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CRIMINAL LAW

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I INTRODUCTION

The year 2024 was a watershed moment for criminal law of the country. In this year three new laws came into force replacing the earlier laws. The Bhartiya Nyaya Sanhita, 2023(BNS), Bhartiya Nagrik Suraksha Sanhita, 2023(BNSS), and the Bhartiya Sakshya Adhiniyam, 2023(BSA) replaced the Indian Penal Code, the 1860, Criminal Procedure Code, 1973 and the Indian Evidence Act, 1872. The same was done ostensibly to decolonize the criminal justice administration. The shift from 'penal' to 'nyaya' marks the shift from the punitive laws of the colonizer to the 'nyaya' i.e. justice laws for the 'Swarajists'. This marks a huge tectonic shift in terms of how the state envisions its criminal justice administration. The state is not there for punishing but the state ensures that justice prevails (the punishment is the collateral happening and not the focal point). This is what the shift portends.

What is interesting in the BNS is that the content of the offences remains the same and the changes are reflected more in the renumbering and shifting of the chapters. Given the 'nyaya' framework, the offences against the state which were of prime importance to the colonizer have been put lower in the hierarchy and the offences against women have been given precedence. Other very significant change has been the introduction of community service as a punishment. The same has been introduced for petty offences like first time theft of property valued under Rs. 5000 and on restoration of the stolen property; misconduct in public by a drunken person; attempt to commit suicide to compel or restrain exercise of lawful power; public servant unlawfully engaging in trade and non-appearance in response to a proclamation under section 84 of the BNSS (section 82 CrPC).

India has taken baby steps to veer away from a punitive criminal justice system and it is hoped that prisons would be decongested by resorting to more alternate ways of punishment besides imprisonment. The BNS uses modern terminology and has done away with archaic words like 'vakil' and is more gender inclusive by mentioning that "The pronoun 'he' and its derivatives are used for any person, whether male, female or transgender."[1] The shifts in human living have been factored in and movable property now includes intangible property as

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1 BNS, s. 2(10).

well. Various other changes have also been added (changes which may be useful or may end up opening a pandora's box in case of promise to marry or may be confusing by including offences like terrorism and organized crime which are within the domain of special laws), the list is long and not within the scope of this survey.

However, this mission of decolonization will have no bearing unless we decolonize the minds and not just the text. Macaulay had insisted in the context of penal laws that "its language should be clear, unequivocal and concise. Every criminal act should be separately defined, its language followed precisely in indictment and conduct found to fall clearly within the definition".[2] Macaulay took pains to make the Code simple and each offence specified the conduct element and the fault element viz, intention, fraudulently, knowingly etc. In spite of this the entire vocabulary of our text books and judgments are replete with Latin words like *mens rea*, *actus reus* etc. These words were nowhere mentioned in the IPC and in fact Macaulay had consciously refrained from using these terms. However, we continued to use these expressions drawing inspiration from common law. The surveyor hopes that the teaching from a decolonization perspective would first entail that we stick to the codified law and get out of this colonial mindset of *mens reas* and *actus reus*.

The present survey deals with the Indian Penal Code, (IPC) provisions as the BNS provisions will start reflecting with passage of time.

II OFFENCES AGAINST WOMEN

Rape

A woman was allegedly raped after administering a stupefying substance. When she regained consciousness, the man promised marriage. He then called her to the temple – applied vermillion, gave her *mangalsutra* and toe ring – all accessories meant for married women - and they started living together as husband and wife. She got pregnant and delivered twins and that is when the appellant abandoned her. The apex court upheld the trial court and high court verdict that the consent of the prosecutrix was vitiated and the appellant was guilty of rape and held thus:[3]

> We have perused the testimony of the victim in detail, and in our view, the finding and judgment of the Trial Court, affirmed by the High Court, does not suffer from any infirmity. The allegations, as alleged by the victim, squarely fall within the first part of section 90 of IPC, i.e., a consent is not consent if it is given under misconception of a fact and the accused knows that consent is obtained in consequence of such misconception. In the present case, the appellant obtained the victim's consent to have sexual intercourse

2 Paraphrased Minute to Council 1853 in Char, Wright and Yeo, *Codification, Macaulay and the Indian Penal Code* 2011 at 23).

3 *Akshay Kumar* v. *State (NCT of Delhi)* 2024 SCC Online SC 1502, para 6. Also see *Shiv Pratap Rana* v *State* (2024)8 SCC 313.

> under the misconception of fact that he is a widower, and he will marry the victim, when he never intended to marry her and maintain as wife. Thus, his guilt is rightly adjudged by the learned courts below.

In *Pankaj Singh* v. *State of Haryana*[4] the prosecutrix was a married woman and filed charges of rape against the accused. Section 114 of the Evidence Act was invoked by her counsel on the argument that the case fell under section 376(2) IPC. The court made the position of law abundantly clear that fiduciary relationship has to be there to invoke section 376(2)IPC , which was missing in the instant case. Only when that is proved can the case be covered under section 376(2) IPC and the presumption that the woman did not consent can be invoked under section 114A of the Evidence Act. That means that in all other cases the burden to prove that sexual intercourse was without consent is on the prosecution which could not be established. The appellant accused was acquitted of the charge of rape.

Gang rape

In a case of gang rape the prosecutrix had given her statement under sections 161 and 164 CrPC. The medical examination also confirmed injuries on her person as well as abrasions on her private parts. The trial court convicted the accused persons and the high court dismissed the appeal and upheld the findings of the trial court. In appeal in the apex court in *Selvamani* v. *State,*[5] it was brought to the notice of the court that the prosecution story was not supported by the prosecutrix, her mother and her aunt (all three had confirmed gang rape in their examination in chief) during cross-examination. The apex court derided the practice of adjournments in the judicial system which in turn helps the accused to influence and win over the victims. The court reiterated the dictum strongly emphasized in *Vinod Kumar* v. *State of Punjab*:[6]

> The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot be allowed to be lonely; a destitute."

