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WOMEN AND THE LAW

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I INTRODUCTION

CIVILIZATION OF a country is known how it respects its women. Each society is obliged to treat the women with respect and dignity so that humanism in its conceptual essentiality remains alive. Though woman is said to be 'the best of all God' and the *Mahabharat* treats her as the source of salvation; crime against women continues to rise and today it has risen to alarming proportions. This is what the survey of 2013 cases reveals.

II PRE CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION ON SEX- SELECTION) ACT, 1994

Female foeticide

Female foeticide has its roots in the social thinking which is fundamentally based on certain erroneous notions, ego-centric traditions, pervert perception of societal norms, and obsession with ideas which are totally individualistic sans the collective good. When the foetus of a girl child is destroyed, a woman of future is crucified. The present generation invites the sufferings on its own and also sows the seeds of suffering for the future generation, as in the ultimate eventuate, the sex ratio gets affected and leads to manifold social problems.

In *Voluntary Health Association of Punjab* v. *Union of India*[1] the apex court had an occasion to examine the effectiveness of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition on Sex- Selection) Act, 1994 (PN & PNDT Act). The legislature has passed this enactment with an intention to provide for prohibition of sex selection before or after conception and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide. However, it is a common fact that the

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1 (2013) 4 SCC 1.

provisions of the Acts are being misused and consciously violated along with the provisions of Medical Termination of Pregnancy Act, 1971 for sex selective abortion with full knowledge that the sole reason for abortion is because it is a female foetus. The purpose of the enactment can only be actualised and its object be fruitfully realized when the authorities under the Act carry out their functions with devotion, dedication and commitment and further there is awakened awareness with regard to the role of women in a society.

The apex court as early as in 2001 in *Centre for Enquiry into Health and Allied Themes* v. *Union of India*[2] had noticed the misuse of the Act and gave various directions for its proper implementation. Non compliance of various directions was noticed by the court again in *Centre for Enquiry into Health and Allied Themes* v. *Union of India*[3] and the court gave various other directions. Having noticed that those directions as well as the provisions of the Act are not being issued properly implemented by the various states and Union Territories, the court further an order on 08.01.13 directing personal appearance of the Health Secretaries of the States of Punjab, Haryana, NCT Delhi, Rajasthan, Uttar Pradesh, Bihar and Maharashtra, to examine what steps they have taken for the proper and effective implementation of the provisions of the Act as well as the various directions issued by the court. The court noticed that, even though, the Union of India has constituted the Central Supervisory Board and most of the states and Union Territories have constituted state supervisory boards, appropriate authorities and advisory committees *etc*. under the Act, their functioning are far from satisfactory. Hence, in *Voluntary Health Association of Punjab*, the Supreme Court of India while directing the state governments to file a status report within a period of three months, gave the following directions:[4]

i. The Central Supervisory Board and the State and Union Territories Supervisory Boards, constituted under sections 7 and 16A of PN&PNDT Act, would meet at least once in six months, so as to supervise and oversee how effective is the implementation of the PN&PNDT Act.

ii. The State Advisory Committees and District Advisory Committees should gather information relating to the breach of the provisions of the PN&PNDT Act and the Rules and take steps to seize records, seal machines and institute legal proceedings, if they notice violation of the provisions of the PN&PNDT Act.

iii. The committees mentioned above should report the details of the charges framed and the conviction of the persons who have

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2 (2001) 5 SCC 577.

3 (2003) 8 SCC 398.

4 *Supra* note 1 at para 8.

committed the offence, to the State Medical Councils for proper action, including suspension of the registration of the unit and cancellation of licence to practice.

iv. The authorities should ensure also that all genetic counselling centres, genetic laboratories and genetic clinics, infertility clinics, scan centres etc. using pre-conception and pre-natal diagnostic techniques and procedures should maintain all records and all forms, required to be maintained under the Act and the Rules and the duplicate copies of the same be sent to the concerned District Authorities, in accordance with rule 9(8) of the Rules.

v. States and District Advisory Boards should ensure that all manufacturers and sellers of ultra-sonography machines do not sell any machine to any unregistered centre, as provided under rule 3-A and disclose, on a quarterly basis, to the concerned State/Union Territory and Central Government, a list of persons to whom the machines have been sold, in accordance with rule 3-A (2) of the Act.

vi. There will be a direction to all genetic counselling centres, genetic laboratories, clinics etc. to maintain forms A, E, H and other statutory forms provided under the Rules and if these forms are not properly maintained, appropriate action should be taken by the authorities concerned.

vii. Steps should also be taken by the state government and the authorities under the Act for mapping of all registered and unregistered ultra- sonography clinics, in three months time.

viii. Steps should be taken by the state governments and the Union Territories to educate the people of the necessity of implementing the provisions of the Act by conducting workshops as well as awareness camps at the state and district levels.

ix. Special cell be constituted by the state governments and the Union Territories to monitor the progress of various cases pending in the courts under the Act and take steps for their early disposal.

x. The authorities concerned should take steps to seize the machines which have been used illegally and contrary to the provisions of the Act and the Rules there under and the seized machines can also be confiscated under the provisions of the Code of Criminal Procedure and be sold, in accordance with law.

xi. The various Courts in this country should take steps to dispose of all pending cases under the Act, within a period of six months.

Female foeticide is the worst type of dehumanisation of the human race. The provisions of the PN & PNDT Act, 1944 are not properly and effectively being implemented. There is no effective supervision or follow up action so as to achieve the object and purpose of the Act. Hence, these directions assume importance. A woman has to be regarded as an equal partner in the life of a man. It has to be borne in mind that she has also the equal role in the society, *i.e.*, thinking, participating and leadership.

III MARRIAGE AND DIVORCE

Section 125 Cr PC *vis-a-vis* social context adjudication

In *Badshah* v. *Sou. Urmila Badshah Godse*,[5] the petitioner married the respondent in 2005. The respondent was a divorcee since 1997 who has obtained a legal divorce. The petitioner was already married and was father of two children when he married the respondent in 2005. However, at the time of solemnizing the marriage with the respondent he duped the respondent by suppressing intentionally the factum of his first marriage which was still subsisting. After the marriage the petitioner and the respondent lived together and the respondent no.2 was also born from this wedlock. In such circumstances, whether the respondents could file application under section 125 of the Cr PC was the main issue for the consideration of the court. The court held that under the provisions of Hindu Marriage Act, 1955 the petitioner could not have married second time when the first marriage was subsisting and hence the petitioner cannot be permitted to deny the benefit of maintenance to the respondent, taking advantage of his own wrong.

It was held in *Chanmuniya* v. *Virendra Kumar Singh Kushwaha*[6] that if man and woman have been living together for a long time even without a valid marriage term of valid marriage entitling such a woman to maintenance should be drawn and a woman in such a case should be entitled to maintain application under section 125 Cr PC. In the present case, the respondent no.1 has been able to prove, by cogent and strong evidence, that the petitioner and the respondent no.1 had been married each other.

It was held in *Dwarika Prasad Satpathy* v. *Bidyut Prava Dixit*[7] that the validity of the marriage for the purpose of summary proceeding under section 125 Cr PC is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceeding is not as strict as is required in a trial of offence under section 494 of the IPC. If the claimant in proceedings under section 125 Cr PC succeeds in showing that she and the respondent have lived together as husband and wife, the court can presume that they are legally wedded spouse, and in such a situation, the party who denies the marital status

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5 2014 (2) SCJ 779.

6 (2011) 1 SCC 141.

7 (1999) 7 SCC 675.

can rebut the presumption. Once it is admitted that the marriage procedure was followed then it is not necessary to further probe into whether the said procedure was complete as per the Hindu rites in the proceedings under section 125 Cr PC. From the evidence which is led if the magistrate is *prima facie* satisfied with regard to the performance of marriage in proceedings under section 125 Cr PC which are of summary nature strict proof of performance of essential rites is not required.

It is to be noted that the order passed in an application under section 125 Cr PC does not finally determine the rights and obligations of the parties and the said section is enacted with a view to provide summary remedy for providing maintenance to a wife, children and parents. In so far as respondent no.2 is concerned, as per the court, who is proved to be the daughter of the petitioner, in no case he can shun the liability and obligation to pay maintenance to her. The court also made a clear and distinct difference between the present case and the ratios in *Adhav*[8] and *Savitaben*.[9] The ratio settled therein would apply only in those circumstances where a woman married a man with full knowledge of the first subsisting marriage. In such cases, she should know that second marriage with such a person is impermissible and there is an embargo under the Hindu Marriage Act, 1955 and, therefore, she has to suffer the consequences thereof. The said judgments would not apply to those cases where a man marriages second time by keeping that lady in dark about the subsistence of the first marriage. According to the court, at least for the purpose of section 125 Cr PC, the respondent no.1 would be treated as the wife of the petitioner, going by the spirit of *Dwarika Prasad Satpathy* and *Chanmuniya* cases.

A purposive interpretation needs to be given to the provisions of section 125 Cr PC. While dealing with the application of destitute wife or hapless children or parents under this provision, the court is dealing with the marginalized sections of the society. The purpose is to achieve social justice which is the constitutional vision, enshrined in the preamble of the Constitution of India. It becomes the bounden duty of the courts to advance the cause of the social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society. The courts have to adopt different approaches in social justice adjudication which is also known as social context adjudication. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause of the derelicts.[10]

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8 *Yamunabai Anantrao Adhav* v. *Anantrao Shivram Adhay* (1988) 1 SCC 530, wherein it was held that a Hindu lady who married after coming into force of Hindu Marriage Act, 1955 with a person who had a living lawfully wedded wife cannot be treated to be a legally wedded wife and consequently her claim for maintenance under s. 125 Cr PC is not maintainable.

9 *Savitaben Somabai Bhatiya* v. *State of Gujarat* (2005) 3 SCC 636 wherein *Adhav* has been followed.

10 *Capt.Ramesh Chander Kaushal* v. *Veena Kaushal* (1978) 4 SCC 70.

There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. In the words of Professor Madhava Menon, social context judging is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by social context judging or social justice adjudication.[11]

Provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from adversarial litigation to social context adjudication is the need of the hour. The court justified this approach in the light of the relationship between law and society. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society as per the changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise direction in determining the proper relationship between the subjective and objective purpose of the law. While interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. The court should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under section 125 Cr PC such a woman is to be treated as the legally wedded wife.

Mediation and pre-litigation mediation

In *K. Srinivas Rao* v. *D.A. Deepa*[12] the court reiterated that cruelty is evident where one spouse has so treated the other and manifested such feelings towards

11 Madhava Menon, Keynote Address entitled '*Legal Education in Social Context.*'

12 (2013) 5 SCC 226.

her or him as to cause in her or his mind reasonable apprehension that it will be harmful or injurious to live with the other spouse. The court also held that the respondent-wife has caused by her conduct mental cruelty to the appellant-husband and his family and the marriage has irretrievably broken down. Where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court.

