Chapter – 5

ROLE OF INDIAN JUDICIARY IN ENHANCING AND PROTECTING HUMAN RIGHTS OF WOMEN

1. Through Pronouncement of Judgment by High Courts & Supreme Court

“In recent years crimes relating to domestic violence have attracted the attention of almost all enlightened sections of Indian society. Legislators, jurists, judges, intellectuals, researchers, social workers and have common all made valuable contribution to the cause of women in distress. Nevertheless, the response of redressal agencies such as the police and the judiciary as well as role of social welfare organizations in detection of family crimes and in providing relief to victims of domestic violence is of paramount importance. It is obvious that the three pillars of Indian constitution i.e. legislatures, executives and judiciary play significant part in dispensing justice to citizen of the country. Women benefit as much from general laws of the country as men.

However, being weaker and suppressed section of society, they deserve special treatment. Hence, legislative enactments against
domestic violence including dowry-deaths, physical and psychological torture, assaults, rapes, and other atrocities against perpetrators of violence. Legislations, however, well intentioned may not deliver the goods unless they are effectively administered by the police and the judiciary. Both supplement to each other in detection of crimes and prosecution of the criminals.

In the following pages the roles of the police, Government and non-Governmental organizations, the women organizations, the judiciary vis-à-vis domestic violence have been discussed in their proper Indian perspective. The analytical study presents both the positive as well as negative aspects of the functioning of these agencies with special reference to developments in post-independence India.

The Judiciary

The Indian judiciary, during the recent past has been overburdened with huge number of cases relating crime against women with dowry and its disastrous repercussion as major issue relating to human rights of women. Therefore, keeping in view the alarming increase in domestic violence cases, the sorry plight of the tortured and harassed women at the hand of either their husband and
in-laws or her parental home, the Indian judiciary has adopted very stringent postures towards such cases, pronouncing firm judgment against the guilty and dispense justice to the aggrieved party because in our country, women have more regard and dignity and when a women suffers any domestic violence, it is supposed that there is no morality or status of like. The Supreme Court in *Chandra Prakash Kewal Chand Jain Vs. State of Maharashtra*, ¹ gave his views; expressing their sentiments as follows:

"When the respect of womenhood in our country is, on the decline, unfortunately. In our country, standard of decency and morality in public life, is no the same as in other countries of the world, so the decency and morality in public life can be promoted and protected if only the courts deal strictly with those who violates the societal norms".

The Indian judiciary lead by the Supreme Court of India has exhibited a welcome judicial activism towards the domestic violence against women. Domestic violence includes the wife battering, cruelty whether mental or physical dowry-death, rape and adultery etc. In *Ram Narayan Gupta Vs. Ramswami Gupta*², the Supreme
Court made an important observation that domestic violence are committed in a fit fury due to sexual jealousy. Women are ill treated, frequently beaten showing intense and extreme indignation to social feelings.

From the day of our independence the Indian judiciary, alongwith the legislature of India, is trying to improve the condition of women. The judiciary interpreted the various legal provisions meant for the protection of women in such a way as to be most beneficial to our women.

**Judicial response over inherited property – A Case Study**

The most important among the contribution of our judiciary is the decision with respect to the stridhan property of a woman. Stridhan is proved to be the root cause of many of the domestic violence suffered by Indian women. In *Pratibha Rani Vs. Suraj Kumar* the husband, soon after the marriage, started harassing, teasing and beating the wife and ultimately turned her out with her children after five years of their marriage. Inspite of repeated demands he refused to return her ornaments, money and other belongings and dishonestly misappropriated them. In this case the
Supreme Court held that the wife is the absolute owner of the stridhan property and ban use her stridhan in any way she likes. As per the court the husband and he in-laws are having only the position of trustees with regard to the stridhan property. They are bound to return the same if and when demanded by her. Any violation of it will become a breach of trust.

The judiciary is always behind the gender justice. The Explanation (I) of section 6 of the Hindu Succession Act, 1956 (before 2005 Amendment) was interpreted differently by the High Courts of Bombay Shiramabau v. Kolgonda, Delhi, Orissa and Gujrat in the cases where women's right to property effected. The Supreme Court in case of Gurupad Vs. Heerabai and in Shyama Devi Vs. Manju Shukla held that the Proviso to section 6 gave the formula for fixing share of the claimant and the share was to be determined in accordance with the Explanation (1) by deeming that a partition had taken place a little before his death, which the clue for arriving at the share of the deceased.

The Supreme Court in the matter of State of Maharashtra Vs. Narayan Rao, held that it was no doubt true that the right of a
female heir to the interest inherited by her in the family property gets fixed on the date of the death of a male member under section 6 of the Hindu Succession Act, but she cannot be treated as having ceased to be a member of the family without her concurrence as otherwise it will lead to strange results which could not have been in the contemplation of Parliament when it enacted that provision and which might also not be in the interest of such females.\(^8\)

The Supreme Court in *Narashimha Murthy Vs. Sushilabai*\(^9\), held that a female heir’s right to claim partition of the dwelling house of the Hindu dying intestate under section 23 of the Hindu Succession Act, 1956 would be deferred or kept in abeyance during the lifetime or even a sole surviving male heir of the deceased until he chose to separate his share or ceases to occupy it or lets it out. The idea of this section is to prevent the fragmentation and disintegration of the dwelling house at the instance of the female heirs, the detriment of the male heirs in occupation of the house, by rendering the male heir homeless or shelterless.

The more important observation was made by Supreme Court in a case *Savita Samvedi Vs. Union of India*\(^10\), where it was held that
the eligibility of married daughter must be placed at par with an unmarried daughter for, she must have been once in that State, so as to claim the benefit.

Hence once a daughter is made a coparcener on the same footing as a son then her right as a coparcener should be real in spirit and content. Hence this spirit inspired the Indian Parliament to omit section 23 into from the Hindu Succession Act of 1956.

In order to give the women same footing right it is pertinent to look forward the widow's right to reside indwelling house. The family dwelling house should not be alienated without the widow's consent or without providing her an alternative accommodation after she has agreed to the sale of the dwelling house. In order to protect such right section 24 was omitted by the Hindu Succession Amendment Act of 2005.

In case of Radhika Vs. Aghnu Ram Mahto\textsuperscript{11}, the Supreme Court in respect of property right of daughter of second wife, held that, for the property inherited by a female Hindu from her father or mother, a female's paternal side in the absence of her son, daughter or children of the predeceased son or daughter, the succession opens
to the heirs of the father or mother and not to the Class (I) heirs, in the order specified in sub-section (1) of section 15 and in section 16 of the Hindu Succession Act of 1956.

The Apex Court in case *P.S. Sairam Vs. P.S. Rama Rao*\(^\text{12}\), held that the shares of the parties in the joint family property have to be determined in accordance with the provisions of section 6 of the Hindu Succession Act, 1956 and accordingly decreed in favour of seven daughters of the joint family along with male heirs accordingly.

In a very recent case *Vanikannu Vs. R. Singaperumal*\(^\text{13}\) the court by going negatively with women's right to property disqualified the daughter-in-law's right to father-in-law's property on the ground that the son had murdered his own father.

The court went through the matter on the ground of justice, equity and good conscience. Here in this case the sole male survivor, the son incurred disqualification by murdering his own father. He could not inherit property of father in view of sections 25 and 27 of the Hindu Succession Act, 1956. His wife who claimed to the property through him, could not have a better claim to the property
of her deceased father-in-law.

The Supreme Court in *R. Ruppayee Vs. Raja Gounder*\(^{14}\) case dealing with the gift related property held that the father can gift the ancestral immovable property within a reasonable limits in favour of his daughter.

The court observed in *B. Chandrashekhar Reddy Vs. State of A.P.*\(^{15}\) that the benefit of section 29A of the Hindu Succession Act, 1956 can be invoked only by major daughters if they are not married prior to the commencement of section 29A of the Act.\(^{16}\)

If the property held by a female was inherited from her father or mother, in absence of any son or daughter of the deceased including the children of any predeceased son or daughter, it would only devolve upon heirs of the father and her sister who was the only legal heir of her father, Deceased female Hindu admittedly inherited the property in question from her mother. The intent of the legislature is clear that if the property is originally belonged to the parents of deceased female, should go to the legal heirs of the father. Further the fact that a female Hindu originally had a limited right and later acquired the full right in any way, would not alter the rules
of succession, given in sub-section (2) of section 15 of the Hindu succession Act of 1956 as the Supreme Court held in Bhagat Ram Vs. Teja Singh\textsuperscript{17}.

In case of Kalawatibai Vs. Soiryabai\textsuperscript{18} the Supreme Court in the matter of widow's right to property held that a female Hindu possessing the property on the date of the Hindu Succession Act of 1956 came into force, could become absolute owner only if she was a limited owner. The legislature did not intend to extend the benefit of enlargement of estate to any or every female Hindu irrespective of whether she was a limited owner or not.

In case of Narayan Govind Hagde Vs. Kamalakara S. Hegde\textsuperscript{19}, the court held that under section 3 of the Hindu Women's Rights to Property Act, 1937 a widow succeeds as a heir to her husband. She fully represents the estate.

The court held in Balwant Kaur Vs. Chanan Singh,\textsuperscript{20} that The chance of daughter to succeed to her father's estate in case of father died intestate not a pre-existing legal right. The destitute widowed daughter has a right to claim maintenance from her father both during his lifetime and also against his estate after his death. The
illegitimate daughter cannot claim heirship as per section 15 of the Hindu Succession Act, 1956, as the Supreme Court said in Vithabai Krishnaji Patil Vs. Banubai w/o Baby Payamal.21

In the present scenario, with the increase in dowry-death or the bride-burning, the court is playing a dynamic role in expounding the law and clarifying the legal norms that the culprits do not escape the punishment on account of technicalities and inadequacies of law.22 But over the past decade, however members of judiciary have displayed contradictory attitude towards women's right. While some have passed path breaking judgement, other have sought to maintain the status quo and dismissed case on technicalities, as we find many cases in past decade where the culprits got the benefit of legal technicality.

**Dowry, Death & Harassment – A Case Study**

Judicial officials hold that in dealing with cases of violence against women, they use discretion in the light of particular circumstances, particular social conditions, and particular individual needs. But is the use of discretion by magistrates always just, un-arbitrary, rational and reasonable? Is their judgement based on
detachment, penetrating thought, and wisdom? In judgements, do judges always succeed in divesting themselves of all fear, anger, hatred, love, and compassion? Do they pay diligent Domestic Violence Against Women

Administration of Justice and Domestic Violent attention to hearing what the victim particularly women has to say Theoretically, the claim of judges having patience in hearing and reasoning may be true but in practice, it may be difficult to stick to such thinking. Judges cannot be free from human frailties. They are human and subject to prejudices, hostilities, pressures and other human problems that might colour their opinion. As such, sentencing differentials do exist the observations of the Orissa High Court are very instructive, the High Court observed that "Courts are called upon to adjudicate the complex question whether 'in-laws' have become 'out-laws' and have directly or indirectly contributed to snuff out the life of a woman. Dowry deaths are result of their disgraceful acts. But the courts have to be careful in sifting the evidence to see whether the accusations are true or are aimed at false implication. In the present day complex world, it is extremely difficult to gauge the
machinations of a mischievous mind. The courts have to tread on very slippery grounds while dealing with such cases, because, sometimes, emotions overrun realities" Baby v. State.23

In dowry death cases, one accused gets seven years imprisonment, another gets life imprisonment and yet another is discharged.