4 2024 SCC OnLine SC 474.

5 2024 SCC OnLine SC 837.

6 (2015) 3 SCC 220.

The apex court observed that the time lag between the examination in chief and cross-examination made the accused to influence the victim. The court upheld the conviction and held that "However, when the evidence of the victim as well as her mother (PW-2) and aunt (PW-3) is tested with the FIR, the statement recorded under section 164Cr.PC and the evidence of the medical expert (PW-8), we find that there is sufficient corroboration to the version given by the prosecutrix in her examination-in-chief".[7] The trial court and high court conviction was upheld by the apex court.

Compromise

In *XYZ* v. *State of Gujarat*,[8] the matter was of quashing the charge sheet pertaining to sections 376(2)(N) and 506 of IPC based on "Settlement allegedly arrived between the parties." The judgment by Abhay S Oka J mentions the veracity of the affidavit filed by the complainant of a settlement. The court mentions that "Even if an affidavit of the victim accepting the settlement is on record, in cases of serious offences and especially against women, it is always advisable to procure the presence of the victim personally or through video conference, so that the court can properly examine whether there is genuine settlement and that the victim has no subsisting grievance".[9] The matter was sent to the high court with the direction to examine, if the settlement was with the consent of the victim and if the content of the affidavits were within her knowledge. It is humbly submitted that the charges alleged were serious coupled with sections of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and hence the question of "Settlement" does not arise. "Settlement" is a concept of civil law! Criminal law recognizes compounding of offences which are tabulated and involve less serious offences.

In contrast, in *Ramji Lal Bairwa* v. *State of Rajasthan*,[10] the seriousness of the offence was highlighted and the court held thus:[11]

> Thus, in unambiguous terms this Court held that before exercising the power under Section 482CrPC the High Court must have due regard to the nature and gravity of the crime besides observing and holding that heinous and serious offences could not be quashed even though a victim or victim's family and the offender had settled the dispute. This Court held that such offences are not private in nature and have a serious impact on the society. Having understood the position of law on the second question that it is the bounden duty of the court concerned to consider whether the compromise is just and fair besides being free from undue pressure we will proceed to consider the matter further.

7 *Id.*, para 1.
8 2024 SCC OnLine SC 3314.
9 *Id.*, para 7.
10 (2025) 5 SCC 117.
11 *Id*. at136, para 36.

This was a case wherein the high court had quashed the proceeding in *Vimal Kumar Gupta* v. *State of Rajasthan*[12] on the ground that the accused and complainant had settled the matter which was under the provision of POCSO.

Statutory rape and kidnapping from lawful guardianship

A girl of 14 years had left her house and there was a case of repeated sexual intercourse by the accused who was 25 years old. The accused was convicted by the special judge for kidnapping the girl child from lawful guardianship under sections 363 and 366 IPC and also under clause (1) of sub-sections (2) and (3) of section 376 IPC. The couple had got married which also made the accused culpable under section 9 of the Prohibition of Child Marriage Act, 2006. The high court in appeal held that the girl child left the house on her own accord and there was no 'taking' or 'enticing' which could be proved and hence the case of kidnapping was not made out. As regards rape, the contention of the victim was factored in that she was married and had given birth to a daughter and had been residing in the house of the accused.

There was delay in investigation and the accused was arrested only in 2021(after three years). When the parents had filed the kidnapping and rape charges the victim was kept in a 'home' and then she stayed with her parents for a few months and then went to live with the accused since 2019. The high court judgment smacked of personal bias of the judge and unsolicited and highly problematic preaching by the court and thereby acquitting the accused. In appeal before the apex court, the *amicus curiae* flagged the usage of highly objectionable portions in the judgment by the high court where the child victim's appearance was shamed, and sexuality among adolescents was linked to bizarre claims of climate change, food habits, social media etc. The high court also showcased its objectionable regressive views on child rights. The high court did not stop here but also gave its own interpretation of the biology involved in the sexual act and remarked, *inter alia*, "sexual urge is not at all normal and normative". The patriarchal and masculine court then ordered a duty charter (as opposed to right charter) for girls[13]. In the estimation of the high court this was a case of "non-exploitative sexual act" – the highest court of the state did not seem to have bothered to factor in the vulnerable age of the girl – a mere 14 years and the accused a man of 25 years of age – a full-grown man. The high court used its plenary power (which has to be used sparingly and responsibily) to set aside the conviction of the accused!

The case is a shocking example of how the parents and the state (as *parens patria)* failed the girl child. The parents disowned her and the state which was then expected to step in (as criminal case was filed against the accused) to provide care, protection, treatment, development and rehabilitation, abdicated its responsibility. The Juvenile Justice Act, 2015 talks about the best interest of the child in need of care and protection and has stellar provisions for the same. However, the state has to operationalize the black letter of the Act which it miserably failed in this case.

12 2022 SCC OnLine Raj. 3564.