The high court has wrongly held that because the appellant-husband and the respondent-wife did not stay together there is no question of the parties causing cruelty to each other. Staying together under the same roof is not a pre-condition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof. Since marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the court. The court further observed thus: "While we are of the opinion that decree of divorce must be granted, we are alive to the plight of the respondent-wife. The appellant-husband is working as an Assistant Registrar in the Andhra Pradesh High Court. He is getting a good salary. The respondent-wife fought the litigation for more than 10 years. She appears to be entirely dependent on her parents and on her brother; therefore, her future must be secured by directing the appellant-husband to give her permanent alimony. In the facts and circumstance of this case, we are of the opinion that the appellant-husband should be directed to pay a sum of Rs.15,00,000/- to the respondent-wife as and by way of permanent alimony." The court issued the following directions to the lower courts to follow in matrimonial matters:[13]

> a) In terms of section 9 of the Family Courts Act, the family courts shall make all efforts to settle the Matrimonial disputes through mediation. Even if the counsellors submit a failure report, the Family Courts shall, with the consent of the parties, refer the matter to the mediation centre. In such a case, however, the family courts shall set a reasonable time limit for mediation centres to complete the process of mediation because otherwise the resolution of the disputes by the family court may get delayed. In a given case, if there is good chance of settlement, the family court in its discretion, can always extend the time limit.
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> b) The criminal courts dealing with the complaint under section 498A IPC should, at any stage and particularly, before they take up the complaint for hearing, refer the parties to mediation centre if they feel that there exist elements of settlement and both the parties are willing. However, they should take care to see that in this exercise, rigour, purport and efficacy of section 498A IPC is not diluted. The discretion to grant or not to grant bail is not in

13 *Id.* at para 36

any way curtailed by this direction. It will be for the concerned court to work out the modalities taking into consideration the facts of each case.

c) All mediation centres shall set up pre-litigation desks/clinics; give them wide publicity and make efforts to settle matrimonial disputes at pre-litigation stage.

Deceit

In *Ram Chandra Bhagat* v. *State of Jharkhand*,[14] the appellant led the complainant woman to believe that she was a lawfully married wife of the appellant though in reality she was not a lawfully married wife of him and thereupon she had cohabited with him for a period of nine years like husband and wife. The accused and the victim woman had two children from that relationship. In the voters' list also the name of the complainant was shown as the wife of the appellant. Hence the apex court confirmed the finding of the lower courts that this conduct of the appellant amounted to deceit under section 493 IPC. An inducement given to a woman to change her status from unmarried woman to married woman and an inducement of belief in the woman that she was lawfully married to the accused are in itself sufficient to constitute offence under section 493. Belief of a lawful marriage alone, as against the actual lawfulness of marriage, establishes the offence of deceit.

Marital relationship

It was held in *Pinakin Mahipatray Rawal* v. *State of Gujarat*[15] that marital relationship means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their up-bringing, services in the home, support, affection, love, liking and so on.

IV DOWRY DEATH

Dowry is often described as an intractable disease for women, a bed of arrows for annihilating self-respect, but without the boon of wishful death. It is a common fact that there is mushrooming of dowry harassment and dowry death cases. Wives are being treated as servants. At this juncture Lord Denning's words are crucial as he said 'on equality of women and their role in the society' that "a woman feels as keenly, thinks as clearly, as a man. She in her sphere does work as useful as man does in his. She has as much right to her freedom to develop her personality to the full as a man. When she marries, she does not become the husband's servant but his equal partner. If his work is more important in life of the community, her work is more important of the family. Neither can do without the other. Neither is above the other or under the other. They are equals."

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14 (2013) 1 SCC 562.

15 (2013) 2 SCALE 198.

Consistency in multiple dying declarations

Conviction can indisputably be based on a dying declaration. But before it can be acted upon, the same must be held to have been rendered voluntarily and truthfully. Consistency in the dying declaration is the relevant factor for placing full reliance thereupon. It is a settled legal proposition that in case there are apparent discrepancies in two dying declarations, it would be unsafe to convict the accused. In such a fact-situation, the accused gets the benefit of doubt.[16] When there are contradictory and inconsistent stand in different dying declarations, they should not be accepted on their face value and great caution is required to be applied.[17] In *Kashi Vishwanath* v. *State of Karnataka*,[18] a matter under sections 498A and 302 read with 34 IPC, there were three dying declarations. A comparison of the three dying declarations by the apex court revealed certain glaring contradictions. Apart from the contradictions, the court also doubted the credibility of three dying declarations since the prosecution has failed to state as to why three dying declarations were recorded in Kannada, when the deceased was talking in Telugu. These facts created doubt in the mind of the court as to the truthfulness of the contents of the dying declarations as the possibility of the deceased being influenced by somebody in making the dying declarations. Hence, the apex court disagreed with the concurrent findings of the lower courts and set aside the conviction.

In *Bhadragiri Venkata Ravi* v. *Public Prosecutor High Court of A.P., Hyderabad*,[19] the apex court further clarified that in case of plural/multiple dying declarations, the court has to scrutinise the evidence cautiously and must find out whether there is consistency particularly in material particulars therein. In case there are inter-se discrepancies in the depositions of the witnesses given in support of one of the dying declarations, it would not be safe to rely upon the same. In fact it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If the dying declaration is found to be voluntary, reliable and made in a fit mental condition, it can be relied upon without any corroboration. But the statements should be consistent throughout. In case of inconsistencies, the court has to examine the nature of the same *i.e.*, whether they are material or not and while scrutinising the contents of various dying declarations, the court has to examine the same in the light of the various surrounding facts and circumstances. In case of dying declaration, as the accused does not have right to cross-examine the maker and not able to elicit the truth as happens in the case of other witnesses, it would not be safe to rely if the dying declaration does not inspire full confidence of the court about its correctness, as it may be result of tutoring, prompting or product of imagination. The court has to be satisfied that

16 *Sanjay* v. *State of Maharashtra* (2007) 9 SCC 148; and *Heeralal* v. *State of Madhya Pradesh* (2009) 12 SCC 671).

17 *Mehiboobsab Abbasabi Nadaf* v. *State of Karnataka* (2007) 13 SCC 112.

18 (2013) 7 SCC 162.

19 2013 (7) SCALE 458.

the maker was in a fit state of mind and had a clear opportunity to observe and identify the assailant.

In this case the session's court has acquitted the accused while the high court has convicted him by reversing the session's court's order. Hence, the Supreme Court of India observed that in exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

Viscera report

In *Bhupendra* v. *State of Madhya Pradesh*[20] with regard to an offence punishable under sections 498A, 304B and 306 of the IPC, it was reiterated that for the purposes of section 304B IPC the mere fact of an unnatural death is sufficient to invite a presumption under section 113B of the Evidence Act, 1872.[21] Section 304B of the IPC refers to death which occurs otherwise than under normal circumstances and the absence of a viscera report would not make any difference to the fate of the case. An unnatural dowry death, whether homicidal or suicidal, would attract section 304B IPC. Section 306 IPC is much broader in its application and takes within its fold one aspect of section 304B IPC. These two sections are not mutually exclusive. If a conviction for causing a suicide is based on section 304B IPC, it will necessarily attract section 306 IPC.

Demand of dowry soon before death – essential ingredient of section 304B IPC

In *Rajeev Kumar* v. *State of Haryana*,[22] the dying declaration of the deceased stated thus: "Today about 7.30 p.m., in evening I was fed up with activities of my husband and put on kerosene oil and burn myself. Earlier my husband used to taunt me for dowry. Action should be taken against my husband." On the question of the applicability of section 394 IPC, the court held that one of the essential ingredients of the offence of dowry death under section 304B IPC is that the accused must have subjected a woman to cruelty in connection with demand of dowry *soon before* her death and this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the court will presume that the accused has committed the offence of dowry death under section 113B of the Indian Evidence Act,1872. Hence in the opinion of the Supreme Court, this ingredient of

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20 (2014) 2 SCC 106: 2013(9) SCALE 568.

21 The court relied upon the decisions in *Ananda Mohan Sen* v. *State of West Bengal* (2007) 10 SCC 774 and *Taiyab Khan* v. *State of Bihar* (now Jharkhand) (2005) 13 SCC 455.

22 AIR 2014 SC 227.

section 304B IPC, has not been established by the prosecution, the trial court and the high court were not correct in holding the appellant guilty of the offence of dowry death under section 304B. However, the court held him guilty of offences of abetment of suicide and cruelty. The language of section 113A of the Indian Evidence Act, 1872 makes it clear that if a woman has committed suicide within a period of seven years from the date of her marriage and that her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband. The Explanation to section 113A of the Indian Evidence Act, 1872 states that for the purpose of section 113A the expression '*cruelty*' shall have the same meaning as in section 498A IPC. The Explanation to section 498A IPC, defines cruelty and clause (a) of the Explanation states that cruelty means any wilful conduct which is of such nature as likely to drive a woman to commit suicide. The dying declaration and other evidence sufficiently established that the appellant used to fight on petty issues and gave beatings to the deceased, which drove the deceased to commit suicide. This was sufficient for the court to conclude that the appellant had committed offences under sections 498A and 306 IPC.

In *Panchanand Mandal @ Pachan Mandal* v. *State of Jharkhand*[23] while setting aside the conviction and sentence awarded to the appellant by the Ranchi High Court, the Supreme Court held that where the deceased has not made any statement in her dying declaration indicating demand of dowry conviction cannot be sustained and cruelty and harassment in general is not sufficient to attract section 304B IPC. The dying declaration was not certified by any medical expert stating that the deceased was in medically fit condition for giving statement. The court has also expressed doubt as to authenticity of the dying declaration as the police officer who recorded the same was not examined.

In *Kulwant Singh* v. *State of Punjab*[24] where there was specific prayer to have sympathetic view considering the old age (78 and 80 years of age) and physical disability of the accused, the apex court refused to grant punishment below statutory minimum by holding that the law prescribes a minimum of seven years imprisonment for an offence under section 304B of the IPC. There is neither any provision for reducing the sentence for any reason whatsoever nor has any exception being carved out in the law. The Supreme Court also noted that sympathizing with an accused person or a convict does not entitle the court to ignore the feelings of the victim or the immediate family of the victim.

Delay in lodging the FIR

In *Kulwant Singh* v. *State of Punjab* [25] the court restated that delay in lodging the FIR cannot be a ground for throwing away the entire prosecution case as

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23 (2013) 9 SCC 800.

24 (2013) 4 SCC 177.

25 *Ibid.*

already held in *Jitender Kumar* v. *State of Haryana*.[26] The court also said that there is no absolute proposition to the effect that a demand for money or some property or valuable security on account of some business or financial requirement could not be termed as a demand for dowry.[27]

Inherent jurisdiction vested in the high court under section 482 of the Cr PC

A criminal complaint has been registered under sections 304B and 498A IPC by the father of the deceased alleging unnatural death in *Rajiv Thapar* v. *Madan Lal Kapoor*.[28] However, the Delhi High Court by exercising inherent jurisdiction vested in the high court under section 482 of the Cr PC held that that no case was made out against the accused. On appeal, this gave an occasion to the apex court to examine the ambit and scope of section 482 Cr PC wherein the following steps were delineated to invoke the power vested in the high court under section 482:[29]

> (i) Whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?
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> (ii) Whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.
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> (iii) Whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/ complainant?
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> (iv) Whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the high court should persuade it to quash such criminal proceedings, in exercise of power vested in it under section 482 of the Cr PC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial specially when, it is clear that the same would not conclude in the conviction of the accused.

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26 (2012) 6 SCC 204.

27 In *Appasaheb* v. *State of Maharashtra* (2007) 9 SCC 721 it was held that asking the wife to bring money for meeting domestic expenses on account of financial stringency and for purchasing manure cannot be held as a demand for dowry. Further, in *Bachni Devi* v. *State of Haryana* (2011) 4 SCC 427 it was held that the observations in *Appasaheb* should be understood in the context of the case.