Even if there are no direct pressures, the magistrates may not wish to offend those who may control their future when they come up for promotion, transfer, reappointment, etc. Study of many cases shows that people engaged in legal profession are more punishment oriented. They are more 'legalistic' in their interpretations and less flexible in interpreting the law.

In spite of the fact that ample proof existed that the deceased had been harassed, humiliated and insulted for dowry, the Supreme Court in an extremely technical judgement in Wazir Chand v. State of Haryana, 24 held that since the factum of suicide had not been proved, the accused could not be convicted under Section 306 of the IPC. The case of the prosecution was that the deceased, had sprinkled kerosene and set herself on fire. In spite of the fact that to stop neighbours from entering the house entrance doors were shut
from inside by the father-in-law and the husband. The court found nothing incriminating in the prosecution which had also urged that deceased had been taken to a nursing home, where adequate facilities were not available. The defense in the case was that the deceased's clothes had caught fire accidentally while she was preparing tea. Though both the Trial and the High Court convicted the husband and the father-in-law of abetment to suicide, the Supreme Court held that there was satisfactory evidence on the basis of which it could be held that the deceased had committed suicide.

Though there was a delay of about an hour and a half in taking the burnt girl to the hospital, the Court held that this again did not prove anything with certainty. The Supreme Court chose not to rely upon the testimony that deceased's cries had been suppressed by turning on the TV loudly, as this fact had not been put to the father-in-law when his statement was recorded. This case shows how the courts can by strictly adhering to technicalities, let a guilty person go scot-free.

There is a lot of resentment and dissatisfaction with the administration of justice. The social expectation is that since the law
is founded on reason, judicial pronouncements must not only punish the offenders but also look to the interests of victims, and that law should not discriminate between rich criminals and poor victims.

In the case of *Soni v. State of Gujrat,* highlighting the importance of Dowry Prohibition Act, 1961, Section 304B and Section 498A, Indian Penal Code, the Supreme Court observed that, "Section 304B and the cognate provisions are meant for eradication of the social evil of dowry which has been the bane of Indian society and continues unabated in spite of emancipation of women and the women liberation movement. This all pervading malady in our society has only a few lucky exception in spite of equal treatment and opportunity to boys and girls for education and career. Society continues to perpetuate the difference between them for the purpose of marriage and it is this distinction which makes the dowry system thrive. Even though for eradication of this social evil, effective steps can be taken by the society itself and the social sanctions of the community can be more deterrent, yet legal sanctions in the form of its prohibition and punishment are some steps in that direction."

In *State of Karnataka v. M.V. Manjunathegowda,*
commenting upon the objects of Dowry Prohibition Act and role of the judiciary, the Supreme Court observed that, "The practice of giving and demanding dowry is a social evil having deleterious effect on the entire civilized society and has to be condemned by the strong hands of the judiciary. Despite various amendments providing deterrent punishment with a view to curb the increasing menace of dowry deaths; the evil practice of dowry remains unabated. The court cannot be oblivious to the intention of the legislature and the purpose for which the enactment of the law and amendment has been effected. Every court must be sensitized to the enactment of the law and the purpose for which it is made by the legislature. It must be given a meaningful interpretation so as to advance the cause of interest of the society as a whole. No leniency is warranted to the perpetrator of a crime against the society. Keeping these overall accounts and circumstances in the background, a deterrent punishment is called for."

Complainants have criticized the fact that, even the initial recording of the complaint by the police is not proper. Sometimes the complaints do not get recorded at all while at other times the
police does not record what the complainant is stating. There is also
an inadequate collection of evidence, false evidence being produced
in court and statements of relevant witnesses not being recorded or
being improperly recorded. The Supreme Court and the High Courts
in India have in some cases issued strong strictures against the
police and in some others have also awarded damages against them.
When the charge is eventually filed in court, the accused is often
able to delay the proceedings by taking adjournments on frivolous
grounds. The prosecution of the case by the Public Prosecutor
appointed by the State has also been a subject of great criticism as
the case often pursued in a lackadaisical manner by the public
prosecutor.\textsuperscript{27}

On a number of occasions courts have expressed anguish and
shock regarding the phenomenon of deaths of young brides under
suspicious circumstances. In \textit{Virbhan Singh v. State of U.P.},\textsuperscript{28} the
Supreme Court said that in view of increasing number of bride
killings, such dastardly crimes, whenever detected and proved,
invite ruthless action and severe deterrent punishment must be
imposed. In quite a few cases, the Supreme Court had to express its
concern regarding the acquittal of some of the alleged culprits by the High Court but pleaded helplessness since no appeal was preferred by the State against those acquittals.

Recently in a far reaching judgement, the High Court's Lucknow Bench suggested the Parliament to make provision for death sentence in dowry death cases under Section 304B of the Indian Penal Code. The above observation was made by a division Bench while confirming the sentence of life imprisonment given by a Hardoi Sessions Court to Moti Lal for causing dowry death of his wife by setting her on fire within three years of the marriage.

The Bench remarked that "to curb the recurrence of such offence, which militates against all canoes of civility, a deterrent sentence is the need of the hour." The Bench added that "in our perception, the offence of dowry death in certain cases, if not more, is as heinous and brutal as that of murder. We feel that the provision of death penalty would act as a deterrent and curb the commission of such offence."

The history of cases dealing with dowry retrieval and dowry violence and indeed other forms of domestic violence, is replete with
examples of deliberate inaction due to gender bias, widespread corruption, apathy and poor investigation by the police. Even the Supreme Court of India and High Courts have in fact commented on this and passed strictures against the police. Many dowry murder/cruelty cases were prosecuted so badly in Court that conviction was hardly likely. Not only this, the manner in which most judges dealt with the case, depended to a large extent on their individual ideology or way of thinking about the role of women. State vs Laxman kumar

highlight the fact that the gender bias against women in sections of the judiciary is an issue which will have to be seriously addressed at a national level. When women's groups protested against this judgement, and pointed out that judges had not appreciated the evidence properly, they were held guilty of contempt.

In the case of L.V. Jadhav v. Shankarao Abasahed, the bridegroom's father demanded Rs. 50,000 during pre-marriage negotiations, but the demand was rejected by the father of the bride. The sum was demanded for payment towards air fare of the bride and father in-law to join the husband in USA. However, the marriage took place on intervention of a common family friend of
both the parties. The bride was not sent to USA to join her husband for one year after marriage for non-payment of Rs. 50,000 demanded by the father-in-law. In the absence of an agreement to pay, this undisputed demand was not construed as dowry by the Bombay High Court which quashed the complaint against the father-in-law. However, on appeal, the Supreme Court set aside the judgment of Bombay High Court and held that even unilateral demand for dowry would constitute an offence under the Dowry Prohibition Act, 1961.

In *Samunder Singh v. State of Rajasthan*, the Court opined that anticipatory bail ought not to be granted in bride-burning cases and acknowledged the validity of the widespread belief that dowry deaths are even now treated with some casualness at all the levels.

In the case of *Shobha Rani vs. Madhukar Reddy*, the ground of divorce was cruelty caused by incessant demand of dowry. She produced a letter of her husband which disclosed as, "Now regarding dowry, I still feel that there is nothing wrong in my parents asking for a few thousands of rupees. It is quite a Domestic Violence Against Women Administration of Justice and Domestic
Violence common thing for which, my parents are being blamed of harassment."

The trial court agreed with the husband of Shohha Rani and came to the conclusion that there was nothing wrong on the part of the husband to ask his wife to give money when he was in need of it. The A.P. High Court also agreed with the trial court by holding that there was nothing wrong and unusual in asking a rich wife to spare some money. Fortunate for being rich, the wife could approach the Apex Court, which differed from the courts below and reversed the findings of both the High Court and the trial judge. The sociological understanding of dowry abuses by the Apex Court is reflected in the following words, "The Indian woman is brought up and trained in a traditional atmosphere and told that it is better to die in the husband's home than return to her parents' home and bring disgrace to them. She finds it very difficult to violate this cardinal principle and prefers to die at her husband's place. This is the social reality of a woman's life. The legal agents in power need to understand this and be sensitive to it." The message must percolate down the line to the grass-root level of judiciary in the country.
In India, because of the complete dependency of a young married girl on her husband and in-laws, in quite a few dowry murder cases the burnt woman has given contradictory dying declarations. If she has felt that she might survive she has given a statement in favour of her husband which she has later changed when she realized that death was imminent. It has also been pointed out that burn victims often not realize that they have suffered severe burns as they feel no pain and therefore do not believe that they may not survive. Courts have sometimes failed to take this social reality into consideration while deciding these cases, while others have given a judgement after appreciating the 'natural' hesitancy and fear of a young bride implicating her husband and in-taws.

The difficulties associated with evidence in cases of dowry murders particularly dying declaration were considered by the Delhi High Court in *Rajpal vs. State*,\(^\text{34}\) In this case of dowry murder, there were six dying declarations, which could be divided into two sets. One set exonerated the accused, and the other completely implicated him. The Trial Court after examining the facts of the case, rejected the declarations which exonerated the accused husband.
One of the dying declarations had been recorded by a local magistrate, in which, the deceased wife had stated that her husband had sprinkled kerosene oil on her and burnt her. This statement had been recorded in Hindi, after the Doctor in the hospital had declared that the wife was fit to make the statement. The deceased had also earlier told her sister and her brother-in-law that it was husband who had burnt her. Both these persons, however, rescinded their earlier statements made to the Magistrate under S. 161 of Code of Criminal Procedure. The Trial Court had found out that deceased's sister was in fact married to the brother of the accused, and that in all probability the brother persuaded his wife to rescind from her statement to save the life of the accused. The brother of accused had turned hostile for the same reason.

The statement exonerating the accused was made at the time when the deceased was admitted to the hospital. The Court noted the fact that the husband of the deceased was with her at that time. However, even thereafter, the deceased, gave a similar statement exonerating the accused to the Assistant Sub-Inspector who examined her. When the accused gave a completely different
statement to the magistrate, the Sub-Inspector again examined the deceased, and the deceased told him that she had made her earlier statement exonerating her husband due to fear of her in-laws. After this, the deceased made a statement detailing how her husband had been harassing her for the last two years, and that after lighting the fire he had bolted the door from outside and left her to burn. Her sister and brother-in-law extinguished the fire and took her to the hospital.

The High Court also accepted the Trial Court's reasoning and held "that the accused had not even tried to put out the fire." The High Court also held that the dying declaration implicating the husband and made to the Magistrate, was correct. This case shows how the courts can be extremely sensitive to the social reality which, moulds even the burn victims behaviour and the thinking. Instead of relying on the technicalities of a law which was constructed without any understanding of how an Indian woman would behave the courts grounded its judgement by taking into account the "natural" fear and dependency that a married girl shows through her hesitation to initially tell the truth,
In another case *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia* 36 even though the dying declaration of the deceased stated that her *sari* had caught fire accidentally while she was preparing tea. The court refused to believe this. In this case, the deceased was seen in flames crying frantically for help, and the neighbours on seeing this rushed to help the deceased and extinguished the flames. This was just 5 days after the marriage. When the police investigated the case, they found that the deceased had been ill-treated and that her in-laws had demanded dowry. The brother of the deceased' and her father gave evidence of this, and how even during the wedding ceremony the in-laws had behaved badly. After the marriage when the deceased's brother had come to take his sister to her matrimonial home for a few days, he was not even permitted to meet the deceased. A maid who had accompanied the deceased from her parent's home also described the ill-treatment.