> This case showcased the failure of the family, the state as well as the judiciary (high court in this case). The apex court factored in all these failures in the judgment. The final order of the apex court restored the conviction of the special court but given the peculiar circumstances reserved the punishment while mandating the state the following:[14]
>
> 60.5.Thereafter, the committee shall meet the victim of the offences at such a place as it desires to communicate what the State Government is offering to her. The Committee must also inform the victim about the availability of the benefits of the scheme of the Government of India. The duty of the committee shall be to help the victim to make an informed choice whether she wants to continue to remain in the company of the accused and his family or wants to avail of the benefits offered by the State Government. This exercise will naturally require meetings with the victim on multiple occasions. In what manner this task should be performed is left to the committee to decide;
>
> 60.6. The committee members must perform their duties very carefully and sensitively while ensuring that the victim does not develop a feeling of insecurity. While doing the exercise, the committee will endeavour to carefully ascertain the kind of support, if any, the victim and her child are getting from the accused and his family members;
>
> 60.7. The State Government and its officials shall render all possible facilities and help to the committee members;

A girl child of seven year was raped by a man 'only' 40 years old[15] (in the precincts of a temple. His guilt stood proved and what was left for determination was the sentence. Capital punishment or imprisonment of 20 years or life imprisonment.[16] The apex court keeping up with the high court judgment got into a very banal differentiation between 'brutal' and 'barbaric':

> We will take the meanings of the words "barbaric", "barbarians" and "brutal" to know the distinctive meanings of the words "barbaric" and "brutal". As per *New International Webster's Comprehensive Dictionary of the English Language*, Encyclopedia Edition they carry the following meanings:

13 *Prabhat Pulkait* v. *State of W.B.* (2023) 1HCC (Cal) 626.

14 *Right to Privacy of Adolescents, In re*, (2024) 15 SCC 788 at 817.

15 *Bhaggi* v. *State of M.P.* (2024) 5 SCC 787, para 11.

16 IPC s. 376 (AB) whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and with fine or death.

'Barbaric' (adj): 1. Of or characteristic of barbarians.2. Wild; uncivilised; crude

'Barbarians' (*n*): 1. One whose state of culture is between savagery and civilization;2. Any rude, brutal or uncultured person.

'Brutal' (adj): Characteristic of or like a brute; cruel; savage.

In the estimation of the court, since there were no external injuries, "we have no hesitation to hold that the fact he had not done it brutally will not make its commission non-barbaric." The court, given the accused's age, commuted life imprisonment (which in this case would have meant till the remainder of life), to rigorous imprisonment of 30 years. It is submitted that cases of rape mandated physical injuries on the victim – ideal rape victim- and it took a long struggle to get out of that mindset. But the surveyor is of the opinion that the narrative of brutal and barbaric has somewhat veered towards that course of requirement of physical signs of rape on the victim's body. The court was well within its right to give 30 years imprisonment, as 20 years is mandatory minimum and for that it did not have to resort to engage with this banal distinction of brutal and barbaric!

Cruelty

The offence under section 498-A IPC does not necessarily envisage a dowry demand. The offence came into operation due to the patriarchal nature of marriage where women have an inferior status and may end up facing harassment from the husband or in-laws. So, the conduct element specified in the offence under section 498-A is either (i) wilful conduct likely to cause grave injury or mental harm or (ii) harassment intended to cause the woman or her family to meet any unlawful demand. The latter cruelty is tied up with the dowry demand but the former may be without dowry harassment. And both forms of cruelty fall within the ambit of section 498-A IPC.[17]

In dealing with cruelty under section 498-A IPC the court made a very important observation, keeping in mind the sanctity of marriage which prevents women from invoking criminal law in cases of cruelty, that "merely because she did not file any complaint for twelve years does not guarantee that there was no instance of cruelty or harassment".[18] Looking at other facts the court upheld conviction under section 498-A IPC but abetment to suicide was not upheld as it could not be proved.

Dowry death

In cases of dowry death, alternate charges can be framed under sections 302 and 304-B IPC. In *State of Karnataka* v. *M.N. Basavarya*[19] the police investigation report failed to nail the accused under section 302 IPC. In appeal, the high court upheld the acquittal; however it found the accused guilty of section 498-A IPC.

17 *Aruli Venkata Ramana* v. *Aluri Thirupathi* 2024 SCC OnLine SCC 5473.

18 See *Jayedeepsinh Pravinsinh Chavda* v. *State of Gujarat* (2025) 2 SCC/16.

19 2024 SCC OnLine SC 2260.See also *Chabi Karmakar* v. *State of W.B.* (2025)1 SCC 398 for dowry death.

The high court refused to look into the fact whether the homicidal death could be covered under section 304-B IPC (the ingredients for presumption of dowry death were present) on the spurious argument that was not framed under this section. Having regard to efflux of time, the court refused to look into further evidence for a section 304-B conviction just in the name of 'interest of justice'.[20] The apex court, in appeal by the state, underlined the fact that if the accused was aware of the ingredients of the offence then it did not matter if a specific charge had not been framed. The case was sent to the sessions court for retrial where the defendant could lead evidence to rebut the presumption of dowry death. The apex court upheld the "interest of justice" in the true sense by ordering a retrial.

III OFFENCES AGAINST HUMAN BODY

Causation

In cases of death what is to be first proved is that whether the death was homicidal. In *Vijay Singh* v. *State of Bihar*[21]it was proved that the death was unnatural and the commission of murder could not be ruled out. The trial court and the high court convicted the accused appellant based on circumstantial evidence. The apex court in appeal, however, held that there was no direct evidence that linked the accused appellants to the murder. The apex court overturned the conviction and acquitted the accused as the "link of causation between the accused persons and the alleged offence is conspicuously missing".[22] It is submitted that causation is at the core of the homicide offences which could not be established by the prosecution and hence the acquittal.