28 (2013)3 SCC 330.

29 *Id*. at para 23.

Wife beating

In *Vajresh Venkatray Anvekar* v. *State of Karnataka*,[30] while dismissing an appeal against the Karnataka High Court's judgment convicting the appellant for abetting the suicide of his wife, the apex court observed that judges must be sensitised to women's problems. The Karnataka High Court has set aside acquittal by the sessions court wherein the sessions judge had observed that wife-beating is normal facet of married life.

The Supreme Court noticed that the sessions judge, while considering charges under sections 498A and 306 of the IPC, has refused to rely upon the evidence of the parents, brother and brothers-in-law of the deceased primarily on the ground that they are interested witnesses. The apex court found this approach unfortunate. When a woman is subjected to ill-treatment within the four walls of her matrimonial house, ill-treatment is witnessed only by the perpetrators of the crime. They would certainly not depose about it. The independent witnesses like servants or neighbours do not want to get involved. If attendant circumstances and evidence on record clearly support and corroborate the witness, then merely because one is interested witness he cannot be disbelieved because of some exaggeration, if the evidence is otherwise reliable. It is true that chances of exaggeration by the interested witnesses cannot be ruled out. It is for the trained judicial mind to find out the truth. If the exaggeration is of such nature as to make the witness wholly unreliable, the court would obviously not rely on him.

The Supreme Court criticised harshly the insensitivity shown by the sessions judge to a serious crime committed against a hapless woman. The sessions judge has observed that "even if upper eye portion or face of Girija had changed their colour because of A-2 giving beatings, that alone as I said earlier is not the act of cruelty driving the deceased to commit suicide." Against this observation, the apex court commented thus:[31]

> The tenor of the judgment suggests that wife beating is a normal facet of married life. Does that mean giving one or two slaps to a wife by a husband just does not matter? We do not think that that can be a right approach. It is one thing to say that every wear and tear of married life need not lead to suicide and it is another thing to put it so crudely and suggest that one or two assaults on a woman is an accepted social norm. Judges have to be sensitive to women's problems. Perhaps learned Sessions Judge wanted to convey that the circumstances on record were not strong enough to drive Girija to commit suicide. But to make light of slaps given to Girija which resulted in loss of her eyesight is to show extreme insensitivity. Assault on a woman offends her dignity. .... It is of course the duty of the court to see that an innocent person is not convicted. But it is equally the duty of

30 (2013) 3 SCC 462.

31 *Id.* at para 14.

> the court to see that perpetrators of heinous crimes are brought to book.

This shows that the court strongly disapproved of the trial court's order, which held that wife-beating was a normal facet of married life. The judiciary right from the lower court to the apex court needs to de sensitised to women's problems. When there is a phenomenal rise in crimes against women, the same can be curbed and the protection granted to women by the Constitution and other laws can be meaningful only if those who are entrusted with the job of doing justice are sensitised to women's problems.

When it is shown that soon before the death she was subjected to cruelty and harassment by her husband was in connection with the demand of dowry, the case would fall within the meaning of dowry death for the purpose to attract 304B IPC. Section 113B of the Indian Evidence Act, 1872 dealing with the presumption of dowry death and proclaims that when the question is whether a person has committed a dowry death of a woman and it is shown that soon before her death, such woman had been subjected by such person to cruelty or harassment, for or in connection with demand of a dowry, the court shall presume that such person had caused dowry death. Hence, it was held in *Ranjit Singh* v. *State of Punjab*[32] that irrespective of the fact whether the accused had any direct connection with the death or not, he shall be presumed to have committed the dowry death provided if the legislative requirements are satisfied. If the prosecution has successfully proved the ingredients necessary to attract the provision of section 304B IPC, section 113B of the Act automatically comes into play.

Locus standi of National Commission for Women

National Commission for Women v. *Bhaskar Lal Sharma*[33] involved a curative petition filed by the National Commission for Women. The initial complaint was filed under sections 498A, 406 and 34 of the IPC. Summons issued on such complaint were challenged and application for quashing the summons was filed by the respondents before the Delhi High Court under section 482 of the Cr PC which were dismissed by the high court. The said revision, having been dismissed, the respondents filed curative petitions before the apex court which was disposed by holding that no case under sections 498A or 406 IPC had been made out against the respondent no. 1 and the respondent no. 2 could be proceeded with only under section 406 IPC. Aggrieved by this, a review petition was filed which got dismissed and hence the National Commission for Women has filed curative petition. It was argued that the manner in which the appeals had been heard and disposed of, quashing the summoning order at the very initial stage, was also improper, since the trial was yet to be conducted and evidence was yet to be adduced in the matter. On the question of the *locus standi* of National Commission for Women, it was held thus:[34]

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32 AIR 2013 SC 2991.

33 (2014) 4 SCC 252.

34 *Id.* at para 11.

> ….[A]s far as the objection relating to the locus standi of the applicant is concerned, the same is not tenable on account of the fact that we are not dealing in this matter with a statutory right but a constitutional provision i.e. Article 142 of the Constitution. The said Article empowers the Supreme Court to pass appropriate orders to do justice between the parties. Furthermore, the issue involved is not one against Monica alone, but the interpretation of the expression "cruelty" used in Section 498A Indian Penal Code We are, therefore, not inclined to accept submission on the point of locus standi and we hold that these curative petitions are maintainable by the National Commission for Women, which has been constituted with certain definite objects in mind. In this regard, we may refer to Section 10 of the National Commission for Women Act, 1990, which provides for the functions of the Commission and, in particular, Section 10(1)(e) and (f) thereof. Clause (e) of Sub-section (1) indicates that the Commission would be entitled to take up the cases of violation of the provisions of the Constitution and other laws relating to women with the appropriate authorities and Clause (f) provides that the Commission will look into complaints and take suo moto notice of matters relating to deprivation of women's rights, non-implementation of laws enacted to provide protection of women and also to achieve the objectives of equality and development.

By allowing the curative petitions filed by the National Commission for Women the court directed to recall the judgment and order in review petition and restored the appeals for *de novo* hearing.

Interference against an order of acquittal

The correctness of the appellant's conviction for an offence punishable under sections 498A and 304B of the IPC is questioned in *Suresh Kumar* v. *State of Haryana*.[35] The appellant had earlier been acquitted by the trial court and on an appeal by the state, his acquittal was reversed and he was convicted of the offences charged. The scope of interference against an order of acquittal was questioned. The court observed that interference against an order of acquittal should not be matter of course, however, where the trial judge commits a jurisdictional error; the appellate court is entitled to interfere and correct the error. In the present case, the trial judge incorrectly concluded that death was accidental and then proceeded on the basis that an accidental death is not punishable under section 304B of the IPC. Since the trial judge had committed a jurisdictional error, after interfering with the finding of trial court, the high court had corrected the same.

In *Madivallappa V. Marabad* v. *State of Karnataka*[36] the main issue was whether the reversing of acquittal by re-appreciation of evidence of prosecution witnesses by the high court was valid or not. This was case under sections 498A

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35 2014 CriLJ 55.

36 2013 (2) SCALE 665: I (2013) DMC 510 SC.

and 304B IPC. The apex court found that the trial court had disbelieved the prosecution case and held that in any case, the prosecution has failed to establish beyond reasonable doubt the ingredients of the offences under sections 498A and 304B. As the appellate court, the high could not have reversed the findings of the trial court, however the high court held the appellants guilty of the charges under sections 498A and 304B, by re-appreciating the evidence. Therefore, the apex court set aside the impugned judgment passed by the high court and allowed the appeal by restoring the judgment of the trial court.[37]

Settlement through mediation

In *K. Srinivas Rao* v. *D.A. Deepa*[38] the court held that though offence punishable under section 498A IPC is not compoundable, in appropriate cases if the parties are willing and if it appears to the criminal court that there exist elements of settlement, it should direct the parties to explore the possibility of settlement through mediation. This is not to dilute the rigour, efficacy and purport of section 498A of the IPC, but to locate cases where the matrimonial dispute can be nipped in bud in an equitable manner. The judges, with their expertise, must ensure that this exercise does not lead to the erring spouse using mediation process to get out of clutches of the law.

V RAPE

Breach of trust

As per the facts in *State of U.P* v. *Naushad*,[39] the accused had sexual intercourse with the prosecutrix by giving false assurance that he would marry her. After she got pregnant, he refused to do so. Hence, the trial court concluded that he never intended to marry her and procured her consent only for the reason of having sexual relations with her. This act of the accused, as per the trial court, falls squarely under the definition of rape as he had sexual intercourse with her consent obtained under a misconception of fact as defined under section 90 of the IPC.[40] The trial court found the accused guilty of rape as defined under section 375 of the IPC. The trial court also held that the crime was of a very grave nature and sentenced the accused to the maximum punishment of life imprisonment as provided for under section 376 of the IPC.

However, the high court, by citing *Deelip Singh* v. *State of Bihar*,[41] reversed the trial court's order and observed that it could be a 'breach of promise to marry' rather than 'false promise to marry' and there is nothing on record to indicate that

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37 Also see, Lisa P. Lukose, "Women and the Law" XLVIII *ASIL* 785-787 (2012).

38 (2013) 5 SCC 226.

39 AIR 2014 SC 384.

40 The same conclusion was also reached in *Yedla Srinivas Rao* v. *State of A.P* (2006) 11 SCC 615.

41 (2005) 1 SCC 88.

she was incapable of understanding the nature and implication of the act of the accused for which she has consented. The high court also observed that the prosecution has failed to prove its case beyond reasonable doubt and hence held that the trial court has erroneously convicted the accused.

Reversing the judgement of the high court and upholding the trial court's order, the apex court held that the trial court was correct in awarding the maximum sentence of life imprisonment to the accused as he has committed a breach of the trust that the prosecutrix had in him, especially due to the fact that they were related to each other. He thus invaded her person, by indulging in sexual intercourse with her, in order to appease his lust, all the time knowing that he would not marry her. He committed an act of brazen fraud leading her to believe that he would marry her. A woman's body is not a man's plaything and he cannot take advantage of it in order to satisfy his lust and desires by fooling a woman into consenting to sexual intercourse simply because he wants to indulge in it. The accused thus deserved suitable punishment for the rape.

Absence of sound reasons

In *Prem Kaur* v. *State of Punjab*[42] the trial court was swayed by the fact that the father and son together cannot rape a woman. The trail court has held that "there is no cogent evidence that the prosecutrix was raped by the accused, Baba Jagir Singh and his son Karaj Singh and Jagtar Singh. It is not possible that father and son will commit the rape at the same time." This was a rare case wherein the appellant was maltreated to the extent that even chilli powder was put in her private parts.

When the matter came up before the High Court of Punjab and Haryana at Chandigarh, the high court also did not show any sensitivity, and did not consider the gravity of the charges levelled against the accused persons. No other reasons were given by the high court, while dealing with the revision, Further, the high court had without examining any medical report, gone to the extent of stating that the prosecutrix had no injury upon her person whatsoever, though the finding is admittedly contrary to the evidence on record. The state authorities have taken a complete indifferent attitude towards the appellant, for the reasons best known to it.

