. The high court upheld this remand, rejecting the wife's revision. The wife then approached the Supreme Court.

The Supreme Court reaffirmed that the court reaffirmed that section 25(2) can only be invoked upon a change in circumstances after the original order was passed. The application filed by the respondent failed to establish any such change post-2015, rendering it legally untenable. The Court emphasized that the finality of orders under PWDVA cannot be undone without new developments justifying modification or revocation. Additionally, the Court clarified that any revocation, if granted, would only take prospective effect, from the date of the new application, not retrospectively. The Supreme Court set aside the decisions of both the high court and the Appellate Court. The respondent's application under Section 25 was dismissed. However, the respondent was granted liberty to file a fresh application under Section 25 if future circumstances change. The court reiterated that the PWDVA is a civil legislation meant for universal protection of women, regardless of their religion, caste, or community.

The Supreme Court's ruling is appreciated as it has strengthened the finality of maintenance and protection orders under the PWDVA. It also ensures that post-facto challenges to maintenance orders are only entertained with genuine

74 S. *Vijikumari v. Mowneshwarachari C*, 2024 INSC 732.

changes in circumstances. The Court's declaration of the secular and universal application of the Act engendered the elements of constitutional equality and gender justice.

#### X POSH ACT, 2013

In *Bijaya Mishra v. Union of India*,<sup>75</sup> the court quashed disciplinary proceedings against an IIM Ranchi professor who had lodged a sexual harassment complaint under Sections 354(a) and 509 IPC. Although no formal complaint was filed under Section 9(1) of the POSH Act, the Director referred the matter to the Internal Committee (CASH). Mishra objected to its constitution, as two members were witnesses to the incident, contrary to Section 7. The Committee nevertheless proceeded, found her allegations unsubstantiated, and, without conducting a separate inquiry under the proviso to Section 14, recommended disciplinary action against her. The High Court held that the inability to prove allegations does not by itself justify invoking Section 14; mala fide intent must be established through a distinct inquiry. Finding the committee's constitution flawed and the process biased, it declared the proceedings void ab initio and quashed all consequential actions.

In *Aggrieved Woman v. State of Delhi*,<sup>76</sup> the high court held that protections under the POSH Act cannot be nullified by the winding up of an employer-company. The petitioner, a former employee of Enlive Solutions (India) Pvt. Ltd., alleged sexual harassment and highlighted the absence of an Internal Complaints Committee. By the time she pursued her grievance, the company had been dissolved. The Court ruled that statutory duties under the POSH Act survive corporate deregistration, ensuring the complainant's right to redress. It directed the District Magistrate, Gautam Buddha Nagar, to constitute an ICC, record her statement, and continue the inquiry. This ruling affirms that procedural safeguards and remedies under the POSH Act remain enforceable despite corporate closure.

#### Verbal abuse in workplace

In *Janak Ram v. The State*<sup>77</sup> the **High Court of Calcutta** held that calling an **unknown woman "darling"** in a public space amounts to a **sexually colored remark** and a **criminal offence under Sections 354A and 509 of the IPC**, reinforcing the need to uphold women's **dignity in public spaces**.<sup>78</sup> A man, while allegedly intoxicated, addressed a **female constable** in public as "*darling*". The accused claimed he was under the influence of alcohol, and the word was used without intent to offend. The **Port Blair Bench of the Calcutta High Court**, presided over by **Justice Jay Sengupta**, upheld his **conviction under Sections 354A and 509 IPC**.<sup>79</sup> The Court noted that even if the offender was not intoxicated, calling a **stranger "darling"** is inherently **sexually colored** and offensive.<sup>80</sup> Under **Section 354A**, the use of such terms amounts to **harassment**. Under **Section 509**, it

75 2024 Latest Case Law Jharkhand.

76 (2024 Delhi HC 3591; 2024 LLR 972).

77 (2020) 01 CHH CK 0102.

78 Indian Penal Code, Ss. 354A and 509.

79 *Janak Ram v The State*, 2024 SCC On Line Cal 92.

constitutes a **gesture or word meant to insult the modesty of a woman**. The Court rejected the argument that the term was used in a “blithe manner”, holding it was an **affront to the woman’s dignity**. The Bench emphasized **societal standards**, declaring that men using endearing terms like “*darling*” toward unfamiliar women in public spaces is unacceptable, regardless of context or tone.<sup>81</sup> The judgment is applauded as it rightly reiterates the **zero-tolerance** policy of Indian courts toward **public sexual harassment**, however mild it may appear. It reinforces the notion that **public spaces must be respectful and safe** for women and that **language and gestures, even if non-violent**, can legally constitute **sexual misconduct**. This ruling also **reaffirms the significant position and value of modesty, dignity, and bodily autonomy** in the evolving legal protection framework for women in India.