Culpable homicide not amounting to murder

Property disputes, many a time, become a bone of contention between parties. In a case where a son and mother were walking and stopped at a betel shop and were showing a particular order of the sub-divisional magistrate, the appellants also arrived at the place. Heated arguments ensued and then "Mar Peet" resulting in death of the son and the mother sustaining injuries. The trial court convicted the accused persons under section 302 read with section 34 IPC which was upheld by the high court. The apex court took into consideration that the offence being committed in the heat of passion in a sudden quarrel could not be ruled out. And since the weapons used were also the ones which are commonly used by agriculturists - axe and sticks - the appellants could not be said to have acted in a cruel and unusual manner. The conviction was altered to section 304 part I in *Devendra Kumar* v. *State of Chhattisgarh*.[23] In a similar vein in *Devendra Singh* v. *State of U.P.,*[24] taking into consideration the nature of injuries sustained by the accused as well as the deceased, the apex court held that likelihood of sudden fight could not be ruled out. Moreover, the court also factored in that

20 *Id.*, para 5.
21 2024 SCC OnLine SC 2623.
22 *Id.*, para 34.
23 2024 SCC OnLine SCC 3182.
24 2024 SCC OnLine SC 1877.

the weapon used was a pen knife and except one injury, other injuries were abrasions and contusions. Hence conviction was altered from section 302 IPC to section 304 part I IPC.

A trivial issue of removing brick led to a quarrel. The appellant lost his control and in the heat of passion assaulted the woman with a knife resulting in her death. The factual situation revealed that a single injury was inflicted and no cruel or undue advantage was taken and the accused was held guilty of culpable homicide not amounting to murder under section 304 part I.[25] A husband killed his second wife as some altercation arose between them. The factual situation revealed that he was hitting her with fists and blows. She was running away from him and she fell and it was at that point that he picked up a stone and hit her. The court made a very interesting statement that "It was admitted by the witness in cross-examination that both the accused as well as the deceased used to consume liquor. It is thus, apparent that the appellant had no motive to hurt the deceased." The court altered the conviction to section 304 part II. [26] The court said that the accused did not behave in a cruel manner or take undue advantage. Cases of the husband killing his wife remain in the realm of section 304 IPC as violence by husband is always normalized. The courts invariably alter the conviction to culpable homicide not amounting to murder even when the husband becomes violent *qua* the wife and she cannot match the violence and is invariably killed. However, this case was disturbing as the man had spent 17 years in 'jail' as he had no idea of the procedure. It was only by the Supreme Court Legal Service Committee that a legal counsel was made available and so there was a delay of 2461 days. This is an unpardonable lapse on the part of the criminal justice administration.

In a case where the killing was by a gun shot after a quarrel, the court held that this alone could not bring it within the rigour of section 300 IPC. What was factored in *Yogesh* v. *State*[27] was that the appellant was carrying the weapon without any intention of using it. He was attending a birthday party, liquor was consumed and a fight ensued between him and another and the appellant used the weapon; hence, conviction was altered to section 304 part I IPC.

Celebratory firing during marriage ceremonies is an unfortunate part of many Indian weddings. In *Shahil Ali* v. *State of U.P.,*[28] the appellant opened fire in a crowded place in a marriage without taking safety measures, thereby killing a person. He was convicted under section 304 part II IPC as the act was imminently dangerous and so culpable homicide, though not intentional (knowledge of a reasonable man was imputed).

Sudden fight

The deceased was living as his second wife with the appellant. The prosecution case was that the appellant assaulted her with fists and stones thereby

25 *Hare Ram Yadav* v. *State of Bihar* (2025) 1 SCC 339.

26 *Kariman* v. *State of Chhattisgarh* 2024 SCC OnLine SC 607.

27 (2024) 12 SCC 719.

28 2024 SCC OnLine SC 259.

causing her death. The court held that it was a case of sudden fight and was not covered by any of the four clauses of section 300 IPC and hence was convicted under section 304 part II IPC.[29] He had served 17 years and so was discharged.[30]

Last seen together

The court in *Raghunatha* v. *State of Karnataka*[31]clarified that when the accused and the deceased were last seen together, the burden was on the accused to prove the facts. "However, for that, initially the prosecution will have to discharge the burden. Merely because the appellants were seen nearby the place where the crime occurred …. It cannot be said that the deceased was last seen in the company of the appellant"[32] It is axiomatic to mention, that the prosecution has to prove its case beyond a reasonable doubt and having failed to do so the conviction was overturned by the apex court.[33] The theory of last seen together can only be put to use if there is sufficient proximity to the time of last seen together and the death. If the person is seen with the deceased and also with others then the prosecution cannot solely rely on this theory as was held in *Alauddin* v. *State of Assam*.[34]

IV JOINT CRIMINAL ENTERPRISE

Constructive liability is imputed in cases of joint criminal enterprise (JCE). As far as section 149 IPC is concerned mere membership of an unlawful assembly makes a person culpable. The position of law is clear that overt act by some of the persons of an unlawful assembly with the common object to kill and cause grievous hurt makes every member of the unlawful assembly guilty of section 302 read with section 149 IPC.[35] However, for conviction under section 34 'common intention' is the *sina qua non*. Hence, both the sections though invoked in cases of joint criminal enterprise, have different essentials. It is not uncommon to replace section 149 with section 34 and *vice versa*. But to do so the essentials need to be justified. In *Madhusudan* v. *State of M.P.*[36] the trial court did not proffer any reason for altering the charge from sections 149 read with section 34. The apex court decided to give the benefit of doubt to the appellants and their conviction under section 302 IPC read with section 34 was held unsustainable.

In the case of bigamy under section 494 IPC, the witnesses were sought to be prosecuted under section 494 read with section 34 IPC. The court held thus:[37]

> A bare perusal of the penal provision would indicate that the order framing charge is erroneous on the face of the record because no

29 *Supra* note 26.