Hence the apex court held that the trial court did not decide the case giving adherence to the provisions of section 354 of the Cr PC which provide for a particular procedure and style to be followed while delivering a judgment in a criminal case and such format includes a reference to the points for determination, the decision thereon, and the reasons for the decision, as pronouncing a final order without a reasoned judgment may not be valid, having sanctity in the eyes of the law. The judgment must show proper application of the mind of the presiding officer of the court, and that there was proper evaluation of all the evidence on

42 (2013)14 SCC 653.

record, and the conclusion is based on such appreciation/evaluation of evidence. Thus, every court is duty bound to state reasons for its conclusions.

The trial court did not record any sound reasoning for acquittal, though it had been the case of the prosecutrix that she remained hospitalised. She had deposed in court that she had been subjected to rape. The high court had also been swayed by the reasoning recorded by the trial court without making much effort to find out the truth in the case. The court at all levels must understand that a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses.[43] While remanding the case for fresh trail to the trial court, the apex court laid down the following law in this regard:[44]

> Thus, in view of the above, the law can be laid down that the court must give reasons for reaching its conclusions. The courts below have dealt with the matter in a very summary fashion. The statements of reasons, for the conclusion reached by them, which could have been more enlightening, are missing. The judgments of the courts below do not comply with the requirement of the statutory provisions as laid down in Code of Criminal Procedure The view taken by the courts below is manifestly unreasonable and has resulted in miscarriage of justice. The courts ought not to have given the defective and cryptic judgment. In fact it is no judgment in the eyes of the law. We are not in a position to judge the correctness, legality and propriety of the findings recorded by the courts below. The absence of sound reasons is not a mere irregularity, but a patent illegality. We are aghast at the judicial insensitiveness shown by the Trial Court, and we find it no less, at the level of the High Court. The view taken by the Trial Court, that the father and son cannot rape a victim together, may in itself cannot be a ground of absolute improbability, however, it may fall within the realm of rarest of rare cases. Whether the allegation is correct or not, has to be examined on the basis of the evidence on record and such an issue cannot be decided merely by observing that it is improbable.

Reduction of sentence below the prescribed minimum

In *State of Haryana* v. *Janak Singh*[45] wherein the high court has reduced the

43 *State of Punjab* v. *Jagir Singh Baljit Singh and Karam Singh,* AIR 1973 SC 2407.

44 *Id.* at para 21.

45 (2013) 9 SCC 431.

sentence below the statutory minimum, the apex court held that when the legislature provides for a minimum sentence and makes it clear that for any reduction from the minimum sentence of seven years, adequate and special reasons have to be assigned in the judgment, the courts must strictly abide by this legislative command. As per proviso to section 376(1) there must be adequate and special reasons to be mentioned in the judgment, to impose a sentence of imprisonment for a term of less than seven years. Thus, ordinarily sentence for an offence of rape shall not be less than seven years. Section 376(1) read with the proviso thereto reflects the anxiety of the legislature to ensure that a rapist is not lightly let off and unless there are some extenuating circumstances stated in writing, sentence below the minimum *i.e*., less than seven years cannot be imposed. While imposing sentence on persons convicted of rape, the court must be careful and must not overlook requirement of assigning reasons for imposing sentence below the prescribed minimum sentence. Criticising the high court, the apex court observed that the high court could have reduced the punishment below the statutory minimum only if it felt that there were extenuating circumstances by giving reasons there for. While reducing the sentence, the high court has merely stated that it was just and expedient to do so. These are not the reasons contemplated by the proviso to section 376(1) IPC. Reasons must contain extenuating circumstances which prompted the high court to reduce the sentence below the prescribed minimum. Sentence bargaining is impermissible in a serious offence like rape. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence.[46]

Determination of the age of prosecutrix – reference to Juvenile Justice (Care and Protection) Rules, 2007

The appellant in *Mahadeo S/o Kerba Maske* v. *State of Maharashtra*[47] was convicted by the High Court of Bombay, bench at Aurangabad for the offences punishable under sections 363, 376 and 506 of IPC. The prosecutrix was aged about 15 years at the time when the offence was committed. There were certificates issued by school, transfer certificate as well as admission form maintained by primary school where prosecutrix had her initial education and school leaving certificate which all confirmed the age of the prosecutrix as below 18 years at the time of occurrence of the offence. However, the doctor who examined the prosecutrix had stated that the age of the prosecutrix could have been between 17 to 25 years. On this, the apex court by confirming the conviction held that the "conviction of accused shall be confirmed if charged against him is proved beyond reasonable doubt".

Rule 12 of the Juvenile Justice (Care and Protection) Rules, 2007 lays down the procedure to be followed in determining the age of a juvenile. Under rule 12 (3) of the said rules, it is stated that in every case concerning a child or juvenile in

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46 *State of Karnataka* v. *Krishnappa* (2000) 4 SCC 75.

47 2013 (3) RCR (Cri) 932.

conflict with law, the age determination enquiry shall be conducted by the court or the board or, as the case may be, by the committee by seeking evidence by obtaining:[48]

(i) The matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) The date of birth certificate from the school (other than a play school); first attended; and in the absence whereof;

(iii) The birth certificate given by a corporation or a municipal authority or a panchayat;

Under rule 12 (3) (b), it is specifically provided that only in the absence of alternative methods described under rule 12 (3) (a) (i) to (iii), the medical opinion can be sought for. In the light of such a statutory rule prevailing for ascertainment of the age of a juvenile, in the considered opinion of the court, the same yardstick can be rightly followed by the courts for the purpose of ascertaining the age of a victim as well.

Conviction on the sole testimony of prosecutrix

The Supreme Court of India in *Md. Iqbal* v. *State of Jharkhand*[49] reiterated that there is no prohibition in law to convict the accused of rape on the basis of sole testimony of the prosecutrix and the law does not require that her statement be corroborated by the statements of other witnesses. The trial court had thoroughly appreciated the facts of the case and came to the conclusion that in view of the provisions of section 114A of Indian Evidence Act, 1872 there is a presumption as to absence of consent in case of gang rape. Thus the appellants had been convicted for the offence punishable under section 376(2) (g) which was also confirmed by the High Court of Jharkhand at Ranchi. The court can also presume in case of gang rape that the prosecutrix did not give consent, as this presumption is based on the reasoning that nobody can be a consenting party to several persons simultaneously. Thus, consent is not possible in the case of gang rape.[50] Even if a woman is of easy virtues it cannot be a licence for any person to commit rape.[51]

The apex court emphasised that the court must act with sensitivity and appreciate the evidence in totality of the background of the entire case and not in the isolation. In this case, even if most of the witnesses including father of the prosecutrix turned hostile, the court found that appellants should not be allowed to take the benefit of this circumstance. Even when the victim is of easy virtue/ unchaste woman that itself cannot be a determinative factor and the court is required to adjudicate whether the accused committed rape on the victim on the

48 *Id*. at para 10.

49 AIR 2013 SC 3077.

50 *Vijay @ Chinee* v. *State of Madhya Pradesh* (2010) 8 SCC 191.

51 *Narender Kumar* v. *State (NCT of Delhi*), AIR 2012 SC 2281.

occasion complained of. She stands on a much higher pedestal than an injured witness. In view of the provisions of sections 53 and 54 of the Evidence Act, 1872, unless the character of the prosecutrix itself is in issue, her character is not a relevant factor to be taken into consideration at all.[52]

Rape is blatant violation of women's right to live with dignity. Rape is not only a sexual crime but also a social crime. Besides the psychological trauma, there is also social stigma which has a devastating effect on rape victim. Majority of rapes are not sudden occurrences but are generally well planned as in this case. Rape victims need physical, mental, psychological and social rehabilitation. Physically she must feel safe in the society, mentally she needs help to restore her lost self esteem, psychologically she needs help to overcome her depression and socially, she needs to be accepted back in the social fold.

In *Swaroop Singh* v. *State of M.P.*[53] where rape was committed at knife point, the court rejected the contention of the accused that the prosecutrix aging 17 to 18 years, though unmarried was having frequent sexual intercourse and hence no definite opinion of rape could be given and, therefore, it cannot be held that the appellant had any forcible sexual intercourse against the wish of the prosecutrix in order to be convicted for the offence under section 376 IPC read with section 506 part II IPC. In this case, the evidence of the prosecutrix was even corroborated by the statements of the witnesses. By upholding the conviction the Supreme Court reiterated that when murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female and no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her.

Two finger test

In *Lillu @ Rajesh* v. *State of Haryana*,[54] it was further clarified that whether the prosecutrix had been habitual to sexual activities or not, is an immaterial question to determine the issue of consent. In *Lillu*, the court also had an occasion to consider the soundness of two finger test wherein it was held that two finger test requires a serious consideration by the court as there is a demand for sound standard of conducting and interpreting forensic examination of rape survivors. The court further observed that the two finger test and its interpretation violate the right of rape survivors to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot *ipso facto*, be given rise to presumption of consent.

In view of International Covenant on Economic, Social, and Cultural Rights 1966 and United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985 rape survivors are entitled to legal recourse that

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52 *State of U.P.* v. *Pappu @ Yunus*, AIR 2005 SC 1248.

53 2013 (2) RCR (Cri) 926.

54 AIR 2013 SC 1784.

does not re-traumatize them or violate their physical or mental integrity and dignity. They are also entitled to medical procedures conducted in a manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence. The state is under an obligation to make such services available to survivors of sexual violence. The court also held that proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with her privacy.

Constitutionality of Juvenile Justice Act, 2000

In *Salil Bali* v. *Union of India*[55] seven writ petitions and one transferred case have been taken up together for consideration in view of the commonality of the grounds and reliefs prayed for therein. The common prayer in *Saurabh Prakash* v. *Union of India*[56] and *Vinay K. Sharma* v. *Union of India*,[57] was for declaration of the Juvenile Justice (Care and Protection of Children) Act, 2000 as *ultra vires* the Constitution. In *Salil Bali* v. *Union of India*,[58] *Krishna Deo Prasad* v. *Union of India*,[59] *Kamal Kumar Pandey* & *Sukumar* v. *Union of India*[60] and *Hema Sahu* v. *Union of India*[61] a common prayer has *inter alia* been made to strike down the provisions of section 2(k) and (l) of the Juvenile Justice (Care and Protection of Children) Act, 2000 and to bring the said Act in conformity with the provisions of the Constitution. A prayer was also made to direct the UOI to take steps to make changes in the Juvenile Justice (Care and Protection of Children) Act, 2000 to bring it in line with the United Nations Standard Minimum Rules for administration of juvenile justice. In *Shilpa Arora Sharma* v. *Union of India*[62] a prayer has *inter alia* been made to appoint a panel of criminal psychologists to determine through clinical methods whether a juvenile is involved in the Delhi gang rape on 16.12.2012.Yet, another relief which has been prayed for in common during the oral submissions made on behalf of the petitioners was that in offences like rape and murder, juveniles should be tried under the normal law and not under the aforesaid Act and protection granted to persons up to the age of 18 years under the aforesaid Act may be removed and that the investigating agency should be permitted to keep the record of the juvenile offenders to take preventive measures to enable them to detect repeat offenders and to bring them to justice. It was also prayed to declare that prohibition in section 21 of the Juvenile Justice (Care and

55 (2013) 7 SCC 705.

56 Writ Petition (C) No. 14 of 2013.

57 Writ Petition (C) No. 90 of 2013.

58 Writ Petition (C) No. 10 of 2013.

59 Writ Petition (C) No. 85 of 2013.

60 Writ Petition (C) No. 42 of 2013.

61 Writ Petition (C) No. 182 of 2013.

62 Writ Petition (Cr.) No. 6 of 2013.

Protection of Children) Act, 2000, be declared unconstitutional.