The report of the chemical analyser and the post-mortem report also indicated that the death was not accidental and the Trial Court accordingly framed the charge against the brother-in-law of the deceased. The High Court held that no case was made out
against the brother-in-law and squashed the charge. The Supreme Court, however, after noting the post-mortem report which also showed confusion besides burn injuries, and the fact that the High Court had ignored the statements of the deceased girl's brother, father, and maid, allowed the appeal by the state. In this case, the Supreme Court also mentioned that the criminal justice system must respond to the need of the hour, and the Courts must display greater sensitivity in cases of this nature and avoid "soft justice." The court noted the changes in the criminal law, which introduced the offences of cruelty and Dowry death, and appreciated the women's organization, which had also appealed to the Supreme Court.

In the *Sudha Goel case*, a young girl who was almost 9 months pregnant was burnt alive by her mother-in-law and husband. The Supreme Court reversed the order of the Delhi High Court and convicted both the accused with imprisonment for life. The girl Sudha had been tortured and harassed with demands for dowry before burning. Neighbours, on hearing Sudha's screams, barged into her home and after trying to put out the flames arranged for a taxi to take her to the hospital. Sudha told the neighbours that her
mother-in-law had set her on fire. She repeated this statement to another person (who later became a prosecution witness) in the taxi. Sudha's in-laws and husband stood watching while Sudha was being burnt. The defence relied upon a dying declaration, which was alleged to have been taken down by the investigating officer in the case.

Disbelieving the police officer's testimony the Supreme Court said that the High Court was wrong in relying upon the written dying declaration as this had not even been taken down by the Magistrate. It is relevant to mention that Sudha had also written some letters to her sister-in-law, which did not refer to any harassment or torture. The Supreme Court had relied upon the oral testimony of the neighbours and relations of Sudha, as it felt they had no reason to lie.

Another key issue which often arises in cases of abetment to suicide by harassment for dowry is how proximate should the abetment be. Since the suicide is often the consequence of "cruelty" and harassment spread over a long period of time the courts should ordinarily consider the cumulative effect of all the incidents. While
some courts have appreciated this others have not.

The High Court held that, since the deceased was being subjected to bearing and harassment by her husband since she was married and had been complaining about this to her parents and relatives continuously, her statement about the beating to the police stating that she feared that she might be killed by the appellant, became relevant and admissible as a dying declaration under Section 32 of the Indian Evidence Act.\textsuperscript{38}

\textit{Abetment to Suicide}

One of the most significant amendments that was inserted in the Indian Evidence Act in 1983 was a section which allowed the courts to presume that in certain circumstances, a husband or his relative had abetted the suicide by a woman.

While talking about the introduction of Section 113A of the Indian Evidence Act, the Supreme Court in \textit{Brijlal vs. Premchand and Others},\textsuperscript{39} clarified that "the Courts can presume that the committing of suicide by a woman has been abetted by husband or relation after two factors are present viz. (a) that the woman has committed suicide Within a period of seven years from the marriage
and (b) that the husband or relation had subjected her to cruelty."
Cruelty would be as defined in S. 498A of the IPC. The Supreme Court went on further to state that the "legislature had realized the need to provide for additional provisions in the IPC and in the Indian Evidence Act to check the growing menace of dowry deaths,"

In fact, a large number of deaths occurred due to continuous harassment of young brides, who it was alleged killed themselves by setting themselves on fire. As the suicide was often committed within the confines of the matrimonial home, there was often no direct evidence indicating the circumstances in which this suicide took place. In Gurbachan Singh vs Sat Pal Singh 40 was that of Ravinder Kaur who was said to have committed suicide by sprinkling kerosene oil on her body and then setting herself on fire. Ravinder Kaur had been living with her husband and in-laws prior to her death. Whenever she visited her parents, she would tell them that her in-laws would taunt her for bringing insufficient dowry and would threaten her that she would be thrown out of the house if she did not bring more dowry. Ravinder Kaur's father gave evidence that
when he visited his daughter, she complained about her in-law's behaviour and said that they were maltreating her for dowry and taunting her that she was carrying an illegitimate child. On one occasion, Ravinder Kaur's father brought his daughter home and only sent his daughter back to her husband and in-laws after her husband assured him, in front of three witnesses including a social worker that they would not maltreat and taunt her in future. Two days prior to the incident, when Ravinder Kaur's sister visited her, Ravinder Kaur also complained to her about her in-laws' cruel behaviour and said she was not happy there. Holding that in such cases, direct evidence was hardly available and that circumstantial evidence and the conduct of the accused persons should be taken into consideration, the Supreme Court held that the persistent ill-treatment of Ravinder Kaur for dowry amounted to abetment. The Court further held that, the fact that the persons in Ravinder Kaur's house including her mother-in-law made no attempt to save Ravinder Kaur, also proved their culpability. It took into account the conduct of the in-laws and husband in not informing the police after the suicide and not taking steps to take her to the hospital. The High Court had taken the view that the case had not been proved beyond
all reasonable doubt against the accused.

The real judicial attitude is disclosed in a survey conducted by Sakshi, an NGO of Delhi, among 109 judges which revealed that judges attribute the pervasiveness of dowry to a number of reasons like unequal economic condition, weak husband, failure of parents to take back the daughter from situations of dowry harassment. The judges laid emphasis on changing women rather than altering attitudes which affect women adversely. Some judges affirmed that while they would not demand dowry for their son, they would have to provide dowry for their daughter, wherein lies the crux of the problem with gender bias.41

**Judicial Response to Wife Battering and Cruelty**

Cases of wife battering are covered under the provisions of Indian Penal Code or law of torts. So far as marital disputes, in which hurt, grievous hurt or battery is caused to the other spouse (wife), are concerned, these are seldom brought before the court, they are often dismissed as ordinary wear and tear of marital life. Besides, the term 'wife battering' is considered foreign to Indian society, it is alleged to have been imported by so-called feminists of
this country to suit their interests.

So far as cruelty is concerned, it is well defined under criminal law, but in matrimonial laws, it is a judicially developed concept.

In *Russel v. Russel*, it was held that cruelty means conduct of such a character as to have caused danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such danger. Lord Denning in *Sheldon v. Sheldon* said that depending upon human behaviour, capacity or incompatibility, new type of cruelty may crop up in any case as the categories of cruelty are not closed.

Recently, in the case of *Alamuri Lalitha Devi vs. State of Andhra Pradesh*, it was held that it is difficult rather impossible to enumerate acts amounting to cruelty or to put cruel conduct into a 'straight jacket' or to make cruel conduct conformable to any inflexible standard. The term cruelty has been designedly left by the judicial authorities too, to an elastic form to meet the necessities of the changing requirements and concepts of the society. Cruelty is not a fact isolated from the environment and background of the
spouses, therefore, each case ought to be decided individually according to the peculiar set up of the case. Therefore, the conduct complained of must be decided to a certain degree by reference to the parties' capacity or in capacity for endurance.

Thus, any conduct of the husband which causes injury to the mind and consequent detriment to the health of wife may amount to cruelty.

In the light of these rulings & Pancho vs. Ram Prasad⁴⁵, the following acts of violence may amount to cruelty. Insulting behaviour and threats of violence amounts to cruelty. When a husband habitually insults his wife and behaves her with neglect and unkindness so as to impair her health, he must be held to be guilty of cruelty.

In case Balbir Kaur vs. Dhir Dass⁴⁶ wife is denied medical treatment and she is turned out of the house, the conduct amounts to cruelty, Continued neglect and fake allegations about wife's parents by the husband amount to cruelty. Where the husband was accused of being a womaniser and drunkard and the wife failed to prove that the said allegations were bonafide or she reasonably believed them
to be true, it was held in *Mukesh Kumaar vs. Kamini*\(^47\) that the reckless accusations having no basis amounted to cruelty. However, the Rajasthan High Court held *Lalita Devi vs. Radha Mohan*,\(^48\) that if the husband indulges in love affairs and goes to the length of promising someone to marry and keeps her in the matrimonial home as his own wife, the conduct of the husband comes within the ambit and scope of cruelty.

The modern view is that mental cruelty can cause even more grievous injury and create in mind of the injured spouse reasonable apprehension that it will be harmful or unsafe to live with the other party. In *Maharaja Nadar v. Muthukani Ammal*\(^49\) the court held that accusing a woman that she is a barren lady would amount to cruelty. It was observed that the legal conception of cruelty comprises two distinct elements: (i) the ill-treatment complained of, and (ii) the resultant danger or apprehension thereof. In *Jameson v. Jameson*,\(^50\) it was held that it would be inaccurate and liable to lead to confusion if the word cruelty is understood, apart from its effect on the victim. The apprehension contemplated by the above legal conception is that further cohabitation will be harmful or injurious and not that the
same or similar acts of cruelty will be repeated where the acts or conduct can be said to amount to cruelty it is immaterial that there is no danger of its repetitions. The inquiry must be whether the cruel treatment established by evidence is of such a nature as to cause in the mind of the victim reasonable apprehension that it will be harmful or injurious to live with the other party.

The Supreme Court considered this aspect in M.G. Dasten vs. Sucheta51. It was observed that the question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse. That which may be cruel to one person may be laughed off by another and what may not be cruel to an individual under one set of circumstances may be extreme cruelty under another set of circumstances.

The general principle as laid down in Trimbak Narayan Biiagwat v. Kumudevi52 underlying cruelty has been that the guilty spouse should be found to have been acting in such a way as to inflict any type of injury to his spouse. This may be directly injurious to her or may affect her indirectly i.e. when the husband
hurts/injures the children or relatives of the wife, it will have the effect of injuring the wife and hence will amount to cruelty.

Another observation was made by the Allahabad High Court in *Gopal v. Mithilesh*\(^5\) wherein the husband was found guilty of cruelty as he used to keep quiet when his wife was constantly criticised and nagged by his brother, usually callous behaviour or neglectful behaviour or deliberate harassment of the spouse could amount to cruelty. If a husband accuses his wife of being unchaste it can be cruelty within the meaning of Sec. 18, HMA. Demand for dowry and compelling the wife to lead an immoral life so as to gain money would amount to cruelty.

**Acts of Physical Violence**

The Indian courts have over the years held acts of physical violence as constituting cruelty. It is a settled rule of law that the 'expression cruelty covers physical violent acts of the spouses' \(^5\) as decided by various Indian High Courts and Supreme Court of India, have in deciding which acts of physical violence amount to cruelty laid down as follows:
(a) **Slapping, Beating and Dragging**

All these incidents of physical violence may amount to cruelty. In recent case, *Lallo v. Smt. Bachì*,\(^5\) the wife was physically beaten up and was dragged. The beating up of the spouse was considered as a serious matter by the court. While granting divorce to the wife, the court observed that the beating by the husband to his wife in this age can not be undermined and ignored. A wife is not a chattel to be beaten at the whim and caprice of the husband,

The beating up of the spouse was considered more serious than the "ordinary wear and tear of the married life", and the conduct of the husband was held as amounting to cruelty.