#### XI MAINTENANCE IN DIVORCE CASES

Maintenance is a remedy available to spouses, especially the woman in the marriage during divorce proceedings, which seeks to ameliorate the financial burden borne by the woman/wife who is financially dependent on her husband. Section 125<sup>82</sup> of the Cr. PC addresses the vulnerability of a divorced woman who does not have an independent source of income to sustain herself. In cases where maintenance is denied, a divorced woman has to take a difficult recourse of leaning on her parental family financially, and this obligation can be taken advantage of. The Muslim Women (Protection of Rights on Divorce) Act, 1986, provides for maintenance rights for divorced Muslim women, ensuring a fair and reasonable provision and maintenance to be made and paid to her within the *iddat* period by her former husband. Additionally, it mandates provisions for children’s maintenance and addresses the issue of *mahr* and other properties given to the woman. While the 1986 Act focuses on maintenance within the *iddat* period and for children, it does not preclude the divorced woman from seeking maintenance under section 125 of the Code of Criminal Procedure (Cr PC) if she is unable to maintain herself after the completion of the *iddat* period as ruled by Supreme Court, positively affirming that a parallel remedy under this provision cannot be overlooked for the sake of enactment of the Muslim Women Act, 1986 which is a personal law.

In the present case,<sup>83</sup> the Supreme Court has clarified that the *Muslim Women (Protection of Rights on Divorce) Act, 1986*, does not curtail a divorced Muslim woman’s entitlement to claim maintenance under section 125 of the Cr. PC. In the present case, the appellant-husband and respondent-wife were married, but their

80 *Ibid.*

81 *Ibid.*

82 S. 125 of the Cr. PC mandates that a Magistrate can order a person with sufficient means to pay monthly maintenance to:

- i. His wife, if she cannot maintain herself.
- ii. His minor child (legitimate or illegitimate) is unable to maintain itself.
- iii. His adult children with physical or mental disabilities are unable to maintain themselves.
- iv. His father or mother, if they cannot maintain themselves.

83 *Mohd Abdul Samadv. State of Telangana*, 2024 INSC 506.

relationship deteriorated, leading the respondent to leave the matrimonial home and initiate criminal proceedings under Sections 498A and 406 IPC. Subsequently, on 25.09.2017, the appellant pronounced triple talaq and sought divorce through the office of Quzath, obtaining an *ex parte* divorce certificate on 28.09.2017. He offered maintenance for the *iddat* period, which the respondent declined, instead filing an application under section 125(1) Cr PC for interim maintenance. The Family Court granted 20,000 per month, later reduced by the High Court to 10,000 per month. Dismissing the husband's appeal, the Bench of Justice B.V. Nagarathna and Justice Augustine George Masih held that section 125 CrPC applies to all married and divorced women, including Muslim women. A divorced Muslim woman may seek remedies under the 1986 Act, section 125 CrPC, or both, as the 1986 Act operates in addition to and not in derogation of, Section 125. Any order under the 1986 Act must be considered under section 127(3)(b) Cr PC. In cases of illegal divorce under the *Muslim Women (Protection of Rights on Marriage) Act, 2019*, relief can be claimed under section 5 of the 2019 Act or Section 125 Cr PC. If divorce occurs during the pendency of a Section 125 petition, the woman may continue under section 125 or switch to remedies under the 2019 Act. The court thus reinforced that the legal protections available to Muslim women are complementary, ensuring broader access to maintenance rights for the sake of enactment of the Muslim Women Act, 1986, which is a personal law.<sup>84</sup>

Interim maintenance proceedings under Section 24 of the Hindu Marriage Act, 1955, are independent of the main matrimonial petition and even after its withdrawal. Deliberate suppression of financial assets by the husband justifies enhancement of maintenance to ensure fairness and protection of the dependent spouse and child.<sup>85</sup>