The court took note of the fact that, as per the data produced, in recent years, there has been a spurt in criminal activities by adults, but not so by juveniles. The age limit which was raised from sixteen to eighteen years in the Juvenile Justice (Care and Protection of Children) Act, 2000, is a decision which was taken by the government, which is strongly in favour of retaining sections 2(k) and 2(l) in the manner in which it exists in the statute. Further, the age of eighteen has been fixed on account of the understanding of experts in child psychology and behavioural patterns that till such an age the children in conflict with law could still be redeemed and restored to mainstream society, instead of becoming hardened criminals in future. There are, of course, exceptions where a child in the age group of sixteen to eighteen may have developed criminal propensities, which would make it virtually impossible for him/her to be re-integrated into mainstream society, but such examples are not of such proportions as to warrant any change in thinking, since it is probably better to try and re-integrate children with criminal propensities into mainstream society, rather than to allow them to develop into hardened criminals, which does not augur well for the future. Subsequent to the 2006 amendment even if a juvenile attains the age of eighteen years within a period of one year he would still have to undergo a sentence of three years, which could spill beyond the period of one year when he attained majority.

Acquittal of co-accused

In *Manoj Giri* v. *State of Chhatisgarh*[63] the trial court while acquitting other co-accused found guilty and convicted the appellant, one Manoj Giri, for commission of dacoity, murder and rape under sections 395, 396, 397, 398 and 376 (2)(g) of the IPC. On appeal, the high court maintained the conviction. When the matter reached the apex court, the court held that, if there is no sufficient evidence against the other accused to infer their guilt, the trial court is justified in acquitting them. If there is sufficient evidence against one of the accused, he alone can be convicted.

With regard to the appellant's conviction under section 396 of the IPC, it was argued that since the other four accused who have been similarly charged were acquitted of the offence of dacoity, it would not be legal and proper to convict the appellant of the said charge. Negating the argument, by relying on *Raj Kumar @ Raju* v. *State of Uttranchal*[64] the court held that for recording conviction of an offence of robbery, there must be five or more persons. In absence of such finding, an accused cannot be convicted for an offence of dacoity. In a given case, however, it may happen that there may be five or more persons and the factum of five or more persons is either not disputed or is clearly established, but the court may not be able to record a finding as to the identity of all the persons said to have committed

63 (2013) 5 SCC 798.

64 (2008) 11 SCC 709.

dacoity and may not be able to convict them and order their acquittal observing that their identity is not established. In such case, conviction of less than five persons - or even one - can stand. But in absence of such finding, less than five persons cannot be convicted for an offence of dacoity. Hence, the apex court had no hesitation in maintaining the conviction of the appellant for the incident in which there was a gang rape, dacoity and a wanton murder of the hapless father-in-law of the prosecutrix.

The apex court while disposing of the petitions made some other observations as well. The Juvenile Justice (Care and Protection of Children) Act, 2000 is in tune with the provisions of the Constitution and the various declarations and conventions adopted by the world community represented by the United Nations. The basis of fixing of the age till when a person could be treated as a child at eighteen years in the Juvenile Justice (Care and Protection of Children) Act, 2000 was article 1 of the Convention of the Rights of the Child. In this regard, one of the other considerations which weighed with the legislation in fixing the age of understanding at eighteen years is on account of the scientific data that indicates that the brain continues to develop and the growth of a child continues till he reaches at least the age of eighteen years and that it is at that point of time that he can be held fully responsible for his actions. Along with physical growth, mental growth is equally important, in assessing the maturity of a person below the age of eighteen years.

In *Beenu Rawat* v. *Union Of India*[65] where the Aam Aadmi Party volunteers who wanted registration of an FIR in respect of a of rape of a poor woman by two persons the Supreme Court directed National Human Rights Commission to expeditiously enquire about the alleged violation of their fundamental right to life and liberty. Direction was also issued for conduction investigation by special investigation team.

VI HUMAN RIGHTS OF LGBT COMMUNITY

In *Suresh Kumar Koushal* v. *NAZ Foundation*,[66] the constitutional validity of section 377 of IPC was in question. The case assumes significance since it has discussed the human rights of LGBT community. The NAZ foundation has filed a PIL in Delhi High Court praying for grant of a declaration that section 377 IPC to the extent it is applicable to and penalises sexual acts in private between consenting adults is violative of articles 14, 15, 19(1)(a)-(d) and 21 of the Constitution. The petitioner argued that section 377 IPC does no enjoy justification in contemporary Indian society and that the section's historic and moral underpinnings do not resonate with the historically held values in Indian society concerning sexual relations. They relied upon 172nd Report of the Law Commission which had recommended deletion of section 377 and pleaded that (i) notwithstanding the recent prosecutorial use of section 377 IPC, the same is detrimental to people's

65 AIR 2014 SC 538.

66 (2014) 1 SCC 1.

lives and an impediment to public health due to its direct impact on the lives of homosexuals; (ii) it is used as a weapon for police abuse in the form of detention, questioning, extortion, harassment, forced sex, payment of hush money; that the section perpetuates negative and discriminatory beliefs towards same sex relations and sexual minorities in general; (iii) as a result of that it drives gay men and MSM and sexual minorities generally underground which cripples HIV/AIDS prevention methods and (iv) the section is used to perpetrate harassment, blackmail and torture those belonging to the lesbian, gay, bisexual and transgender (LGBT) community.

The division bench of the high court had dismissed the writ petition by observing that no cause of action has accrued to the respondent no.1 and purely academic issues cannot be examined by the court. The review petition filed by respondent no.1 was also dismissed by the high court. On appeal, the apex court remitted the writ petition for fresh decision by the high court, in which the Delhi High Court held thus:[67]

> We declare that Section 377 IPC, insofar it criminalises consensual sexual acts of adults in private, is violative of Articles 21, 14 and 15 of the Constitution. The provisions of Section 377 IPC will continue to govern non-consensual penile non-vaginal sex and penile non-vaginal sex involving minors. By 'adult' we mean everyone who is 18 years of age and above. A person below 18 would be presumed not to be able to consent to a sexual act. This clarification will hold till, of course, Parliament chooses to amend the law to effectuate the recommendation of the Law Commission of India in its 172nd Report which we believe removes a great deal of confusion. Secondly, we clarify that our judgment will not result in the re-opening of criminal cases involving Section 377 IPC that have already attained finality.

The Supreme Court of India, on appeal observed that in its anxiety to protect the rights of LGBT persons and to declare that section 377 IPC violates the right to privacy, autonomy and dignity, the Delhi High Court has extensively relied upon the judgments of other jurisdictions. Though these judgments shed considerable light on various aspects of LGBT persons' right and are informative in relation to the plight of sexual minorities, according to the apex court they cannot be applied blindfolded for deciding the constitutionality of the law enacted by the Indian legislature. Thus the apex court has upheld section 377 IPC and overturned the judgment of the Delhi High Court in 2009 that had decriminalised adult consensual same sex conduct. It was held that section 377 IPC does not suffer from the vice of unconstitutionality and the declaration made by the division bench of the high court is legally unsustainable.

It is to be noted that a miniscule fraction of the country's population constitute lesbians, gays, bisexuals or transgenders and as per the reported orders in last

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67 *Id.* at para 2.

more than 150 years less than 200 persons have been prosecuted for committing offence under section 377 IPC. It is true that fundamental rights must be interpreted in an expansive and purposive manner so as to enhance the dignity of the individual and worth of the human person. The right to equality under article 14 and the right to dignity and privacy under article 21 are interlinked. The rights under articles 14, 19 and 21 must be read together. The Constitution is a living document and it should remain flexible to meet newly emerging problems and challenges. As one of the basic human rights, the right of privacy is not treated as absolute and is subject to such action as may be lawfully taken for the prevention of crime or disorder or protection of health or morals or protection of rights and freedoms of others.[68] Similarly, right to sexual orientation can always be restricted on the principles of morality and health.

The high court and Supreme Court of India are empowered to declare as void any law, whether enacted prior to the enactment of the Constitution or after. Such power can be exercised to the extent of inconsistency with the Constitution/ contravention of part III. There is a presumption of constitutionality in favour of all laws, including pre-constitutional laws as the Parliament, in its capacity as the representative of the people, is deemed to act for the benefit of the people in light of their needs and the constraints of the Constitution. Further, the doctrine of severability seeks to ensure that only that portion of the law which is unconstitutional is so declared and the remainder is saved. This doctrine should be applied keeping in mind the scheme and purpose of the law and the intention of the legislature and should be avoided where the two portions are inextricably mixed with one another. The court can resort to reading down a law in order to save it from being rendered unconstitutional. But while doing so, it cannot change the essence of the law and create a new law which in its opinion is more desirable. IPC is a pre-constitutional law. Courts are empowered to declare as void any pre-constitutional law to the extent of its inconsistency with the Constitution and any law enacted post the enactment of the Constitution to the extent that it takes away or abridges the rights conferred by part III of the Constitution. In fact a constitutional duty has been cast upon the court to test the laws of the land on the touchstone of the Constitution and provide appropriate remedy if and when called upon to do so. Seen in this light the power of judicial review over legislations is plenary.

With reference to International Covenant on Economic Social and Cultural Rights, article 12 of the ICESCR requires states to take measures to protect and fulfil the health of all persons. Right to health is an inherent part of the right to life under article 21. States are obliged to ensure the availability and accessibility of health services, information, education facilitates and goods without discrimination especially to vulnerable and marginalised sections of the population. It has a duty to address the needs of those at the greatest risk of HIV including MSM and transgendered persons. The risk of contracting HIV through unprotected penile anal sex is higher than through penile vaginal sex. The HIV prevalence in MSM is 7.3% which is disproportionately higher than in that of the general population which is less than 0.5%.

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68 *Mr. X* v. *Hospital Z* (1998) 8 SCC 296.

The 172nd Law Commission Report specifically recommended deletion of that section and the issue has repeatedly come up for debate. However, the legislature has chosen not to amend the law or revisit it. This shows that Parliament, which is undisputedly the representative body of the people of India has not thought it proper to delete the provision. Such a conclusion is further strengthened by the fact that despite the decision of the Union of India to not challenge in appeal the order of the Delhi High Court, the Parliament has not made any amendment in the law. The judges in this case clearly noted that while the court holds section 377 as not unconstitutional, the legislature is still free to consider the desirability and propriety of deleting or amending the provision.