When beating is coupled with improper behaviour of the husband, the conduct easily comes within the ambit of cruelty. In *Kaushalya Devi v. Masat Ram*,\(^5\) the husband used to give beatings to the wife and did not even permit her to talk to any neighbour, male or female and threatened that she would be put to death in case she talked to any body. Cruelty was held to be established.

In *Baburao v. Sushita Bai*,\(^5\) there was positive evidence to
show that the wife used to be habitually beaten by the husband and the latter even neglected to provide her with food. It was held that the attitude of the husband amounted to legal cruelty.

In *Smt. Kaushalya v. Wishakhi Ram* the wife deposed that her husband used to beat her with sticks and place her hands beneath the charpoy. He even tried to set fire to her. Even in the absence of a medical certificate about the seriousness of injuries, the conduct of the husband was held to amount to cruelty, "according to the standards of all civilized societies."

(b) **Acts of Physical Violence Resulting in Injuries**

Acts of physical violence often cause hurt and pain causing physical pain amounts to physical cruelty decided in *Ashok Sharma vs Santosh*. When the acts of physical violence result in injury, there is not much difficulty in holding cruelty. In *Tulsibai vs Bhuna*, the wife petitioned for judicial separation on the ground of cruelty alleging that when she cooked rice for him, the husband on the pretext that it was not properly cooked, pierced her legs with a hot Konchu (an edged instrument used for cooking). When the injuries started bleeding, chilies were put on the injured parts, so
that it took six months to recover in her father's house. On an assurance of good behaviour given by the brother of the husband, she returned to reside with the husband but she was again beaten and kicked so that one of her fingers was fractured. It was held that having faced such ordeals, she was likely to meet the same or graver type of trouble in the future. She was in need of protection from the recurrence of cruelty and a decree of judicial separation was granted.

In another case, *Karnail Singh v. Bhupinder Kaur*, the husband kicked off the kettle towards his wife and burnt her hand. It was held that if a husband can physically torture his wife by burning her hand with boiling water and can also mentally torture her by filing fake complaint of her unchastity and cheating against her, the wife is fully justified in bidding good bye to his hearth and home. It was held as a clear case of cruel treatment on the part of the husband to his wife.

In *Chand Narain v. Saroj*, the husband who was addicted to drinking used to beat his wife and she received injuries several times on her face and head which bled. Causing physical hurt to the
wife was held as constituting cruelty, in *K.V. Sallapon v. Smt. Kamla* the husband subjected his wife to continuous abusing and beatings and inflicted a knife injury. It was held that the act of the husband amounted to cruelty.

In *Brawne v. Braume* wife's hand was tied with a chain and her feet with a rope and she was kept hanging in doorway. A decree of judicial separation was granted to the wife on the ground of 'legal cruelty' under the Indian Divorce Act, 1969.

In case violence is not *per se* sufficient to warrant a finding of cruelty the court is bound to take into consideration the general conduct of the husband towards the wife. And if this is of a character tending to degrade the wife and subjecting her to a cause of intense indignity injurious to her health, the court is at liberty to pronounce the conduct as amounting to cruelty.

(c) **Treatment Amounts to Cruelty Under Matrimonial Law**

The harm contemplated by section 13 (1) (a) of Hindu Marriage Act may be mental suffering as distinct from bodily harm because pain of mind may be even more severe than bodily pain. In *Kashinath v. Smt. Devi*, it was held that forcing a wife to sleep in a
room in the background of the house amounted to cruelty as a wife is entitled to insist that she should not be exposed to unpleasantness of the relatives of her husband and that suitable provisions should be made for her to live with her husband in privacy.

It, therefore, follows that any act of violence which causes disgrace to the wife or subjects her to a course of annoyance and indignity would amount to cruelty under the Act. Beating, slapping, pushing and pulling of hair even if they do not result in any physical injury may amount to cruelty under the provisions as they may cause an apprehension in the mind of the wife that it will be harmful for her to live with her husband. In case the husband grabs with her before his or her relatives, or insults her before the servants, the conduct may amount to cruelty.

The result is that if the husband's behaviour is capable of causing an apprehension contemplated by Section 18 (2) (b), it would amount to cruelty enabling the wife to seek maintenance and live separately. In *Kamla Bai v. T.R. Rathnavdu* the very presence of wife was resented and it was made clear to her that she was an unwanted wife. The wife found her life miserable and the calculated
exclusion unbearable. It was held that husband's attitude was sufficient justification for the wife declining to live in his house and suffer in silence to the detriment of her health. The court observed that cruelty can take diverse forms and merely not providing sufficient comforts or amenities and even not showing affection may not amount to cruelty. Negative conduct such as neglect or want of affection or even want of consideration would not be cruelty. Even extracting heavy work may not amount to cruelty. But if acts are intended to convey the impression that the wife is not wanted and her presence is resented, they would amount to cruelty.

The husband ill-treated the wife. Beat her, so much so that she had to go to the police to lodge a report. Justice Dua rightly said that even though injuries on the person were considered to be not very serious as to call for their medical treatment. Yet she had been actually ill-treated and beaten up, this must be held to amount to cruelty.68

**False Accusations of Adultery or Unchastity Amounts to Cruelty**

That false accusations of adultery or unchastity amounts to cruelty came to be established at an early period. Thus, in
false accusations of adultery were made orally, in lawyer's notice and in pleadings while in Saptmi v. jagdish the husband constantly called his wife a prostitute, a woman of the street. If a spouse is subjected to false accusations of adultery, insults, abuses, humiliation, false charges of immorality, it would make married life impossible to be endured and would make a very unhappy and miserable existence. This type of cruelty is worst than the acts of physical cruelty. In Paras Raw v, Kamlesh the Punjab and Haryana High Court took the view that mere allegation of immorality in the written statement does not amount to cruelty, though the Delhi High Court took the view that if the respondent made false charges of adultery in cross examination or in his disposition, it would amount to cruelty, Pushpa v. Krishan Indulgences in promise to marry amount to cruelty, Pranab v. Mrinmayee. In Kamleshi v. Paras Ram, where Punchhi, J, observed that fake accusation of adultery should be such as to cause danger to life, limbs or health of the petitioner. It is not a correct formulation of cruelty. Our courts have otherwise consistently taken the view that fake accusations of adultery amount to cruelty.
In *Kamla Devi v, Antamath*\(^7\) it was held that "fake accusations of unchastity made by the husband may cause the wife great mental suffering which may be much severe than bodily pain caused by some beating. Such accusations certainly would amount to cruelty in the eye of law. In *Smt. Putul Devi v. Gopi Mandal*\(^7\) and *Iqbal Kaur v. Pritam Singh*\(^7\) it was held that fake charge of chastity against the wife amounts to cruelty.

In *Smt. Sumanbai v. A.O. Panpatil*\(^7\) it was held that baseless imputation by the husband alleging unchastity to wife amounts to cruelty. In its cause, Justice Vaidya observed that there can be no more insulting injury to the wife than her own husband doubting her chastity. In the case of *Shanta Wadhwa v. R.M. Wadhwa*\(^7\) Bombay High Court pointed out that taunting by the husband that his wife has developed extra marital relationship with others amounts to cruelty.

In this case, the wife was practicing as an advocate. The husband, a businessman, though ran in debts did not want his wife to practice and on that account started taunting her by making fake allegations that she was having affairs with her colleagues. This led
to bitterness between the two, leading to four incidents of assault on her by the husband.

**False Complaints to Police or Persons in Authority against Other Spouse**

Making fake and baseless complaints to the police or persons in authority against the other spouse has been held to cause mental cruelty in various cases.

*Jorden Diengdoh v. S.S. Chopra*[^80] Delhi High Court held that the conduct of the husband in writing threatening letters to wife, making fake complaints of theft against her to police and also Domestic Violence Against Women Administration of Justice and Domestic Violence writing letters to her superior officers containing fake and baseless allegations, amounted to cruelty in a matrimonial proceeding for divorce.

**Drunkenness of the Husband**

Drunkenness *per se* is not cruelty. But persistent drunkenness after warning that such a course of conduct is inflicting pain on the other spouse, certainly if it is known to be injuring the other spouse's health, may well of itself amount to cruelty, held in *Baker vs Baker*.

[^80]: Source or reference
In *Smt. Rita v, Brij Kishore* 82 it was held that in the context of Hindu culture, there may be certain circumstances in which drunkenness may amount to cruelty. Justice M.L. Jain rightly observed that the habit of excessive drinking is a vice and cannot be considered reasonable wear and tear of married life. If a spouse indulges in excessive drinking and continues to do so in spite of remonstrance by the other, it may amount to cruelty, since it may cause great anguish and distress to the other spouse who may find living together not merely miserable but unbearable.

The High Court held that mere consumption of alcohol by a husband may not be reasonable excuse for the wife to withdraw from the society of her husband but a violent temper accompanying it might justify such refusal. It is a mental cruelty to insist that she must follow the path which the husband was treading in personal habits. The obstinate insistence by the husband that wife must eat and drink wine and threat to another marriage cumulatively constitute cruelty both physical and mental and provides a sufficient ground for refusing restitution of conjugal rights. 83
In the case of *Geeta vs Mohan*\(^8^4\) wife Geeta claimed divorce on the ground of cruelty by her husband. It was alleged by the wife that her husband was addicted to drinks to such an extent that he was always under the influence of liquor and was a slave of liquor. High Court made the following observation "Danger to health, life or limb is no longer an essential constituent of cruelty, cruelty is a course of conduct by the offending spouse which makes it impossible for the complaining spouse to live with him. Besides, intention to injure the mind is not a necessary component of cruelty though intention may aggravate cruelty.

In this case, husband's persistent conduct is of such a nature that it is impossible for the wife to live with the husband and hence, the aforesaid conduct of the husband amounted to mental cruelty to his wife.

**Denial of Medical Treatment Amounts to Cruelty**

The most important among the contribution of our judiciary in denial of medical treatment to the spouse, In *Balbir v. Dhirdas*\(^8^5\) particularly on the very first day of her arrival in the matrimonial home and turning her out to the matrimonial home on the very first
Sex and Cruelty

Sex is an important aspect of matrimonial relationship. Either on account of orthodoxy or ignorance, often enough people hesitate to give expression to the agony which stems from this cause. The husband has normal sexual life with his wife for 8 years but then abstained for the next 6 years without giving any reason or explanation for this abnormal conduct and despite the warnings from his wife and the doctor that it was adversely affecting her health, the husband abstained from sex, the court held that it amounted to cruelty.\(^8^6\)

Wilful Denial of Sex Amounts to Cruelty

The another important contribution of our judiciary regarding wilful denial of sex amounts to cruelty as in *Jyotish Guha v. Smt. Meera Guha*\(^8^7\) Calcutta High Court held that willful denial of sexual intercourse or persistent refusal of sexual intercourse without any reasonable cause by one spouse to the other amounts to an act of cruelty. In this case, court found that the wife was persistently refused sexual intercourse without any reasonable cause ever since
the solemnization of marriage and practically throughout the period of marital life, causing depression and frustration in her mind.