30 See also *Hussainbhai Asgarali Lokhandwala* v. *State of Gujarat* 2024 SCC OnLine SC 1975.

31 2024 SCC OnLine SC 365.

32 *Id*., para13.

33 Also see *Manharan Rajwada* v. *State of Chhattisgarh* 2024 SCC OnLine SC 1836.

34 (2024) 12 SCC 224.

35 *Haalesh* v. *State of Karnataka* (2024) 3 SCC 475 para 22.

36 2024 SCC Online SC 4035. See also *Baljinder Singh* v. *State of Rajasthan* 2024 SCC Online SC 2622.

37 *S. Nitheen* v. *State of Kerala* (2024) 8 SCC 706, para 15.

> person other than the spouse to the second marriage could have been charged for the offence punishable under Section 494IPC simpliciter. However, this is a curable defect, and the charge can be altered at any stage as per the provisions of Section 216CrPC.

V INCHOATE OFFENCES

Abetment

In *Jayadeep Singh Piavinsinh Chanda* v. *State of Gujarat,*[38] a woman committed suicide and charges under section 498A and section 306 IPC were invoked. Cruelty stood proved but the offence of abetment of suicide was not upheld. The court held as follows:

> Section 306 IPC penalises those who abet the act of suicide by another. For a person to be charged under this section, the prosecution must establish that the accused contributed to the act of suicide by the deceased. This involvement must satisfy one of the three conditions outlined in Section 107IPC. These conditions include the accused instigated or encouraged the individual to commit suicide, conspiring with others to ensure that the act was carried out, or engaging in conduct (or neglecting to act) that directly led to the person taking his/her own life.

The court held that the fault element (*mens rea*) required section 306 IPC is "Intention to abet the act" and if this is not proved the conviction would fall. This was a case where cruelty by the husband stood proved but abetment was not established.

In another case[39] the husband committed suicide and there were allegations of beating and abusive behavior by the wife not only at home but also by visiting his place of work. All this stood proved by witnesses. However, a specific charge of abetment to suicide needs a "mental process of instigating or intentionally aiding a person in doing a thing"[40] and in this case 'a thing' meant suicide which could not be proved. Hence, the wife like the husband in the previous case, was acquitted of abetment to suicide charges.

In the case of a love relationship, the emotional turmoil may lead to suicide. This would, however, not tantamount to abetment to suicide. In *Kamaruddin Dastagir Sanadi* v. *State of Karnataka*[41] the court categorically held thus:[42]

> Even assuming, though there is evidence that the accused – appellant promised to marry the deceased, that there was such a promise, it is

38 (2025) 2 SCC 116, para 22.

39 *Rohini Sudershan* v *State of Maharashtra* 2024 SCC OnLine SC 1701.See also *Piabhu* v. *State* 2024 SCC Online SC 137.

40 Quoting *S.S. Chhenna* v. *Vijay Kumar Mahajan* (2010) 12 SCC 190.

41 2024 SCC Online SC 3541; see also *Prakash* v. *State of Maharashtra* 2024 SCC OnLine SC 3835.

42 *Id*.,para 31.

> again a simple case of a broken relationship for which there is a different cause of action, but not prosecution or conviction for an offence under section 306.

Similarly, merely asking for money to start a business from wife's parents without anything more will not come within the ambit of cruelty or harassment. The court in *Naresh Kumar* v. *State of Haryana*,[43] reiterated that when a woman dies by suicide within seven years of marriage then the presumption under section 113-A of the Evidence Act would not automatically apply but only after foundational fact of cruelty or harassment has been established by the prosecution.[44]

VI OFFENCES AGAINST THE STATE

Sedition

In *Javed Ahmad Hajam* v. *State of Maharashtra*[45] an FIR was lodged under section 153 A of IPC on the basis of a Whatsapp message relating to abrogation of article 370. The high court refused to quash the FIR by holding that "August 5 - Black Day Jammu and Kashmir" attracts the offence under section 153-A. The apex court in its judgment quashing the FIR made some very pertinent observations thus:[46]

> The High Court has held [*Javed Ahmed Hajam* v. *State of Maharashtra*, 2023 SCC OnLine Bom 819] that the possibility of stirring up the emotions of a group of people cannot be ruled out. The appellant's college teachers, students, and parents were allegedly members of the WhatsApp group. As held by Vivian Bose, J., the effect of the words used by the appellant on his WhatsApp status will have to be judged from the standards of reasonable women and men. We cannot apply the standards of people with weak and vacillating minds. Our country has been a democratic republic for more than 75 years. The people of our country know the importance of democratic values. Therefore, it is not possible to conclude that the words will promote disharmony or feelings of enmity, hatred or ill will between different religious groups. The test to be applied is not the effect of the words on some individuals with weak minds or who see a danger in every hostile point of view. The test is of the general impact of the utterances on reasonable people who are significant in numbers. Merely because a few individuals may develop hatred or ill will, it will not be sufficient to attract clause (*a*) of sub-section (1) of Section 153-AIPC.

The judgment becomes all the more important as Oka J held that it is imperative that police force is educated and enlightened regarding a very important right

43 (2024) 3 SC 573.

44 See also *Amudha* v. *State* 2024 SCC Online SC 373; *Prabhat Kumar Mishra* v. *State of U.P.* (2024). 3 SCC 665; *Nipun Aneja* v. *State of U.P*. 2024 SCC Online SC 4091.

45 (2024) 4 SCC 156.