VII RIGHT TO WORK

Ban on bar dance

State of Maharashtra v. *Indian Hotel and Restaurants Assn*.[69] involved the issue of constitutionality of sections 33A and 33B of the Bombay Police Act, 1951 as inserted by Bombay Police (Amendment) Act, 2005. Section 33A prohibited holding of performance of dance of any kind or type in any eating house, permit room or beer bar. However, under section 33B, this prohibition was not applicable in respect of the dance performance in a drama theatre, cinema theatre and auditorium; or sports club or gymkhana, where entry is restricted to its members only, or a three starred or above hotel or in any other establishment or class of establishments, which, having regard to (a) the tourism policy of the Central or State Government for promoting the tourism activities in the State; or (b) cultural activities. In effect it was an outright ban on dance bars while allowing dance performances in three star and above hotels and other elite establishments. This appeal to the Supreme Court challenged the decision of the Bombay High Court which declared that sections 33A and 33B of the Bombay Police Act, 1951 are *ultra vires* to articles 14 and 19(1)(g) of the Constitution of India. On analysis of the amendment, the court found that section 33(a) (i) prohibits holding of a performance of dance, of any kind or type, in any eating house, permit room or beer bar. This is a complete embargo on performance of dances in the establishment covered under section 33(a) (i). Section 33(a) contains a non-obstante clause which makes the section stand alone and absolutely independent of the Act and the rules. Section 33(a) (ii) makes it a criminal offence to hold a dance performance in contravention of sub-section (i). On conviction, offender is liable to punishment for 3 years, although, the court may impose a lesser punishment of 3 months and fine, after recording special reasons for the same. On the other hand, the establishments covered under section 33B enjoy complete exemption from any such restrictions. The dance performances are permitted provided the

69 (2013) 8 SCC 519. The court also considered other two cases, *State of Maharashtra* v. *Ramnath Vishnu Waringe* and *Ghar Hakka Jagruti Charitable Trust* v. *State of Maharashtra* along with this [Civil Appeal Nos. 2704 and 2705 of 2006 and 5504 of 2013 (Arising out of S.L.P. (C) No. 14534 of 2006)].

establishments comply with the applicable statutory provisions, bye-laws, rules and regulations. Hence the court held that the classification of the establishments covered under sections 33A and 33B would not satisfy the test of equality laid down in the case of *State of Jammu and Kashmir* v. *Triloki Nath Khosa*[70] wherein it was observed that classification must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.

The apex court wondered how exactly the same dances can be said to be morally acceptable in the exempted establishments and lead to depravity if performed in the prohibited establishments. Rather it is evident that the same dancer can perform the same dance in the high class hotels, clubs, and gymkhanas but is prohibited of doing so in the establishments covered under section 33A. The court could not find any rationale which would justify the conclusion that a dance that leads to depravity in one place would get converted to an acceptable performance by a mere change of venue. The discriminatory attitude of the state is illustrated by the fact that an infringement of section 33A(1) by an establishment covered under the aforesaid provision would entail the owner being liable to be imprisoned for three years by virtue of section 33A(2). On the other hand, no such punishment is prescribed for establishments covered under section 33B. Such an establishment would merely lose the licence. Such blatant discrimination cannot possibly be justified on the criteria of reasonable classification under article 14 of the Constitution of India. It has been well settled that article 14 does not prohibit reasonable classification for the purpose of legislation and that a law would not be held to infringe article 14 of the Constitution if the classification is founded on an intelligible differentia and the said differentia has a rational relation to the object sought to be achieved by the said law.

In the present case, the so called distinction is based purely on the basis of the class of the performer and the so called superior class of audience. It cannot be presumed that the class to which an individual or the audience belongs brings with him as a necessary concomitant a particular kind of morality or decency. The court could not find any merit in the presumption which runs through sections 33A and 33B that the enjoyment of same kind of entertainment by the upper classes leads only to mere enjoyment and in the case of poor classes; it would lead to immorality, decadence and depravity. Morality and depravity cannot be pigeon-holed by degrees depending upon the classes of the audience. The aforesaid presumption is also perplexing on the ground that in the banned establishments even a non-obscene dance would be treated as vulgar. On the other hand, it would be presumed that in the exempted establishments any dance is non-obscene. The underlying presumption at once puts the prohibited establishments in a precarious position, in comparison to the exempted class for the grant of a licence to hold a dance performance. Yet at the same time, both kinds of establishments are to be

70 (1974) 1 SCC 19.

granted licenses and regulated by the same restrictions, regulations and standing provisions. In the opinion of the court, the presumption is *elitist*, which cannot be countenanced under the egalitarian philosophy of our Constitution. Sections 33A and 33B introduce an invidious discrimination which cannot be justified under article 14 of the Constitution. Our Constitution makers have taken pains to ensure that equality of treatment in all spheres is given to all citizens of this country irrespective of their station in life.

It was further held that the state failed to establish that restriction was reasonable or that it was in interest of general public the high court noticed that in guise of regulation, legislation imposed a total ban on dancing in establishments covered under section 33A of Act. The legislation failed to satisfy doctrine of direct and inevitable effect. In the instant case, the state has failed to justify the classification between the exempted establishments and prohibited establishments. The legislature is the best judge to measure the degree of harm and make reasonable classification but when such a classification is challenged the state is duty bound to disclose the reasons for the ostensible conclusions. The amendment was based on an unacceptable presumption that the so called elite *i.e.*, rich and the famous would have higher standards of decency, morality or strength of character than their counter parts who have to content themselves with lesser facilities of inferior quality in the dance bars. The state presumed that the performance of an identical dance item in the establishments having facilities less than 3 stars would be derogative to the dignity of women and would be likely to deprave, corrupt or injure public morality or morals; but would not be so in the exempted establishments. These are misconceived motions of a bygone era which ought not to be resurrected. The activities which are obscene or which are likely to deprave and corrupt those whose minds are open to such immoral influences, cannot be distinguished on the basis as to whether they are performing in five star hotels or in dance bars.

The court disagreed with the notion that high morals and decent behaviour is the exclusive domain of the upper classes; whereas vulgarity and depravity is limited to the lower classes. Any classification made on the basis of such invidious presumption is liable to be struck down being wholly unconstitutional and particularly contrary to article 14 of the Constitution of India. The apex court held that the restrictions in the nature of prohibition cannot be said to be reasonable, inasmuch as there could be several lesser alternatives available which would have been adequate to ensure safety of women than to completely prohibit dance. In fact, a large number of imaginative alternative steps could be taken instead of completely prohibiting dancing, if the real concern of the state is the safety of women.

This amendment was brought about on the admission of the police that it is unable to effectively control the situation in spite of the existence of all the necessary legislation, rules and regulations. There were already sufficient rules and regulations and legislation in place which, if efficiently applied, would control if not eradicate all dangers to society enumerated in Preamble and objects and reasons of impugned legislation. There was no material placed on record by state

to show that it was not possible to deal with situation within framework of existing laws except for unfounded conclusions recorded in preamble as well objects and reasons - sufficient power was vested with licensing authority to safeguard any perceived violation of dignity of women through obscene dances. All alleged activities could be controlled under existing regulations.

Discontinuance of bar dancing in establishments below rank of three star establishments, led to closure of a large number of establishments, which resulted in loss of employment for about 75,000 women employed in dance bars in various capacities. So the cure is worse than the disease as many of the dancers were forced into the sex trade after the ban. Many of those unfortunate people, who had no other option as they had no other skills, were forced into prostitution merely to survive. Right to practise a trade or profession and right to life guaranteed under article 21 of Constitution, were, by their very nature, intermingled with each other, but in a situation like present one, such right could not be equated with unrestricted freedom. Instead of generating unemployment, it might be wiser for state to look into ways and means in which reasonable restrictions might be imposed on bar dancing, but without completely prohibiting or stopping the same. State had to provide alternative means of support and shelter to persons engaged in such trades or professions, some of whom were trafficked from different parts of country and had nowhere to go or earn a living after coming out of their unfortunate circumstances. A strong and effective support system only would provide solution to this problem.

Instead of the ban, there should be regularization of working conditions of bar dancers. There should be monitoring and prevention of entry of children into these establishments. There should be protection against forced sexual relations and harassments. There should be security of earning, medical benefits and protection from unfair trade practices. There must be development that increases rather than reduces options for women. The court opined that it would be more appropriate to bring about measures which should ensure the safety and improve the working conditions of the persons working as bar girls. Instead of putting curbs on women's freedom, empowerment would be more tenable and socially wise approach. This empowerment should reflect in the law enforcement strategies of the state as well as law modeling done in this behalf. As Swami Vivekanand notes just as a bird could not fly with one wing only, a nation would not march forward if the women are left behind.

Harassment at work

In *Registrar General* v. *Jayshree Chamanlal Buddhbhatti*[71] the respondent therein was a candidate who had obtained high rank in the selection for the judicial service. She was given an independent posting in a rural area, where she was living all alone. Her disposal of cases had been very good. 115 judges were appointed during her time which included some 80 judges of her batch, and none of them had

71 2014 (1) SCT 325 (SC).

given as many judgments as she had, both on civil as well as on criminal side. Only 25 of her judgments were carried in appeal to the appellate court, and one up to the high court which got confirmed. The complaints made by her, regarding the misbehaviour of the staff, and the harassment to her by a section of the bar, were not heeded by the then district judge, leave aside making an attempt to understand the difficulties faced by her. Instead, certain unjustified adverse remarks were made against her. Subsequently, the then district judge conducted the preliminary inquiry against her, in his capacity as the vigilance officer, wherein without any justification he tried to connect her with the death of the wife of another judicial officer. An investigation was conducted against the respondent without affording her any opportunity, though it contained allegations against her character, and the investigation was sought to be justified as determination of her suitability for the post which she was holding. Subsequently, she has been terminated from her services during probation after holding an inquiry behind her back, and without giving her an opportunity to defend.

The apex court had to examine in these circumstances, whether this is a case of termination simpliciter of the services of a probationer on account of her unsuitability for the post that she was holding, or whether it is a termination of her services after holding an inquiry behind her back. If it is a case of deciding the suitability of a probationer, and for that limited purpose any inquiry is conducted, the same cannot be faulted as such. However, if during the course of such an inquiry any allegations are made against the person concerned, which result into a stigma, he ought to be afforded the minimum protection which is contemplated under article 311 (2) of the Constitution of India even though she may be a probationer. The protection is very limited, *viz.*, to inform the person concerned about the charges against him, and to give him a reasonable opportunity of being heard. If the termination is by way of punishment then a probationer is entitled to attract article 311. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry, the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee.

It is the duty of the district judge and also of the high court to protect the judicial officers against unjustified allegations. However, in the present case, the district and high court administration have clearly failed to do so. Hence the court observed that the high courts must see to it that the hostile work environment for junior judicial officers, particularly the lady officers, is eliminated. This is necessary to encourage the young officers to put in good judicial work without fear or favour. The court directed the appellant to reinstate the respondent in her service with continuity and all consequential benefits. The respondent was also held to have completed her probation satisfactorily.

Some staff members in the court used to threaten the lady judge by calling names in vulgar Gujarati slang. Some advocates also used to send their clients in a drunken state to her residence. In such situations, an unmarried lady judge cannot be safe. She had been given no protection despite all these hardships, and yet she continued to do her best, but in return had been served with the order of termination. It is not uncommon for a colleague to talk to another colleague, and merely because one colleague is male and the other is female, it is no reason to suspect that permissible lines had been crossed and then to draw an adverse inference against the character of the lady judge.

One of the submissions which was advanced on behalf of the appellants was that the high court, on its judicial side, ought to have given a further opportunity to the high court administration to conduct a further inquiry against the respondent. The apex court then observed so: "In our view, keeping in mind the material on record, such a further exercise was not called for, and in any case certainly no more. The services of the respondent have been terminated way back in 2007. Six long years have gone thereafter, and for no fault of hers, the respondent has suffered. Directing any further inquiry would add salt to the injury. The conclusion arrived at by the High Court administration that the performance of the respondent was not good and satisfactory, and that she was not suitable for the post she was holding was on the face of it for extraneous reasons. Consequently with a view to do complete justice, the Respondent will have to be held as having completed her probation satisfactorily, and that she was entitled to continue in the post that she was holding."

India is a male dominating society. It should not be a pretext to harass a lady whatever be her profession. When such things happen in the judicial service itself, it would be a disgrace to the profession. This judgement is a welcome one.