**Willful Refusal of Sexual Intercourse and Impotency**

If refusal to have intercourse amounts to cruelty so does the impotency. In *Rita v. Balkrishnan Nijhawan*,\(^8\) Delhi High Court observed "the law is well settled that if either of the parties to a marriage being of healthy physical capacity refuses to have sexual intercourse, the same would amount to cruelty entitling the other to a decree.

**Harassment Due to Failure to Conceive a Child Amounts to Cruelty**

An another important contribution of the judiciary regarding harassment due to failure to conceive a child also amounts to cruelty in *Virbhan Singh v. State of U.P.*,\(^8\) the bride was considered as an "inauspicious" girl because she did not bear children for four or five years after the marriage. Determination that the husband should remarry led the husband and his mother to commit the dastardly murder of the young wife in a most gruesome fashion, *Renu and others v. State of Haryana*,\(^9\) the leveling of false allegations
regarding the incapability of wife to conceive a child by the husband in divorce petition amounts to cruelty under Section 498A, Indian Penal Code,

*Extra-Marital Relation with other than Spouse*

*Add. Public Prosecutor vs T. Anand*[^1] Extra-marital relation or love affairs with other than own spouse amounts to cruelty and also causes to bride murder or bride death.

*Jadeja Danibha v. State*[^2] in this case the accused killed his wife with Dharia blows because he heard that his wife, did carry a reputation of corrupt lady.

In *Govindan Kutly v. State*[^3] the husband killing his wife with blunt stick on her vital part on account of suspicion of her character.

In *Thothfin v. State*[^4] the husband who was of 40 years old murdered his young wife who was only 16 years old with a knife stabs in lungs because young wife has illicit intimacy with the cousin of her husband and husband tried to stop her from going to cousin's house.

In *Hari Kishan v. State*[^5] the husband murdered his wife with 'chaurse' blow as his wife developed intimacy with the landlord

[^1]: Add. Public Prosecutor vs T. Anand
[^2]: Jadeja Danibha v. State
[^3]: Govindan Kutly v. State
[^4]: Thothfin v. State
[^5]: Hari Kishan v. State
where both husband and wife were living as tenants.

In *Hazara Singh v. State* the husband was disturbed by the thoughts about the unchastity of his wife, during the night of occurrence threw nitric acid upon her and killed her.

In *Jainim Chandrabhan v. State of Bombay* the husband who suspected about the character of his wife murdered his wife by striking her with a knife.

In *KM. Nanavati v. State* it was held that the illicit relations before or after the marriage continue to pursue or the love affair developed later on lead to murder of wife or the paramour of the wife.

In *Mohasai Sukhlal v. State Of M.P.*, husband murdered his wife on account of suspicion that his wife had some relation with someone.

In *Velucfiami Thevar v. State*, the husband murdered his wife in a very brutal and inhuman manner only because she has her paramour named Ravi with whom she had illicit connections.

In *Ramaswamy Madar’s case* the wife was murdered by her husband because the wife eloped with a stranger and returned after
many days without telling anything to her husband.

In *Narbalwdur Darjee v. State*,\(^{102}\) husband immediately killed his wife as he saw his wife having illicit intercourse with a stranger.

In *Dasauldhari v. State*,\(^{103}\) the husband suspected his wife having illicit relation with his younger brother, and killed her with Takva.

In *Ali Mohiddin Gunna v. State*,\(^{104}\) the relation between wife Juma Suleman and husband were not cordial, husband inflicted fatal knife blows which suggested that she was not faithful to him.

In *Nikka Rani v. State*,\(^{105}\) Smt. Churi was murdered by her husband who gave her Khokhri blow on head; because she was living with her parents and used to visit parents again and again, gave birth to an illegitimate son. Moreover did not disclose the name of father of son.

In *Ravinder Singh v. State of Haryana*,\(^{106}\) it was noticed that the accused Ravinder Singh had developed intimacy with a girl, other than his wife by misrepresenting that girl that he was a bachelor.

The girl Balbir Kaur insisted to do marriage. To get her as his
wife he murdered his wife Smt. Bimla.

In the case of *Ram Dass v. State of Maharashtra*,\(^{107}\) the husband gave poison to his wife Smt. Shomta, suspecting the character of his wife that she wrote certain letters to one Chotey Lal and if he had not come across these letters, the life would have been peaceful.

**Sex and Cruelty Illegal Confinement to Force Sexual Intercourse**

In *Gurudeu Kaur vs. Sarwan Singh*,\(^{108}\) the husband kept his wife in illegal confinement, the wife's statement was that her husband was forcing her to have sexual intercourse with his real brother.

Sometime this act of cruelty is so wilful which either caused the husband to murder his wife or resulted in suicide by the wife.

**Sexual Harassment for Earning Money**

The most important among the contribution of our judiciary in sexual harassment for earning money as described in *State of Maharashtra v. Gauri Shankar Kawadu Shende*,\(^{109}\) the accused caused the death of his wife in the cruel, barbarous and extremely revolting manner, in broad day light with a knife by inflicting blows
one after the other. The motive behind the murder was that the accused suggested his wife that she should earn money by immoral means. The suggestion made by the accused was that she should sell herself for money and provide livelihood for the family. The deceased was unwilling to do so. The accused was convicted under Section 302, Indian Penal Code.

In *Emperor v. Shahu Mehrab* the husband was convicted under Section 304A of Penal Code for causing death of his child wife by a rash and negligent act of sexual intercourse with her.

*State of Karnataka v. Neelkantha Sakreppa Shankanavar* the accused husband throttled deceased wife to death as she resisted him for having sexual intercourse with her.

In numerous cases the judiciary has observed that the following Acts do not Amount to Cruelty

**Domestic Quarrels do not Amount to Cruelty**

Domestic quarrels between a husband and wife by itself do not amount to cruelty in criminal law, unless the case falls within the four corners of either clause (a) or clause (b) of the explanation to Section 498A Indian Penal Code, Refusing to setup a separate
establishment or refusing to ask his mother to leave the house and stay elsewhere is a legitimate exercise of discretion by the husband, may be because of insufficient funds to acquire a separate establishment or may be because of his natural love and affection for the mother or may be because of social compulsions. If such a refusal by the husband leads to constant quarrels between him and his wife, it can not be said that he has treated his wife with cruelty. Such quarrels in the aforesaid background do not amount to cruelty even under the matrimonial law, according to the Karnataka High Court in the case of *Yashoda Bai v. Krishnamoorthy Bhimappa Katavkar.*

In *Suklideo Thakre v. State of Maharashtra* it is clear mere quarrel or ill treatment would not be sufficient to level the charge of cruelty within the meaning of the Explanation to Section 498A. The degree of the conduct of the husband must be such that it would drive the wife to commit suicide or would cause grave injury or danger to her life, limbs or health.

In *Padmabai v. State of Madhya Pradesh* it was held by Madhya Pradesh High Court that stray domestic quarrels,
perfunctory abuses by mother-in-law in the Indian society, crude and uncultured behaviour by the in-laws or the husband towards his wife being mundane matters of normal occurrence in the traditional joint Hindu families, will not go to form and constitute 'cruelty' unless these acts or conduct singly or cumulatively are found to be of such formidable and compelling nature, as may lead to the commission of suicide or may facilitate in a singular and prime manner, the commission of the same.

**Requiring Wife to do Domestic Work**

It does not amount to cruelty under Section 498A Indian Penal Code, This view was held in the case of *Smt. Shyama Devi v. State of West Bengal* Calcutta High Court held that the deceased was not tortured by compelling her to do domestic work.

Besides, it is also very much doubtful if doing domestic duties in the absence of servants may be considered as torture let alone torture enough to make a housewife to prefer death to get away of it.

**Insisting Wife to Stay with Her In-Laws**

It was laid down in the case of *Mange Ram and others v. State of Haryana* that "mere fact that the husband wanted his wife to
stay in his parental house and serve his parents and that she should not visit her parental house" does not amount to cruelty under Section 498A of the Indian Penal Code.

**Reprimanding Wife**

Whether reprimanding the wife by the husband amounts to cruelty under Section 498A was answered in the negative by the Punjab and Haryana Court in the case *Balbir Singh v. State of Punjab*.

Ordinarily, a single act of physical violence may not necessarily amount to cruelty because it may be out of sudden anger or may be unintended to cause physical injury to the wife. However, no rule of thumb can be laid down that a single act of physical violence can not amount to physical cruelty at all. If the husband beat his wife with an iron rod and causes several fractures on her bones it may be that under the peculiar facts and circumstances of that case, this act be held as cruelty under Section 498A. It is a question of fact to be decided by the court on the evidence before it, in the back of the facts and circumstances of each particular case.
A Single or Isolated Act of Beating and Abusing will not Amount to Cruelty in Criminal Law

The most important among the contribution of our judiciary in a single or isolated act of beating and abusing will not amount to cruelty in criminal law, in Reddy Satyanarayan v. State of Andhra Pradesh\textsuperscript{118} The wife was aged about 16 years and was married to Peddy Satyanarayan on 02/02/87 when no one was in the house, she poured kerosene on her person and set herself on fire. In her dying declaration she stated that an hour prior to the occurrence of burning, her husband told her that some outsiders were commenting against her chastity. The husband also beat and abused her. Thereupon she said that she would die. The husband replied that she was at liberty to die and saying so he left the house. On account of the aforesaid conduct of the husband, she poured kerosene and set herself on fire.

High Court held that the dying declaration spoke only about the solitary incident on 02/02/87. It can not be said that the single act of beating and abusing amounts to "willful conduct" which is of such a nature as is likely to drive the woman to commit suicide. High Court set aside the conviction against the accused.
It must be noted that it is not each and every type of cruelty by the husband and/or his relatives to the woman which is sought to be covered by Section 498A of the Indian Penal Code.

The legislature has provided that the cruelty must be of such gravity as mentioned in clauses (a) or (b) of Section 498A thus under clause: (a), cruelty must be of such gravity as is likely to drive a woman to an extremity of suicide or that it should be of such intensity as to result in grave injury to life limb or health (whether physical or mental) of such woman. Clause (b) implies some continuous course of a harassment to meet an unlawful demand of property or valuable security or on account of the failure to meet such demand.

Both the clause of Section 498A require a course of conduct consisting of some acts which constitute cruelty. This has been made clear in the case of State of Maharashtra v. Ashok Chotelal Shukla\textsuperscript{119}

Cruelty may be either physical or mental. In some cases it may be both. There is no difficulty in holding when physical violence amounts to cruelty under Section 498A. However barring some clear cases, questions do arise in the sphere of mental cruelty as to
whether a particular act or conduct of a husband and/or his relatives amounts to mental cruelty or not. The reason is that mental cruelty may be of any kind or of infinite variety. It may be subtle or brutal. It may be by words, gestures, or even by mere silence. There is no limit to the kind of conduct which may constitute cruelty. New types of mental cruelty may crop up. The courts have been giving and may give new dimensions to mental cruelty by judicial interpretation such as in the demand for dowry, provided it can come within either of the two clauses of the explanation to Section 498A.