46 *Id.*, para 15.

guaranteed by part III of the Constitution and that is the freedom of speech and expression guaranteed by article 19(1)(a) of the Constitution. The court, speaking through the judgment, exhorted that police "must be sensitized about the democratic values enshrined in the constitution."[47]

VII SPECIFIC OFFENCES

Kidnapping

Section 364-A was added to the statute book for aggravated crime of kidnapping. The ingredient of it involves a reasonable apprehension that the person kidnapped may be put to death or hurt may be caused to him. In *William Stephen* v. *State of T.N.*[48] kidnapping was proved but the aggravated form of kidnapping could not be proved, hence the accused were punished under section 364 IPC. Another striking feature of the case was that certificate under 65-B was not produced and hence the record relating to calls was discarded by the high court. The apex court taking note of this lapse by the investigating officer mentioned that the states must ensure and strengthen their training so that officers remain up to date with procedural requirements mandated for the admissibility of electronic evidence and the ilk. This warning by the apex court becomes all the more important in the light of the new criminal law statutes which seek to leverage scientific advancements for an effective and prompt investigation. Even when the abducted person is grievously hurt it will not automatically fall under section 364-A. For application of this section, its ingredients will have to be proved.[49]

Obscenity

In *Apoorva* v. *State (NCT of Delhi)*,[50] obscenity was discussed in detail. The court made very pertinent observations which need to be reproduced in original:[51]

> **45.** The *last* issue is that of the standard or perspective used by the High Court to determine obscenity. It is well settled that the standard for determination cannot be an adolescent's or child's mind, or a hypersensitive person who is susceptible to such influences… However, the High Court has incorrectly used the standard of "impressionable minds" to gauge the effect of the material and has therefore erred in applying the test for obscenity correctly. …
>
> **47.** Similarly, the metric to assess obscenity and legality of any content cannot be that it must be appropriate to play in the courtroom while maintaining the court's decorum and integrity. Such an approach unduly curtails the freedom of expression that can be exercised and compels the maker of the content to meet the

47 See also *Shiv Prasad Semval* v. *State of Uttarakhand* (2024) 7 SCC 5.

48 (2024) 5 SCC 258.

49 See also *Neeraj Sharma* v. *State of Chhattisgarh* (2024) 3 SCC 125.

50 (2024) 6 SCC 181.

51 *Id*. at 208-209.

requirements of judicial propriety, formality, and official language. Here again, the High Court committed a serious error in decision-making.

VIII SENTENCING

Proportionality in sentencing is an important facet of criminal justice administration.[52] When the appellant pleads parity in sentencing it must be ensured by the courts that parity of guilt must be there for the parity in sentencing. The apex court in *Kunhimuhammed* v. *State of Kerala*[53] reminded that "parity is not an automatic entitlement; the role intent and actions of each accused must be individually assessed to determine their degree of involvement in the crime".[54] Dealing with the plea of advanced age and deteriorating medical condition for reduction of sentence the court reminded itself that "the court is also tasked with balancing these personal hardships against the severity and nature of the offence as well as its impact on the rule of law and societal harmony"[55]

A case of house trespass and outraging the modesty of a woman came to be decided in appeal after 25 years. Given the young age of the appellant at the time of the incident (which was 21 years) and the fact that 25 years had elapsed the sentence under section 354 IPC was reduced to one year from two years.[56]

The question in *Amit Rana* v. *State of Haryana*[57] was on the quantum of punishment under section 307 IPC. The first part mentions 'imprisonment of either description for a term which may extend to ten years." In the instant case, however, punishment awarded was for 14 years taking into consideration the victim's spinal injury and its after effects. In appeal, the apex court categorically held that the conviction under first part of section 307 demands that imprisonment may be upto 10 years and hence 14 years imprisonment was converted to 10 years. Our system should works on certainty of law and not on judge made law.

In *Yogesh* v. *State*[58] the court in a case of conviction under section 304 part I took into consideration that the appellant had a 16 years old daughter and a bedridden father, and so modified the sentence to the one undergone already.

While deliberating on capital punishment the courts have been factoring in chances of being reformed apart from other mitigating and aggravating circumstances. In a case of rape and murder the court took note of the fact that the appellant belonged to a challenging socio economic strata, had lost his mother at the age of eight and brother at the age of 10. His very young age of 22 was also considered, his behaviour in prison was recorded and hence the court was of the opinion that there was strong likelihood of his getting reformed. Under these

52 See *Baba Natarajan Prasad* v. *M. Revathi* (2024) 7 SCC 537.
53 2024 SCC Online SC 3618.
54 *Id.*, para 27.2.
55 *Id.*, para 28.2.
56 *Didde Sriniwas* v. *State* 2024 SCC OnLine SC 3424.
57 2024 SCC OnLine SC 1763.
58 *Kishore* v. *State of Punjab* 2024 SCC OnLine SC 110.

circumstances the court commuted death penalty to rigorous imprisonment for a period of 20 years without remission in *Rabbu* v. *State of M.P*.[59]

In a horrific case of sodomy and murder of a four year old child the question was whether death penalty should be awarded to the accused. The court in *Sambubhai Raisangbhai* v. *State of Gujarat*[60] did the mandatory exercise of mitigating and aggravating circumstances. The report was sought from the superintendent of the prison where the accused was lodged. The report opined that his conduct was normal, his mental condition was good and he was remorseful. The court reached the conclusion that there was scope for reformation and hence did not impose death penalty. However, being mindful of the fact that life imprisonment with its remission policy may be an inadequate punishment, it sentenced him to "imprisonment for a period of 25 (twenty five) years without remission"[61] The court termed it as "just deserts" and taking note of the socio-economic condition of the accused set aside the fine amount imposed on him by the trial court.