Implementation of *Vishaka* guidelines

In *Medha Kotwal Lele* v. *Union of India*,[72] the writ Petition was filed for implementation of order passed in *Vishaka*, in regard to guidelines for prevention and redressal of sexual harassment and their due compliance under article 141 of the Constitution. The central/state governments were requested to consider suitable measures including legislation to ensure that guidelines laid down by this order were also observed by employers in private sector. From affidavits of state, it transpired that states had amended rules relating to duties, public rights and obligations of government employees but had not made amendments in rules. The states which had carried out amendments in standing orders had not provided that report of complaints committee should be treated as a report in disciplinary proceedings by inquiry officer. Hence the apex court held that implementation of guidelines had to be not only in form but substance and spirit so as to make available safe and secure environment to women at workplace in every aspect and thereby enabling working women to work with dignity, decency and due respect.

72 (2013) 1 SCC 297.

The court also opined that if there is any non compliance to guidelines, it would be open to aggrieved persons to approach respective high courts. Since the guidelines issued in *Vishaka* should not remain symbolic, the following further directions were issued by the court: (i) The states and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings *etc*. of the complaints committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the complaints committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent. (ii) The states and Union Territories which have not carried out amendments in the Industrial Employment (Standing Orders) Rules shall now carry out amendments on the same lines, as noted above in Clause (i) within two months. (iii) The states and Union Territories shall form adequate number of complaints committees so as to ensure that they function at taluka level, district level and state level. Those states and/or Union Territories which have formed only one committee for the entire state shall now form adequate number of complaints committees within two months from today. Each of such complaints committees shall be headed by a woman and as far as possible in such committees an independent member shall be associated. (iv) The state functionaries and private and public sector undertakings/organisations/bodies/institutions *etc.* shall put in place sufficient mechanism to ensure full implementation of the *Vishaka* guidelines and further provide that if the alleged harasser is found guilty, the complainant - victim is not forced to work with/under such harasser and where appropriate and possible the alleged harasser should be transferred. Further provision should be made that harassment and intimidation of witnesses and the complainants shall be met with severe disciplinary action. (v) The Bar Council of India shall ensure that all bar associations in the country and persons registered with the State Bar Councils follow the *Vishaka* guidelines. Similarly, Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory institutes shall ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them follow the guidelines laid down by *Vishaka*. The court also gave directions in *Medha Kotwal Lele* case that on receipt of any complaint of sexual harassment the same shall be dealt with by the statutory bodies in accordance with the *Vishaka* guidelines and the present guidelines.

Rehabilitation of sex workers

In *Budhadev Karmaskar* v. *State of West Bengal*,[73] the Supreme Court of India reiterated that the sex workers although have a right to live with dignity as

73 (2013) 1 SCC 294.

the society is aware that they are forced to continue with this trade under compulsions since they have no alternative source of livelihood, collective endeavour should be there on the part of the court and all concerned who have joined this cause as also the sex workers themselves to give up this heinous profession of flesh trade by providing the destitute and physically abused women an alternative forum for employment and resettlement in order to be able to rehabilitate themselves. The court appealed that judiciary should not be misunderstood to encourage the practice of flesh trade or advocate the recognition of sex trade merely because it has raised the issue to emphasize the rehabilitation aspect of the sex workers, for which this court had taken the initiative right at the threshold. It added so:

> Thus, when we modify the earlier term of reference and state regarding conditions conducive for sex workers to live with dignity in accordance with the provisions of Article 21 of the Constitution, the same may not be interpreted or construed so as to create an impression or draw inference that this Court in any way is encouraging the sex workers to continue with their profession of flesh trade by providing facilities to them when it is merely making an effort to advocate the cause of offering an alternative source of employment to those sex workers who are keen for rehabilitation. When we say "conditions conducive for sex workers to live with dignity", we unambiguously wish to convey that while the sex workers may be provided alternative source of employment for their rehabilitation to live life with dignity, it will have to be understood in the right perspective as we cannot direct the Union of India or the State Authorities to provide facilities to those sex workers who wish to promote their profession of sex trade for earning their livelihood, except of course the basic amenities for a dignified life, as this was certainly not the intention of this Court even when the term of reference was framed earlier.

VIII THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

Live-in relationship

Indra Sarma v.*V.K.V. Sarma*[74] the apex court examined the question whether a live-in relationship would amount to a relationship in the nature of marriage falling within the definition of domestic relationship under section 2(f) of the Protection of Women from Domestic Violence Act, 2005 (PWDV Act) and the disruption of such a relationship by failure to maintain a women involved in such a relationship amounts to domestic violence within the meaning of section 3 of the PWDV Act.

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74 AIR 2014 SC 309.

The parties in the present case had lived together for 18 years and then the respondent had left the company of the appellant without maintaining her. In the criminal miscellaneous complaint filed before the magistrate under section 12 of the PWDV Act, 2005 the plea of domestic violence had been accepted and the respondent was directed to pay an amount of Rs.18,000/- per month towards maintenance. The session court also upheld the order and observed that due to their live-in relationship for a considerable long period, non-maintenance would amount to domestic violence within the meaning of section 3 of the PWDV Act, 2005. However, the high court had set aside the order passed by the courts below holding that the relationship between the parties would not fall within the ambit of relationship in the nature of marriage as it does not satisfy the test laid down in *Velusamy* case.[75]

On appeal against the judgment of the high court, the Supreme Court examined whether the non maintenance of the appellant in a broken live-in-relationship, which is stated to be a relationship not in the nature of a marriage, would amount to domestic violence within the definition of section 3 of the PWDV Act, enabling the appellant to seek one or more reliefs provided under section 12 of the PWDV Act. The court observed that while examining whether a relationship would fall within the expression 'relationship in the nature of marriage' within the meaning of section 2(f) of the DV Act, the courts should have a close analysis of the entire relationship, in other words, all facets of the interpersonal relationship need to be taken into account. The court cannot isolate individual factors, because there may be endless scope for differences in human attitudes and activities and a variety of combinations of circumstances which may fall for consideration. Invariably, it may be a question of fact and degree, whether a relationship between two unrelated persons of the opposite sex meets the tests judicially evolved. The court culled out certain non-exhaustive guidelines for testing under what circumstances, a live-in relationship will fall within the expression relationship in the nature of marriage under section 2(f) of the PWDV Act, 2005:[76]

i. Duration of period of relationship

   Section 2(f) has used the expression at any point of time which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation.

ii. Shared household

   The same definition provided under section 2(s) of the PWDV Act.

iii. Pooling of resources and financial arrangements

   Supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names

75 *D. Velusamy* v. *D.Patchaiammal* (2010) 10 SCC 469.

76 *Supra* note 74 at para 55.

or in the name of the woman, long term investments in business, shares in separate and joint names, so as to have a long standing relationship, may be a guiding factor.

iv. Domestic arrangements

Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or up keeping the house, etc. is an indication of a relationship in the nature of marriage.

v. Sexual relationship

Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring *etc*.

vi. Children

Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.

vii. Socialization in public

Holding out to the public and socializing with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship.

viii. Intention and conduct of the parties

Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship.

The court held that the appellant had entered into a live-in-relationship with the respondent knowing that he was married person, with wife and two children, hence, the generic proposition laid down by the Privy Council in *Andrahennedige Dinohamy* v. *Wiketunge Liyanapatabendage Balshamy*,[77] that where a man and a woman are proved to have lived together as husband and wife, the law presumes that they are living together in consequence of a valid marriage will not apply and, hence, the relationship between the appellant and the respondent was not a relationship in the nature of a marriage, and the status of the appellant was that of a concubine. A concubine cannot maintain a relationship in the nature of marriage because such a relationship will not have exclusivity and will not be monogamous

77 AIR 1927 PC 185.

in character.[78] In *Gokal Chand* v. *Parvin Kumari*[79] the apex court has held that the continuous cohabitation of man and woman as husband and wife may raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is a rebuttable one and if there are circumstances which weaken and destroy that presumption, the court cannot ignore them. Polygamy, that is a relationship or practice of having more than one wife or husband at the same time, or a relationship by way of a bigamous marriage that is marrying someone while already married to another and/or maintaining an adulterous relationship that is having voluntary sexual intercourse between a married person who is not one husband or wife, cannot be said to be a relationship in the nature of marriage.

The court observed that in the instant case, there is no necessity to rebut the presumption, since the appellant was aware that the respondent was a married person even before the commencement of their relationship, hence the status of the appellant is that of a concubine or a mistress, who cannot enter into relationship in the nature of a marriage. Long standing relationship as a concubine, though not a relationship in the nature of a marriage, of course, may at times, deserves protection because that woman might not be financially independent, but according to the court, thee PWDV Act, 2005 does not take care of such relationships which may perhaps call for an amendment of the definition of section 2(f) of the PWDV Act, 2005 which is restrictive and exhaustive. While refusing to give any order off maintenance the court held thus:[80]

> …[T]he appellant, having been fully aware of the fact that the respondent was a married person, could not have entered into a live-in relationship in the nature of marriage. All live-in relationships are not relationships in the nature of marriage. Appellant and the respondent's relationship is, therefore, not a relationship in the nature of marriage because it has no inherent or essential characteristic of a marriage, but a relationship other than in the nature of marriage and the appellant's status is lower than the status of a wife and that relationship would not fall within the definition of domestic relationship under section 2(f) of the DV Act. If we hold that the relationship between the appellant and the respondent is a relationship in the nature of a marriage, we will be doing an injustice to the legally wedded wife and children who opposed that relationship. Consequently, any act, omission or commission or conduct of the respondent in connection with that type of relationship, would not amount to domestic violence under section 3 of the DV Act....If any direction

78 Reference was also made *Badri Prasad* v. *Director of Consolidation (*1978) 3 SCC 527 and *Tulsa* v. *Durghatiya* (2008) 4 SCC 520.

79 AIR 1952 SC 231.

80 *Id*. at para 65.

> is given to the respondent to pay maintenance or monetary consideration to the appellant, that would be at the cost of the legally wedded wife and children of the respondent, especially when they had opposed that relationship and have a cause of action against the appellant for alienating the companionship and affection of the husband/parent which is an intentional tort.

While dismissing the appeal and upholding the verdict of the high court, the apex court also observed that live-in relationships which are not in the nature of marriage are of serious concern and are societal reality. Children born out of such relationship also suffer most. It calls for bringing in remedial measures by the Parliament, through proper legislation.

The Supreme Court of India in *Saraswathy* v. *Babu*,[81] by reversing the judgement of the Delhi High Court held that the conduct of the parties prior to the coming into force PWDV Act, 2005 can be taken into consideration while passing an order under section 18, 19 and 20 thereof.[82]

> ... whether acts which now constitute domestic violence but committed prior to the coming into force of the Act would form a basis of an action there under. ..The Act came into force on 2005. It cannot be disputed that several wrongful actions which might have amounted to offences such as cruelty and demand for dowry cannot have taken the description of domestic violence till such time the Act came into force. In other words the offending Acts could have been construed as offences under other enactments but could not have been construed as acts of domestic violence until the Act came into force. Therefore, what not domestic violence was as defined in the Act till the Act came into force could not have formed the basis of an action. Ignorance of law is no excuse but the application of this maxim on any date prior to the coming into force of the Act could only have imputed knowledge of offence as subsisted prior to coming into force of the Act. It is true that it is only violation of orders passed under the Act which are made punishable. But those very orders could be passed only in the face of acts of domestic violence. What constituted domestic violence was not known until the passage of the act and could not have formed the basis of a complaint of commission of domestic violence.