In present scenario whole of the judicial perception with regard to cruelty can be summarised in a survey conducted by Sakshi an NGO of Delhi among 109 judges of both subordinate and higher judiciary of some States which revealed that most of the judges are in favour of compromise and adjustment of the parties in situations of domestic violence. In a criminal complaint of cruelty, the degree of proof required varies with the perception of the judge on marriage and matrimonial relations which again is imbibed by him from the environment in which he is brought up from childhood. There is an urgent need to sensitise the law enforcement
agency and the judiciary by training programmes like seminar and Workshop, so that they can perceive the situation of violence faced by a woman in her traditional role in home.122

The High Court judgments, convicting the murderers of Sudha Goel and Manju Shree Sarda were reversed by the Supreme Court which then proceeded to criticize the populist judgment in the Sudha Goel case.123

Three acquittals made by the High Court in State Delhi Administration Vs. Laxman.124 In this case a young girl named Sudha, was married on 3rd of December. Her neighbours in the late evening heard her shrilling and crying "bachao-bachao". Her neighbours found her standing a flame. While her-in-laws tried to put out the fire. The Court observes that the "fact that Sudha implicated mother-in-law as the person who poured kerosene on her and lit the fire to the cloths in more or less spoken by eye witness."

But the High Court acquitted all three members while the Supreme court examined all the arguments advanced by the High Court in acquitting all three member and came to the conclusion quite different frame the one arrived at by the High Court. The
Supreme Court gave a verdict that the three convicts should be punished by life sentence.

Responding very seriously against the prevailing social evil of dowry demands, the Punjab and Haryana High Court observed in *Romesh Kumar Vs. State of Punjab*, 125

"Reminding his wife off and on that he should have been provided with a television set, a fridge and a scooter and pushing out his wife from the house, and later agreeing to keep her only after payment of Rs. 5,000/- to him would amount to cruelty with a view to coerce her to ask her brothers to meet the unlawful demands."

Expressing grave concern over dowry related violence resulting the dowry-death or bride burning the Supreme Court has off and on advocated for stringent and deterrent punishment to those persons who are involved in the commission of such heinous crime. Thus the Hon'ble Supreme Court observed 126:

"It is unfortunate and disturbing phenomenon has recently arisen in many parts of the country, the instance of bride burning are alarmingly on increase. If the society should be ridden of this growing evil, it is imperative that whenever dastardly crimes of this
nature are detected and the offence brought home to the accused, the Court must deal with such offenders ruthlessly and impose deterrent punishment."

The Supreme Court had opined that even death sentence may not be improper in the case of gruesome bride burning. Deeply perturbed by the growing incidence of ill treatments, tortures humiliation of young wives by their husbands or in-laws, the Supreme Court advocated in *Surinder Kumar vs. State (Delhi Admin.)*, for the severe condemnation of such cases and the strictest deterrent punishments for such offenders.

The Supreme Court had an occasion to consider the imposition of a sentence in case of bride-burning. Bala Krishna Evoid's J. speaking for the bench in case *Kailash Kaur Vs. State of Punjab* observed as follows:

“Where a case of a gruesome murder of a young wife by the barbaric process of pouring kerosene oil on the body and then setting her on fire as a culmination of a long physical and mental harassment for the extraction of dowry comes before the court and the offence is brought home to the accused beyond reasonable doubt,
it is the duty of the court to deal strictly and award maximum penalty prescribed by law in order that it may operate as a deterrent to the other persons from committing such anti-social acts. Hence the accused were convicted under sec. 498A and Sec. 306 of Indian Penal Code”.

The Bombay High Court in *Sudam Vs. State of Maharashtra*\(^{130}\), where the dying declaration of the wife showed the continuous ill treatment and torture at the hands of the husband, she had no alternative but to end her own life, held that maximum punishment permissible under sec. 498A of Indian Penal Code, on the husband by the trial court is justified since this fulfills all the ingredients of cruelty.

During the recent past, it has been held by the Division Bench of Allahabad High Court in *Indrawati Vs. Union of India*\(^{131}\) that neither sec. 498A, of Indian Penal Code nor sec. 3 and 4 of the Dowry Prohibition Act are ultravires of Article 14, 19, 21 and 22 of the Indian Constitution.

In *Inder Rai Malik Vs. Sunit Malik*\(^{132}\) it was contended that sec. 498A of Indian Penal Code was violative of Article 14 of the
Constitution of India, in as much as it gave an arbitrary power to the police as well as to the court and the word "cruelty" and "harassment" occurring in the said revision are equally vague. It was further contended that sec. 498-A of I.P.C. offended against double jeopardy under Article 20 of the Indian Constitution, in as much as a person can be convicted both under sec. 4 of Dowry Prohibition (Amendment) Act, as well as under sec. 498A of Indian penal Code.

It was that sec. 498A of the Indian Penal Code inter-alia, punishes such demands of property or valuable security, form the wife or her reallies which are coupled with cruelty to her. Hence a person can be prosecuted in respect of both the offences punishable under sec. 4 of the Dowry Prohibition (Amendment) Act, 1984 and sec. 498A of the Indian Penal Code. There is no question of giving arbitrary power to the police as well as to the courts. The word cruelty is well defined and its import is well known and there can be any arbitrary exercise of power in interpreting it.

In yet another case of *P. Kishapathi Vs. State of A.P.* Justice Radha Krishna Rao of Andhra Pradesh High Court held that in all dowry cases, the appreciation of evidence has to be made in the light
of the provision contained the sec. 113A of the Indian Evidence Act. It is the intentional aid and active complicity which from the gist of the offence and the court can draw of legal presumption under sec. 113A of Indian Evidence Act. In the instant case, the deceased committed suicide on account of regular harassment, beatings and mental torture from her husband and the in-laws for more dowry. The Andhra Pradesh High Court held that when the evidence of the parents of deceased was closely scrutinized, it was clear that the trial court had rightly considered the legal effect of the presumption under sec. 113A of Indian Evidence Act read with sec. 498A of the Indian Penal Code and gave a correct finding that the regular harassment and torture by the husband and the in-laws before her death, forced the poor bride to commit suicide. Hence the husband and the mother-in-law were held guilty under sec. 498A and 306 of the Indian Penal Code.

A new dimension was added to the concept of dowry by the Supreme Court in *Shobha Rani Vs. Madhukar Reddi*[^134]. It was held that the demands for dowry prohibited under the Act amounts to cruelty and the same entitles the wife to get a decree for dissolution
of marriage convicting the husband in State of Punjab Vs. Iqbal Sing\textsuperscript{135} the Supreme Court observed that the legislative intent behind incorporating sec. 113A of Indian Evidence Act and sec. 304B of Indian Penal Code was to strengthen the hands to the prosecution in a crime generally committed within the privacy of residential homes.

The case of Shanti Vs. State of Haryana\textsuperscript{136}, is another instance of dowry death. In this case, the deceased Smt. Kailash was subjected to extreme cruelty and harassment by her mother-in-law and wife of the brother of her husband. On April 26, 1988, the father of the deceased came know that his daughter had been murdered and cremated by those two ladies along with the help of three other persons. The report was given to the police but it could recover duly her bones and ashes. The Addl. Session Judge who tried all the five accused, convicted the appellants i.e. the mother-in-law and wife of her husband's brother under sec. 304B of Indian Penal Code and sentenced each of them to life imprisonment and under sec. 201 of Indian Penal Code sentenced them to undergo an imprisonment for one year and a fine of Rs. 2000/- each and also under sec. 498A of Indian Penal Code sentenced them two year rigorous imprisonment
and a five of Rs. 3000/- each. The appeal against the conviction was dismissed by the High Court and Supreme Court.

The court have often opined that in dowry death cases, the instances that took place for a long period of seven years and the totality of circumstances have to be considered as a whole.

In case of dowry-death the motive is inherent, as held in Ashok Kumar Vs. State of Rajasthan\textsuperscript{137} notice for a number may or may not be there. But in dowry death it is inherent. In Mulakh Raj Vs. Satish Kumar.\textsuperscript{138}

The motive to kill the wife could not be proved, yet the accused was Convicted. The crucial question came before the court whether the death was suicidal or homicidal in case of Sarojini Vs. State of M.P.\textsuperscript{139} the learned session judge found that the motive to kill the young lady was unsuitable thirst for dowry. The husband acquitted because non-compliance of evidence and the benefit of doubt goes in favour of mother-in-law.

The Supreme Court independently scrutinized the evidence. The doctor found that the strain was completely burnt. The forensic experts opined that in all probability was homicidal. There was no
kerosene smell in the store room in which the dead body in the haked condition was found. The sewing machine was found not burnt. The Supreme Court in completely agree with the High Court & Session Court that the death was homicidal due to the asphyxia and it was not suicidal.

Another case of regular bickerings, cruel treatment, physical and mental torture of a bride by her husband and in-laws which finally led her to commit suicide was that of Mohd. Hoshan and another Vs. State ot A.P.\textsuperscript{140}. In this case the newly wedded wife died of burn injuries within a short span of the marriage. The evidence of her father and sisters showed that the deceased regularly complained about the tortures and ill-treatments meted to her by her husband an in-laws for bringing inadequate dowry. Moreover the in-laws also accused her for carrying an illegitimate child and for all these reasons she was apprehensive of her life in danger.

The Supreme Court, keeping in view all the circumstances came to the conclusion that the deceased committed suicide only at the instigation of her husband and her in-laws, so a presumption under sec. 113A of Indian Evidence Act was also available. The
court affirmed the conviction of the accused husband and the in-laws under sec. 306 of the Indian Penal Code.

In case *Prabhu Dayal and Others Vs. State of Maharashtra*\(^{141}\), the deceased wife was a victim of excessive dowry demand by the husband coupled with severe cruelties perpetuated on her and was found 100% burnt on one day. The husband turned it a suicide by herself. The medical evidence showed asphyxia due to burn and the prosecution was successful in establishing the guilt of the accused husband who remained viewing this ghastly incident through the windows without any he and cry or making any serious attempt to save the deceased. The Supreme Court rightly observed that it was a case of murder and the husband convicted under sec. 302 of the Indian Penal Code.

Where a young women died under normal circumstances but due to asphyxia on account of hanging and that too within seven years of marriage, the Andhra Pradesh High Court held that a presumption of dowry death can be raised under sec. 113B of Indian Evidence Act and 304B of the Indian Penal Code to attract even if it is a case of suicide. It was proved that the deceased was subjected to
the cruelty and thus the court convicted the husband under sec. 304B and sentenced him to suffer rigorous imprisonment of seven years.

In case *Nunna Venkateshwarlu alias Venkateswara Rao Vs. State of Andhra Pradesh*\textsuperscript{142}, the deceased wife, who died an unnatural death just after four years of her marriage was subjected to acute torture and humiliation by her husband, as had been alleged by the prosecution. The husband along with his cunning parents subjected his wife to utmost torture and severe cruelties with demands to bring more dowry from her parents and to sell the land, gifted to her by her father at the time of her marriage and to pay the sale proceeds to them. Unable to bear the regular assaults, the deceased frustrated with her life committed suicide by consuming pesticide poison. The prosecution argued since the deceased had committed suicide within seven years of her marriage, all the three above mentioned persons be convicted under sec. 304B of the Indian Penal Code.