In a case of honour killing, the father strangulated her nine-month pregnant daughter, as he was unhappy with her inter-caste marriage. On the quantum of punishment, the court looked into various mitigating factors including, poor socio-economic background, adverse childhood experience, mental and emotional disturbance resulting from daughter's inter-case marriage – the societal disapproval, and post-conviction mental illness. The court, after doing a thorough background check, decided to take the middle path as there was possibility of reform and gave him a fixed sentence of 20 years without remission in *Eknath Kirtan Kumbharkar* v. *State of Maharashtra*.[62]

Navas v. *State of Kerala*[63] is one of the rare cases wherein the judges have taken pains to discuss how the numerical years without remission need to be arrived at. On conviction the accused was given 30 years without remission. The court after a detailed study of cases post *Shraddhananda II* [64] and after getting a detailed report from the prison authorities, modified the sentence to 25 years without remission.[65]

IX MISCELLANEOUS

Criminal law is part of public law and the state has to initiate the case and the prosecution must prove the case beyond a reasonable doubt. Section 106 of the Evidence Act, 1872 cannot be invoked to shift the burden of the prosecution. It

59 (2024) 15 SCC 246.

60 (2025) 2 SCC 399.

61 *Id.*, para 45.

62 2024 SCC OnLine SC 2879.

63 (2024) 14 SCC 82.

64 *Swamy Shraddananda (II)* v. *State of Karnataka* (2008) 13 SCC 767.The same was held constitutional in *Union of India* v *Sriharan* 2015(13) SCALE 165.

65 See Jyoti Dogra Sood, 'Sentencing' in "Criminal Law" XLVIII *ASIL* 2012 at 300-305. The survey had questioned how the 20,25, 30 years without remission is decided by the bench.

only comes to play when the prosecution led evidence makes out a *prime facie* case, only then would arise the question of shifting the onus to prove such facts on the accused and not otherwise.[66]

Shoddy investigation

The criminal justice system administration remains plagued by shoddy investigation which has been repeatedly flagged by the apex court on many occasions. Prime witnesses are not examined, test identification parade not done where it would have helped etc.[67] These lapses result in acquittals and the victims are left in the lurch with no closure. The *Kishanbhai*[68] judgment had stressed on accountability and till the country does not build up a strong accountability mechanism, the state of affairs will continue.

Custodial death

The case of *Manik* v. *State of Maharashtra,*[69] is regarding the alleged death of a person in police custody and the police tampering with the evidence thereafter. The custodial torture stood proved. The defence plea was that the deceased named Shama escaped from police custody by jumping from a moving jeep. The police concocted a story of his surfacing in Raipur – travelling without a ticket and on his refusal to pay fine was produced before the Railway Court. A dead body was also found in the forest and that was passed off as that of Shama. After examining the evidence, C.T. Ravi Kumar J was of the opinion that the case of the prosecution must stand on its own legs and since there was no evidence regarding homicidal death of Shama and prosecution could not establish a fool proof case, the accused were acquitted for commission of offence under section 304 part II IPC.

Sanjay Kumar J, however, did not concur with his brother judge and lamented thus:[70]

> It is high time that our legal system squarely faces the menace of police excesses and deals with it by putting in place an effective mechanism to obviate such inhuman practices. Long ago, Prof. Upendra Baxi had observed:"*What is truly striking about India is the lack of respect for rule of law, not just by the people but those who make and enforce them*". A few years later, Prof. Srikrishna Deva Rao pointed out that excessive use of force is a product of the police culture that rationalizes physical abuse as appropriate punishment for persons who are viewed as trouble-makers or deviants. He asserted that lack of proper legal restraint on police powers is one of the main reasons for continuous police abuse and

66 *M. Vijay Kumar* v. *State of Tamil Nadu* (2024) 4 SCC 633.
67 *Kishore* v *State of Punjab* 2024 SCC OnLine SC 110.
68 *State of Gujarat* v *Kishanbhai* (2014) 5 SCC 108, para 23.
69 2024 SCC OnLine 2625.
70 *Id.*, para 16.

> that torture by the police is violative of the right to life and personal liberty under Article 21 of the Constitution.

The judge upheld the conviction under section 304 part II IPC read with section 34 and also held that it was too light a punishment.

Victimology

Victim compensation under section 357 CrPC recognizes the pain and suffering of the victim. It is to reassure the victim that he/she is not a forgotten entity of the criminal justice system. As much as the law is geared towards punishing the guilty, the law also is under an obligation, for reparation towards a victim. And both these endeavours are independent of each other. Highlighting this, the court in *Rajendra Bhagwanji Umraniya* v. *State of Gujarat* held thus:[71]

> The provision of Section 357 recognizes the aforesaid and is victim centric in nature. It has nothing to do with the convict or the sentence passed. The spotlight is on the victim only. The object of victim compensation is to rehabilitate those who have suffered any loss or injury by the offence which has been committed. Payment of victim compensation cannot be a consideration or a ground for reducing the sentence imposed upon the accused as victim compensation is not a punitive measure and only restitutory in nature and thus, has no bearing with the sentence that has been passed which is punitive in nature.