As per the facts of the present case, even after the order passed by the subordinate judge the respondent-husband has not allowed the appellant-wife to reside in the shared household matrimonial house. In the opinion of the Supreme

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81 (2014) 3 SCC 712.

82 Also see *V.D. Bhanot* v. *Savita Bhanot* (2012) 3 SCC 183.

Court this amounted to continuance of domestic violence committed by the respondent-husband against the appellant-wife. Hence, the court held that in view of the such continued domestic violence, it is not necessary for the lower courts to decide whether the domestic violence is committed prior to the coming into force of the PWDW Act, 2005 and whether such act falls within the definition of the term domestic violence as defined under section 3 of the PWDV Act, 2005.

Even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWDV Act, 2005. Hence, the appellant-wife having being harassed since 2000 is entitled for protection orders and residence orders under sections 18 and 19 of the PWDV Act, 2005 along with the maintenance under section 20 (d) of the PWDV Act, 2005. In addition to the reliefs granted by the courts below, the apex court directed the respondent-husband to pay compensation and damages to the extent of Rs.5,00,000/- in favour of the appellant-wife.

The judgement holds that the wife who has been subjected to the domestic violence is entitled for compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the husband.

The PWDV Act is intended to achieve the constitutional principles laid down in article 15(3), reinforced *vide* article 39 of the Constitution of India. It is intended to provide for protection of rights of women who are victims of violence of any type occurring in the family. The Malimath Committee report also states that a man who marries a second wife, during the subsistence of the first wife, should not escape his liability to maintain his second wife, even under section 125 Cr PC.[83] Domestic violence is undoubtedly a human rights issue, which was not properly taken care of in our country even though the Vienna Accord 1994 and the Beijing Declaration and Platform for Action (1995) had acknowledged that domestic violence was undoubtedly a human rights issue. UN Committee on Convention on Elimination of All Forms of Discrimination against Women in its general recommendations had also exhorted the member countries to take steps to protect women against violence of any kind, especially that occurring within the family, a phenomenon widely prevalent in India. Thus the PWDV Act, 2005 has been enacted to provide a remedy in civil law for protection of women from being victims of domestic violence and to prevent occurrence of domestic violence in the society. The courts have to bear this in mind while dealing cases under the PWDV Act, 2005.

IX HINDU SUCCESSION ACT, 1956

In *Shivdev Kaur* v. *R.S. Grewal*[84] the court examined the true import of section 14 of Hindu Succession Act, 1956. The court held that if a Hindu female has been

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83 *Deoki Panjhiyara* v. *Shashi Bhushan Narayan Azad* (2013) 2 SCC 137.

84 (2013) 4 SCC 636.

given only a life interest through will or gift or any other document referred to in section 14, the said rights would not stand crystallised into the absolute ownership as interpreting the provisions to the effect that she would acquire absolute ownership/title into the property by virtue of the provisions of section 14(1) of the Act 1956, the provisions of sections 14(2) and 30 of the Act 1956 would become otios. If a property has been acquired by a Hindu female by a will or gift, giving her only a life interest it would remain the same even after commencement of the Act 1956, and such a Hindu female cannot acquire absolute title.

X MISCELLANEOUS

Registration of FIR

The writ petition, under article 32 of the Constitution in *Lalita Kumari* v. *Govt. of U.P*[85] has been filed by one Lalita Kumari (minor) through her father for the issuance of a writ of *Habeas Corpus* or direction(s) of like nature for the protection of his minor daughter who has been kidnapped. The Constitution bench of the Supreme Court examined the question whether a police officer is bound to register a first information report (FIR) upon receiving any information relating to commission of a cognizable offence under section 154 of the Cr PC or the police officer has the power to conduct a preliminary inquiry in order to test the veracity of such information before registering the same? This issue before the Constitution bench arose out of two main conflicting areas of concern, *viz*.,(i) whether the immediate non-registration of FIR leads to scope for manipulation by the police which affects the right of the victim/complainant to have a complaint immediately investigated upon allegations being made; and (ii) whether in cases where the complaint/information does not clearly disclose the commission of a cognizable offence but the FIR is compulsorily registered then does it infringe the rights of an accused. The Constitution bench of the Supreme Court gave the following directions in this case:

(i) Registration of FIR is mandatory under section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

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85 (2014) 2 SCC 1.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The non-exhaustive category of cases in which preliminary inquiry may be made are as under: (a) Matrimonial disputes/ family disputes, (b) Commercial offences, (c) Medical negligence cases, (d) Corruption cases, (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the general diary entry.

(viii) Since the general diary/station diary/daily diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

Judicial review

In *Alsia Pardhi* v. *State of M.P* [86] a complaint has been made to the police against the forest officials for forcibly taking a minor girl aged about 14 years in their custody. The subsequent whereabouts of the girl was unknown. No proper investigation had been done by the police with the forest officials against whom the allegations had been made. In a writ of habeas corpus before the Madya Pradesh High Court, it was held to be a case of missing person and a not a case of illegal, wrongful or forceful confinement. Hence, in the opinion of the high court the matter did not warrant issue of a writ of habeas corpus. Being aggrieved by this order, the appellant approached the apex court by way of special leave. The point for consideration for the court was whether there was any lapse on the part of the state agency in carrying out the investigation and the facts and materials mandated

86 (2014) 2 SCC 725.

for entrusting the investigation to the CBI? While answering the question in affirmative the court referred the decision in *State of West Bengal* v. *Committee for Protection of Democratic Rights, West Bengal*,[87] in respect of entrusting the investigation to the CBI when the state has already initiated enquiry through its agency, wherein the apex court has held that the fundamental rights, enshrined in part III of the Constitution, are inherent and cannot be extinguished by any constitutional or statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under part III has to be taken into account in determining whether or not it destroys the basic structure. The state has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers.

The power of judicial review is essential to give practicable content to the objectives of the Constitution embodied in part III and other parts of the Constitution. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between Parliament and the state legislatures, it is also necessary to show any transgression by each entity. If in terms of entry 2 of list II of the seventh schedule on the one hand and entry 2-a and entry 80 of list I on the other, an investigation by another agency is permissible subject to grant of consent by the state concerned, there is no reason as to why, in an exceptional situation, the court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the statute. In the opinion of the apex court the exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the court fails to grant relief, it would be failing in its constitutional duty.

With regard to the restriction under the Special Police Act, the court held that when the Special Police Act itself provides for CBI investigation in relation to the crime which was otherwise within the jurisdiction of the state police, subject to the consent by the state, the court can also exercise its constitutional power of judicial review and direct CBI to take up the investigation within the jurisdiction of the state. The power of the high court under article 226 of the Constitution cannot be taken away, curtailed or diluted by section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the courts, the restriction imposed by section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the constitutional courts. Therefore, exercise of power of judicial review by the high court would not amount to infringement of either the doctrine of separation of power or the federal structure.

The court also noticed that the kidnapped girl belonged to Pardhi community, a denotified tribe and the Pardhi community people are being constantly harassed

87 (2010) 3 SCC 571.

by the police and forest officials. On view of this, the court ordered to appoint the CBI to investigate the matter afresh and proceed further according to law. It is to be noted that in the writ petition before the high court the prayer was made only for production of the abducted girl, however, the apex court moulded the relief and ordered to appoint the CBI to investigate the case in question, *viz*., and whereabouts of the kidnapped minor girl by the forest officials.

Object of pardon

In *State of Rajasthan* v. *Balveer @ Balli*[88] where a woman has been murdered in the forest the chief judicial magistrate tendered pardon on an accomplice the purpose of obtaining the evidence. The high court set aside the judgment of the trial court and acquitted the convicted by holding that the sole testimony as an approver could not be accepted. The apex court by reversing the high court's impugned order held the accused guilty of the offences under sections 376(2)(g) and 302 read with section 34 IPC and imposed rigorous imprisonment for life for the offence under section 302 read with section 34 IPC and 10 years rigorous imprisonment for the offence under section 376(2)(g) IPC.

An accomplice is unworthy of credit, unless he is corroborated in material particulars. Section 133 of the Indian Evidence Act provides that an accomplice shall be a competent witness against an accused person and when the pardon is tendered to an accomplice under section 306 Cr PC, the accomplice is removed from the category of co-accused and put into the category of witness and the evidence of such a witness as an accomplice can be the basis of conviction as provided in section 133 of the Indian Evidence Act, 1872. The object of section 306 is to allow pardon in cases where heinous offence is alleged to have been committed by several persons so that with the aid of the evidence of the person granted pardon the offence may be brought home to the rest. The basis of the tender of pardon is not the extent of the culpability of the person to whom pardon is granted, but the principle is to prevent the escape of the offenders from punishment in heinous offences for lack of evidence. There can therefore be no objection against tender of pardon to an accomplice simply because in his confession, he does not implicate himself to the same extent as the other accused because all that section 306 requires is that pardon may be tendered to any person believed to be involved directly or indirectly in or privy to an offence.[89]

XI CONCLUSION

The cases surveyed reveal that in our country where people are described as civilised, crime against women is committed even when the child is in the womb as the female foetus is often destroyed to prevent the birth of a female child. As evident from the above discussion, there is a phenomenal rise in crime against women. Protection granted to women by the Constitution of India and other laws

88 AIR 2014 SC 1117.

89 *Suresh Chandra Bahri* v. *State of Bihar* [1995 Supp.(1) SCC 80].

can be meaningful only if those who are entrusted with the job of doing justice are sensitized towards women's problems.[90] In *Lillu @ Rajesh* v. *State of Haryana*,[91] it was observed that the two finger test and its interpretation violate the right of rape survivors to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot *ipso facto*, be given rise to presumption of consent. There has been follow up action by the Supreme Court to curb female foeticide as evident in *Voluntary Health Ass.of Punjab* v. *Union of India*. The apex court highlighted the importance of marriage and the necessity for the amicable settlement of matrimonial dispute in *K. Srinivas Rao* v. *D.A. Deepa*.[92] In *Inder Sharma* the apex court signalled the need to amend PWDV Act, 2005 with regard to live in relationships. *State of Maharashtra* v. *Indian Hotel and Restaurants Assn*.[93] shows that it would be more appropriate to bring about measures which should ensure the safety and improve the working conditions of the women especially those working in vulnerable conditions such as bar girls. Instead of putting curbs on women's freedom, empowerment would be more tenable and socially wise approach. This empowerment should reflect in the law enforcement strategies of the state.[94] The extension of women's rights should be the basic principle of all social progress.[95]

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90 *Vajresh Venkatray Anvekar* v. *State of Karnataka* (2013) 3 SCC 462.

91 AIR 2013 SC 1784.

92 (2013) 5 SCC 226.

93 (2013) 8 SCC 519. The court also considered other two cases, *State of Maharashtra* v. *Ramnath Vishnu Waringe* and *Ghar Hakka Jagruti Charitable Trust* v. *State of Maharashtra along with this* [Civil Appeal Nos. 2704 and 2705 of 2006 and 5504 of 2013 (Arising out of S.L.P. (C) No. 14534 of 2006)].

94 *State of Maharashtra* v. *Indian Hotel and Restaurants Assn*. (2013) 8 SCC 519.

95 Charles Fourier, "Degradation of Women in Civilization" *The Theory of the Four Movements and of the General Destinies* (1808).