Before this case came in appeal to the High Court of Andhra Pradesh, the Session Court had already prosecuted all the above mentioned accused and tried for an offence under sec. 304B of the
Indian Penal Code. On evidence, the learned Session Judge found that in the absence of any concrete evidence, no offence is made out against the in-laws of the deceased, and hence acquitted them. The husband was found guilty under the said charge, and thus sentenced to rigorous imprisonment for seven years. Hence, he preferred an appeal in the present court. In the opinion of the High Court, the prosecution had totally failed to establish the guilt of the accused husband under sec. 304B of the Indian Penal Code to the Court's satisfaction. In the absence of any concrete evidence on record, the court opined that the offence under sec. 304B of the Indian Penal Code cannot be made out. However, the court viewed that undoubtedly it was established there was regular torture and harassment of the deceased by none other but her husband. Unable to bear the torture, she committed suicide. Thus the Court held that the accused appellant had committed an offence punishable under sec. 498A of the Indian Penal Code. Moreover, he had also abetted his wife (deceased) to commit suicide by giving her constant humiliations and assaults, in the opinion of the court. Thus the court held that the accused husband is also liable under sec. 306 of the Indian Penal Code. The substantive sentences under sec. 498A and
sec. 306 of the Indian Penal Code were to run concurrently.

Where during the few years of marriage, it was established beyond doubt that the bride was constantly subjected to utmost cruelty with the regular demand of dowry by her husband and taunts on the ground of being barren, she ultimately committed suicide, the Andhra Pradesh High Court observed in *P.P. Rao & other Vs State of A.P*\textsuperscript{143} that presumption under sec. 113A and 113B of Indian Evidence Act can be raised. There was no evidence that the accused husband abetted the deceased wife to commit suicide. The Court held that the offence under sec.306 of the Indian Penal Code is not made out but the accused husband was convicted under sec. 498A and sec. 304B of the Indian Penal Code.

In case *Wazir Chand and another Vs. State of Haryana*\textsuperscript{144} there was conclusive proof as alleged by the prosecution that the deceased (Veena) who died within a year after her marriage was constantly abused, tortured and humiliated by her father-in-law who was dissatisfied with the insufficient dowry which she had brought with her. Fed up with daily quarrels, humiliations and tortures the deceased sprinkled kerosene oil on her clothes and set herself on
fire. It was further alleged by the prosecution that her screams, while burning, were mercilessly suppressed by the inmates of her husband's family by putting on loudly a radio set and T.V. set to prevent the neighbours who would have come on hearing her loud shrieks. Moreover, there was deliberate delay in taking her to a proper hospital after the incident, on the part of the husband and in-laws.

Keeping all the above facts in view, the Supreme Court held that the present circumstances come very much within the definition of cruelty as envisaged in sec. 498A of the Indian Penal Code. It upheld the decision of the High Court and confirmed the conviction of her husband and father-in-law under sec. 498A of the Indian Penal Code.

In case Chanda Laxmi Narayana Vs. State of Andhra Pradesh\(^ {145}\). It was alleged by the Prosecution that the accused husband who lived happily for about one and a half year with his wife, started demanding additional gold and lump sum amount of money from her. On her failure to do so, she was often subjected to physical torture by him and who later on deserted her.
The prosecution was successful in proving the above facts beyond reasonable doubt, which was corroborated by independent witnesses. The court on the basis of the material on record and the failure of the husband to rebut the allegations of the prosecution, categorically held the husband guilty of the offence under sec. 498A of the Indian Penal Code [Explanation (b)] and sentenced him to suffer rigorous imprisonment for three years and also to pay fine of Rs. 5000/- and in default of fine, simple imprisonment for six months.

The Supreme Court recently deliver a leading judgement on dying declaration. In Harjeet Kaur Vs. State of Punjab\textsuperscript{146}, the Parminder Kaur was died by her husband, mother-in-law and father-in-law by the kerosene oil for non fulfillment of demand of dowry. The trial court and High Court convicted the three appellant. Harjit Kaur, the mother-in-law filed an appeal before Supreme Court and alleged that second dying declaration recorded by the Sub-Divisional Magistrate an I.A.S. Officer, not in presence of relative of deceased and not in question answer form and in Punjabi language.

The Supreme Court opined that the second dying declaration
can not be regarded as untrue merely because it is contrary to her statement made earlier. What she has stated in the second dying declaration appears to be more probable and natural. And Supreme Court held that dying declaration recorded by Sub-Divisional Magistrate can not lead to an inference that Magistrate had recorded it under pressure. And whole circumstances can not create any doubt regarding evidence of Sub-Divisional Magistrate or genciness of dying declaration. These appeal dismissed by Supreme Court and find that they rightly convicted.

In *State of Karnataka vs. C. Prakash*[^147] the accused was convicted for unnatural death of his wife, she met with husband due to strangulation because of unfulfilled dowry demands. Husband had strangulated on the wife by using everyone rape.

Evidence of witness as well as Priest who performed marriage that said items were given pursuant to those demands at time of marriage and no evidence shows that accused assaulted wife for non-payment of dowry, a letter written by deceased to her brother two weeks after the marriage description and tenor of said letter clearing establishing that the alleged acts of cruelty were grave, persistent
and had seriously disturbed the wife physically and mentally by which the wife committed suicide.

The Karnataka High Court convicted the accused under sec. 304B of the Indian Penal Code for seven years rigorous imprisonment and conviction under sec. 498A is maintained. The High Court also made conviction under sec. 3 and 4 of the Dowry Prohibition Act, and directed that the substantive sentence shall run concurrently.

The question before Court weather father of wife would be punished for given the dowry or not? In case *A. Balasubrahamaninm Vs State*,148 The father of wife was charged by the accused, alleged that he would also be punishmed for given the dowry under sec.3(1) of Dowry Prohibition Act. The Madras High court says that no doubt, it is true that sec. 3 of the Dowry prohibition Act provides penalty for giving or taking dowry. On perusal of the records, it is true that they gave 60 sovereigns of jewels and other article at the time of marriage. Under sec. 3(2) of the Act, exemption has been given to the presents which are given at the time of marriage to the bridegroom, when those presents one entered in a list maintained.
Therefore, the articles and jewels given to bridegroom can not be said to be dowry in the fact and circumstances of the case. Court dismissed the appeal.

Recently, a good judgement deliver by the Patna High Court, conviction of accused-husband under sec. 304B and sec. 498A of the Indian Penal Code even material contradiction in the testimony of witness and medical evidence not stating exact cause of death. In case Rajeshwar Prasad and Others Vs. State of Bihar,149 the Indu Kumari were died by the husband and her-in-laws for demanding the dowry of Rs. 35000/-, T.V. and fridge.

These fact prove that Indu Kumari died in circumstances which were not natural by the circumstantial evidence. The prosecution case against appellants except husband of deceased, appears doubtful. But so far the case of husband in concerned the court found that the prosecution has by bringing on record the demand of dowry, the evidence of close relations of deceased at on the demand of dowry, she was being subjected to cruelty and her death in circumstances not normal. The charges under sec. 304B and sec. 498A of the Indian Penal Code were proved against him and
Chapter – 5


The Indian judiciary, through its various decisions widened the scope of cruelty with an intention to fulfill the object of the legislature behind the insertion of this provision. In Pawan Kumar Vs. State of Haryana\textsuperscript{150} In the case wife was tortured and harassed in the matrimonial home as part of repeated dowry demands. The torture and harassment continued because of the non-fulfilment of the demand, resulted in her suicidal death. Mental torture was held to be a form of cruelty. The ambit of mental cruelty was also discussed by our Supreme Court. The court opined that whether one spouse has been guilty of cruelty to the other, is a question of fact. It depends on the various factors like the sensitivity of the individual victim, the social background, the environment, the education etc.

The deceased sustained burn injuries and died at the hospital within a few days of her marriage. The prosecution alleged cruelty on the part of the husband and in laws. The appellants contended that scolding and taunting of the deceased for not preparing proper food and that she was not good looking was not such a cruelty so as
to push her to commit suicide. The Supreme Court held that mental cruelty varies from person to person depending on the intensity of sensitivity and degree of courage or endurance to withstand such mental cruelty. Each case has to be decided on its own facts to decide whether the mental cruelty was established or not. Thus, even the continuous scolding or faulting for not preparing proper food or that she was not good looking amount to mental cruelty in the particular case.\footnote{151} In \textit{Smt. Madhuri Mukund Chitnis Vs. Mukund Mar Chitnis and another}\footnote{152}, the wife was subjected to series of malicious and vexatious litigation and was humiliated and tortured through the execution of search warrants. The Bombay High Court, in this case, held that even the making of false allegations for the purpose of harassing wife through criminal proceedings would constitute an offence under sec. 498A of the Indian Penal Code.

This approach of the Indian judiciary in widening the ambit of 'cruelty' is quite appropriate one especially when domestic violence cases are considered. The judiciary thus, tried to utilize all the available provisions so as to protect our women from various types of violence occurring in their house.
The Supreme Court expressed its strong protest against the tendency of dowry related domestic violence becoming dangerous in nature and resulting in death of the victim. In *Lichhama Devi Vs. State of Rajasthan*\(^{153}\), in this case the deceased was harassed and tortured in her matrimonial home in the name of dowry. One day the neighbours saw flames coming out of her kitchen. The neighbour who centred the room found the wife in flames. She was taken to hospital. But the appellant, i.e., the mother-in-law did not allow the husband to arrange blood. As a result she died. the Supreme Court held that in case of bride burning, death sentence might not be improper. The persons who perpetrate such barbaric crime, without any human consideration, must be given extreme penalty. The victim was regularly and continuingly tortured and ill-treated by her in-laws for bringing an amount of Rs. 5000/- or an autorickshaw from her father's house. One day she was found dead out of burn injuries in her matrimonial home, the Court suggested that social reformist and legal jurists might evolve machinery for debarring such a boy from remarriage irrespective of the member of family who committed the crime and in violation penalize the whole family including those who participate in it \(^{154}\).
The different personal laws, in India allow cruelty as a ground for getting a divorce in matrimonial disputes. This ground of cruelty covers many of the domestic violence cases. The courts, in India, are trying to widen the ambit of the ground so as to provide relief in the maximum number of cases. This is a ground for judicial separation also. So, by widening its ambit, the court can provide relief to the maximum number without breaking the marital relationship by way of an order for judicial separation.

Incest and Marital Rape

As far as incest and marital rape is concerned, Supreme Court of India in *State of Himachal Pradesh Vs. Asha Ram* observed, "there can never be more graver and heinous crime than the father being charged of raping his own daughter. He not only delicts the law but it is a betrayal of trust. The father is the fortress and refuse of his daughter in whom the daughter trusts. Charged of raping his own daughter under his refuse and fortress is worst than the gamekeeper becoming a poacher and treasury guard becoming a robber".

There is also no penal provision to deal with cases where a
family member, most often the father of the child, is involved in the sexual assault. Unfortunately, nothing has been done in our country to protect the abused children. *Sudesh Jhaku Vs. KCJ*\(^{156}\), is a vivid example of the deficiency in the law where, although it is painfully evident that the minor, aged six years, had been brutally abused by her father, the judge was left with no option but to drop charges of rape and retains only less serious charges of outraging the modesty of the victim.