Demolition justice

Bulldozer justice has become a major tension point in the criminal justice administration. The powerful state keen on taking justice in its own hands has been violating the age-old fundamental principle of presumption of innocence unless proven guilty by the judicial system. The presumption of innocence is normative and has nothing to do with the guilt or innocence of the accused or the final outcome of the case this presumption must operate even in the face of stark criminality. As Packer explains it is a "direction to officials about how they are to proceed, not a prediction of outcome".[72] But this has been flouted repeatedly by the state machinery and a writ petition was filed before the apex court - *Directions in the matter of demolition of structures in Re*[73] - highlighting the scourge of collective punishment by the authorities by demolishing the property of the accused persons. The bench headed by Gavai CJI emphasized, *inter alia*, on fair trial, presumption of innocence and right to shelter and laid down important guidelines for demolition:[74] The constitutional court held that no demolition ought to be done without a show cause notice duly executed. Measures were specified so as to avoid manipulation of notice dates leveraging technology for the same. A period

71 2024 SCC OnLine SC 927,para 23.

72 Herbert L.Packer, "Two models of Criminal Process" in *Limits of Criminal Sanction* 161(1968).

73 (2025) 5 SCC 1.

74 *Id.* at 50-52, paras 94.1 to 94.15.

of 15 days and a personal hearing is mandated to the person concerned. Only then the final order may be given which should also explain whether the unauthorized construction is compoundable or not and reasons if demolition is ordered. An opportunity for appeal or for voluntary destruction of unauthorized destruction to be made available. After this process, if demolition is ordered then the directions mandate that a detailed report be prepared, signed by two *panchas* and the demolotion must be videographed. The apex court through these detailed directions have tried to ensure that criminal justice administration does not become criminal administration of justice.

Role of public prosecutor and legal aid

Every case is a quest for truth and the judge is dependent on the officers of the court in this quest in an adversarial system. The court in *Ashok* v. *State of U.P.*[75] while acquitting the accused of murder and rape of a 10 year old girl child, gave very important directions for right to legal aid which must form part of training in the judicial and research academies. The court specifically factored in the duties of the public prosecutor to ensure right to legal aid to the accused and directed thus:[76]

> **38.2.** When an accused is not represented by an advocate, it is the duty of every Public Prosecutor to point out to the court the requirement of providing him free legal aid. The reason is that it is the duty of the Public Prosecutor to ensure that the trial is conducted fairly and lawfully;
>
> **38.3.** Even if the court is inclined to frame charges or record examination-in-chief of the prosecution witnesses in a case where the accused has not engaged any advocate, it is incumbent upon the Public Prosecutor to request the court not to proceed without offering legal aid to the accused;
>
> **38.4.** It is the duty of the Public Prosecutor to assist the trial court in recording the statement of the accused under Section 313CrPC. If the court omits to put any material circumstance brought on record against the accused, the Public Prosecutor must bring it to the notice of the court while the examination of the accused is being recorded. He must assist the court in framing the questions to be put to the accused. As it is the duty of the Public Prosecutor to ensure that those who are guilty of the commission of offence must be punished, it is also his duty to ensure that there are no infirmities in the conduct of the trial which will cause prejudice to the accused;
>
> **38.5.** An accused who is not represented by an advocate is entitled to free legal aid at all material stages starting from remand. Every accused has the right to get legal aid, even to file bail petitions;

75 (2025) 2 SCC 381.

76 *Id.*, para 38.

In a country where fair disclosure is not mandated from the public prosecutor, who is an officer of the court, it is highly commendable that the judiciary has cast this duty of ensuring legal aid to the accused on the prosecutor.

Juvenile justice

In *Thirumoorthy* v. *State of T.N.,*[77] the court held that the appellant accused being a juvenile at the time of the commission of the crime should have been, as per the law, subjected to preliminary assessment to decide whether he should be tried as a child or as an adult. The court observed that "directing such an exercise at this stage would be sheer futility because now the appellant is nearly 23 years of age." [78] This is such an apt interpretation and stands in contrast to *Barun Chandra Thakur's* case wherein the court had held that "Today after 3-1/2 years we are not in a position to give an opinion as to whether any further test can be carried out at this stage as the age of the child is now more than 21 years. However, we leave it to the discretion of the Board or the psychologist who may be consulted as to whether any fresh examination would be of any relevance/assistance or not"[79]

The court further held:[80]

> **48.** At this stage, there remains no realistic possibility of finding out the mental and physical capacity of the appellant-accused to commit the offence or to assess his ability to understand the consequences of the offence and circumstances in which he committed the offence in the year 2016.
>
> **50.** Thus, we are left with no option but to quash and set aside the impugned judgment [*Thirumoorthy* v. *State of T.N.*, 2021 SCC OnLine Mad 1520] and direct that the appellant who is presently lodged in jail shall be released forthwith, if not required in any other case.

X CONCLUSION

The year witnessed some disturbing sexual offence cases. A child of 14 marrying a man of 25 did not stir the conscience of the high court and it pontificated on sexuality and gave a duty charter for girls. The apex court assisted by Madhavi Divan castigated the approach of the high court.[81] But one cannot lose sight of the fact that the high court indulged in such profanities. Judges' training and sensitization must be strictly enforced. The National Judicial Academy was designed for this and it must be mandatory for higher judiciary to enroll for in-service trainings. The judgment in *Bhaggi*[82] reminds us of the era where rape laws envisaged

77 (2024) 12 SCC 307.

78 *Id.*, para 47.

79 *Barun Chandra Thakur* v. *Master Bholu* 2022 SCC Online SC 870 (Para 85). See Jyoti Dogra Sood, "Unpacking Preliminary Assessment in the Juvenile Justice Act 2015" 13 *Bangalore University Law Journal* (2023).

80 *Supra* note 77, paras 48 and 50.

81 *Supra* note 14.

82 *Supra* note 15.

an ideal victim (with bodily marks of struggle) and this case almost resurrects the same, which is shocking to say the least. The constitutional court ensured through its directions in *Demolition* case[83] that rule of law prevails in the country and not rule by law!

83 *Supra* note 72.