In this landmark<sup>86</sup> case of the Supreme Court regarding the issue of permanent alimony in the context of an irretrievably broken marriage. The case centers around the determination of alimony for the wife after years of separation and the financial capacity of the husband. The Supreme Court awarded a one-time permanent alimony of Rs. 5 Crores to the wife and Rs. 1 Crore for the maintenance of the son. The court ruled that alimony should not penalize the husband but ensure a reasonable standard of living for the wife. Aggrieved by the decision of the Family Court, the appellant Parvin Kumar approached the High Court of Delhi. However, the Court rejected the argument of the Appellant that the Family Court could not adjudicate maintenance after the withdrawal of the divorce petition. The court clarified that Sections 24 and 26 of the Hindu Marriage Act (HMA) are independent of the divorce proceedings. The High Court dismissed the appeal and directed to increase maintenance be increased to Rs. 1,45,000 per month from February, 28 2009. The court also directed that previous payments made by the Appellant husband would be adjusted and that he pays interest at 12% per annum on the shortfall in the maintenance amount.

84 *Danial Latifi v. Union of India*, (2001) 7 SCC 740.

85 *Parvin Kumar Jain v. Anju Jain*, 2024 INSC 961.

86 *Id.*

The parties had been estranged and living separately for over 20 years. The wife filed for interim maintenance under *Section 24 HMA*; the husband sought to withdraw the divorce petition to avoid liability. He concealed assets worth over 5 crores, including mutual funds, rental income, and bank deposits. The Family Court granted 1,15,000/month as interim maintenance; the Delhi High Court increased it to 1,45,000/month. The Supreme Court observed that even after the withdrawal of the main petition, the maintenance shall continue as per Section 24, which protects the financially dependent spouse during matrimonial litigation.<sup>87</sup> The husband's deliberate concealment of financial documents was condemned; such conduct demands judicial correction to ensure transparency and equity. 1,45,000/month was upheld as proportionate based on the husband's financial standing and the needs of the wife and child. Using powers under Article 142, the court granted divorce on irretrievable breakdown and ordered a 1 crore lump sum for the son's future.<sup>88</sup>

This ruling strengthens the protection of financially dependent spouses, disallows procedural evasion of maintenance, and penalizes non-disclosure of assets. It reflects the Supreme Court's commitment to realistic, rights-based approaches in matrimonial disputes that conform to the values of justice and equity.

## XII MISCELLANEOUS

In *Sanjay Roy v. State of West Bengal*,<sup>89</sup> the Supreme Court dealt with a **serious violation of fundamental rights arising from the prolonged detention of a juvenile in protective custody**. Sanjay Roy, a minor at the time of arrest, had been kept in custody **for over six years**, far exceeding the **maximum three-year detention period** permitted under the then *Juvenile Justice Act*. The Bench held that such incarceration beyond the statutory limit amounted to **illegal detention**, directly infringing **article 21** of the Constitution, which guarantees the right to life and personal liberty. The Court stressed that fundamental rights cannot be diluted merely because a person is an accused; once the lawful period of detention ends, the State has **no authority in law** to continue holding the person. The court also found a breach of **Article 14**, noting that the State's failure to follow statutory and procedural safeguards led to **arbitrary treatment**, violating the principle of equality before the law and equal protection of the laws. Any deviation from statutory mandates without lawful justification was declared unconstitutional. Ordering the petitioner's **immediate release**, the Supreme Court underscored the State's duty to ensure that no person, particularly a **juvenile**, as a vulnerable group, is deprived of liberty without legal authority. This ruling reaffirmed the **primacy of personal liberty** and the **special protection** accorded to juveniles under both constitutional and statutory law.

87 Hindu Marriage Act, No. 25 of 1955, § 24, India Code (1955).

88 Constitution of India, art. 142.

89 (2004) 5 SCC 362.

## XIII CONCLUSION

In recent years, the Indian judiciary has faced a significant backlog of cases involving dowry-related offences, revealing an alarming trend with serious implications for the protection of women's human rights. Against the backdrop of rising domestic violence and the harsh realities endured by women subjected to cruelty and harassment, whether from in-laws or within their parental homes, the judiciary has increasingly adopted a stance of marked strictness. It has delivered firm verdicts against offenders, reinforcing the principle that violence against women will not be tolerated and affirming the highest regard and dignity accorded to women in Indian society.

However, while recent criminal law reforms have modernised procedural aspects of the justice system, their contribution to substantive gender justice remains limited. True progress requires more than the imposition of stringent punishments; it demands a fundamental shift in the legal understanding of consent, autonomy, and structural inequalities. Without legislative reforms that reflect the lived realities of women, coupled with gender-sensitive enforcement, the promise of justice risks becoming an incomplete and performative gesture rather than a genuine transformation.