The Rajasthan High Court have lenient view on the part of accused father in case *Pooran Ram Vs. State of Rajasthan*\(^{157}\), where the rape was committed by the father on his daughter. The court considering all facts and circumstances of the case particularly the perversity of the appellant, sentence reduced to imprisonment of ten years from the life imprisonment. The court followed it in case *Mangoo Khan alias Mohammad Ali Bisayati Vs. State of Rajasthan*\(^{158}\), the prosecutrix aged 16-17 years submitted a FIR stating that her mother left her father about three years back and she was living with her parents village sarvad. About three months back while she was sleeping with her sister and brother, she was aroused
by her father, who wanted to massage his legs. She alleged that she
was asked by her father to sleep with him, but she refused. It is
further alleged that her father caught hold and through on the bed
and committed rape on her. The court observed that the statement of
prosecutrix inspiring confidence and her version supported by
confidence and her version supported by statement of other
witnesses. The court held that no merit in this appeal and the same is
dismissed and appellant is liable under section 376 of the Indian
Penal Code and sentence reduced to ten year imprisonment from life
sentence.

The Orissa High Court also shown leniency towards the
accused in case Maguni Ranjan Jyoti Vs. State of Orissa\textsuperscript{159}, the
accused was charged under section 366, 376 and 506 of the Indian
penal Code, alleging that accused maternal uncle of prosecutrix
abducted her by use of deceitful means for providing a job to her.
The accused and prosecutrix took the shelter in another village. In
the night, accused tied a cloth and gaged her mouth and thereafter
forcibly committed sexual intercourse with her. The High court set-
aside the trial court sentence of rigorous imprisonment of six years
for the offence under section 366 and 506 because it is alleged that accused committed rape, that does not necessarily mean that prosecutrix was abducted by accused. But the High Court found testimony of prosecutrix, trustworthy and reliable and accused having completely believed trust of a niece and committed rape on her in a beastly manner. Conviction under section 376 of the Indian Penal Code is maintained along with its sentence of rigorous imprisonment of seven years and to pay fine of Rs. 2000/-.

In yet another case State of Maharashtra Vs. Mohan Sankar Rao Janrao, accused committed rape on minor girl who was niece of his wife was living with family of accused since her childhood. The court held that the accused was sentence to one year imprisonment and fine of Rs. 1000/-was imposed. The grounds for imposing lesser punishment were that offence in question was first offence committed by accused and that he was only earning member of his family.

To ascertain the judicial perception of rape cases, Sakshi, a Non-Governmental Organization of Delhi, surveyed 94 judgements of higher judiciary in the country during the period from 1979 to
1996. Out of 94 reported cases, the trial court convicted the accused in 80 cases. On appeal the higher court acquitted in 41 per cent cases, reduced sentence in 53 per cent cases and increased sentences in 6 per cent cases.

The ground of acquittal includes inter alia, the view of judges that penetration of a woman is physiologically impossible without her consent and that in any case victims are partially to blame for such abuse. Some accused are acquitted by given excessive reliance on medical report which indicates no injury on the male organ of the accused and no rupture of the hymen of the victim girl.

In case Mohan Singh Vs. State of Rajasthan\(^\text{162}\) accused father-in-law was charged under section 375 of the Indian Penal Code committing rape with his daughter-in-law. She alleged that at the fateful night she was sleeping in her room alone at her maternal grandfather's home. When her husband was not with her, her father-in-law asked her opened the door, he entered into the room and close the door at gun point tore her clothes and forcibly committed sexual intercourse with her. Prosecutrix also alleged that she was kept at his house by the appellant for 1½ months after the incident. The session
court convicted the accused under section 376 of Indian Penal Code and sentenced to suffer simple imprisonment for seven years and a fine of Rs. 500. But on an overall appreciation of the evidence of the prosecutrix and her conduct the High Court found that she is not a reliable witness and implicit reliance can not be placed on her testimony. And the prosecutrix has failed to prove that she was raped by the appellant and the trial court has committed an error in convicting the appellant for the offence punishable under section 376 of IPC. The court held that the appeal of accused is allowed and setting aside the judgement of session court. The appellant is acquitted of the charge under section 376 of Indian Penal Code.

But the Jharkhand High Court maintained the sentence given by Session Court while the victim lady is the only competent witness to prove the allegation of rape on her, in case *Hare Krishna Dan Vs. State of Bihar*,\(^3\) the victim was daughter-in-law of accused alleged to have committed rape on her twice within short span of 10-12 days taking advantage of physical weakness of his son. The victim has said that due to fear of her prestige and the prestige of her family and also due to threat of the appellant, she did not say anybody about the
incident. She narrated whole matter after rape was committed on second occasion. The High Court dismissed the appeal and maintained the judgment of session court that sentence of 10 years imprisonment under section 376 of the Indian Penal Code.

The Apex court pronounced a leading judgment in favour of victim in a case *State of Punjab Vs. Gurmeet Singh* The Court observed that rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Court, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix. If evidence of-the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of
corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations”.

Recently, the Supreme Court pronounce a landmark judgement in a case State of Himachal Pradesh Vs. Abha Ram,\(^{165}\) that conviction for rape can be funded on the testimony of the prosecutrix alone unless there are compelling accused father raped her minor daughter and charged under section 376 of Indian Penal Code. The Session Court imposed the sentence of 5 year Rigorous imprisonment and a fine of Rs. 1000/-. But the High Court acquitted the accused on the basis of no spermatozoa were found on the Salwar and underweare of prosecutrix and no evidence shows that hymen was ruptured and medical report was highly unreliable. The Appeal came before Supreme Court, the court founds that evidence clearly established that her parents relationship were strained. No rhyme or reason as to why daughter should depose falsely against any other person of rape, much less against her father, sacrificing thereby her chastity and facing shame. The testimony of prosecutrix
well corroborated by testimony of mother and sister and corroborated by medical evidence inspire confidence. So evidence of prosecutrix is more reliable than that of injured witness and conviction based on her testimony cannot be interfered with. The Apex court also found that offence be more graver and rarest of rare, by betraying trust and taking undue advantage of trust reposed in him by daughter serving food at odd hours. He ravished chastity of his daughter, jeopardized her future and marital and conjugal life has been devastated. She carries an indelible social stigma on her head and deathless shame as long as she lives. The court held that the appellant is liable under section 376 of Indian Penal Code and sentence enhanced from five years' rigorous imprisonment to imprisonment for life and fine amount of Rs. 1000 enhanced to Rs. 25000/-.

Recently, the Apex Court in a landmark judgement ruled that the absence of injury on the body of rape victim is not necessarily evidence of consent or of falsity of the allegation.\textsuperscript{166}

The fact that in every rape trial consent beyond all reasonable doubt in difficult to prove was highlighted in the famous (Mathura
Rape case) Tukaram vs. State of Maharashtra,\textsuperscript{167} Which triggered the campaign for change in rape laws. Along with this case on the recommendations of, the 84\textsuperscript{th} report of Law Commission on rape and allied offences, certain amendments were introduced and section 376A and 376B were introduced in the Indian Penal Code.

These changes include protection of victim during investigation, change in the definition to remove the element of consent, addition of custodial rape as a crime and increase in the punishment of custodial, gang rape and rape of pregnant women. In order to give teeth to the provisions of rape of Criminal Procedure Code and Indian Evidence Act were also amended by the Amendment Act, 1983.

Judges of subordinate judiciary conduct the trial of rape cases in open court in violation sec. 327 of Cr.P.C. which provides that rape cases must be tried in camera and the identity of the victims girl must not be disclosed to the print and electronic media. Some judges are extremely reluctant to look beyond their technical understanding of law even in this era of judicial activism in India.

However, the Apex Court's pronouncement in \textit{Delhi Domestic}
Women's Forum Vs. Union of India\textsuperscript{168}, in the first instance where the judiciary has come closer to understanding the impact of sexual violence as women experience it. In this case the Supreme Court has indicated the broad parameters in assisting the victims of rape during investigation and trial of the criminal case.

The gist of the guidelines is that the victims of sexual assault will get legal assistance from a competent lawyer from the stage of interrogation by the police till the conclusion of trial in the court. It is the duty of the police authority to inform the victims of their right to engage an Advocate for legal assistance. The Advocate so engaged will not only render professional service, but also assist the victim in getting help from other agencies like mind counseling or medical assistance. The anonymity of the victims must be maintained from the beginning of the investigation till the conclusion of trial. The victims must be awarded compensation by the courts when the case ends in conviction of the offender. The Government must set up Criminal Injuries Compensation board for awarding compensation to the victims even when the cases end in acquittal of the accused person.
The long delay in the lodging a First Information Report by prosecutrix of the offence of rape is immaterial to punish the accused. In a case Chhabu Ram vs. State of Himachal Pradesh, an appeal made by a accused aged 60 years, who has been convicted of and sentenced for committing rape on his own minor grand-daughter. Prosecutrix stated that accused raped her on five occasions when her parents were away in connection with earning their livelihood. As a result of said sexual intercourse she had delivered a child, who died within a month. Her evidence corroborated by evidence of her parents and medical evidence also. Accused plead that prosecutrix had forced him to commit sexual intercourse with her and at that time he was under influence of Devta. But the court accepted said statement is Admission by accused under section 21 of the Indian Evidence Act. The High Court rejected the plea of accused and dismissed the appeal because no merit in the appeal.

To be successful in avoiding prosecution for rape on wife, the husband has to 'prove a valid or at least a voidable marriage' and then he has to establish that his wife is or is above fifteen years of age. If a husband is found guilty of rape or his wife who is between
12 to 15 years of age, he can be punished with imprisonment, which may extend to two years or with five or both. The application of the proviso may be ruled out on the court is already having a wide discretion, to extend or not to extend the punishment to two years or simply impose a fine on husband.

Only three decisions were referred to in text books in India on matrimonial rape. The reference made to the decision in case Karthik Kundu Vs. State\textsuperscript{170} decided by the Calcutta High Court, under the exception to section 375 of the Indian Penal Code, is misleading since this ruling by Lords Justice P.B. Mukherjee and A.K. Das turned not upon matrimonial rape by the husband, but 'on the deception of the appellant leading to a belief being created in the mind of the woman to think that she is married to ;him thereby resulting in her consent to have sex with him under such belief, rightly "ending in convicting the appellant for an offence under section 493 of IPC by emphatically rejecting the argument of Karthik that there was distinction between a minor and major girl with reference to the application of that section".

In Tatya Tukaram Khabali\textsuperscript{171} the Bombay High Court
decision, (unreported) a husband, suspecting the fidelity of his wife, went in search of her with his nine companions and fund her in the company of her lover. While the husband was looking on, these nine companions raped her. All the nine persons were held guilty of rape upon her.

Delay in lodging FIR could not the cause of acquittal of accused the case of *Maharashtra Vs. Ambarnath Bapu Saheb Gade*,\(^{172}\) prosecutrix allegedly raped by her husband, father-in-law, brother-in-law and other two close relatives in agricultural field during midnight. She suffered serious and severe mental shock resulting in hysterical amnesia and was incapable of understanding anything and able to speak after 4-5 days of treatment.

The judgment of the acquittal of the trial court of all the accused under section 376(g) of the Indian Penal Code was quashed and set aside by the Bombay High Court and sentenced to suffer rigorous imprisonment for seven years and fine of Rs. 2000/- each. Therefore, the victims of rape need social rehabilitation because with. no fault of their own they get social ostracization instead of commiseration which they deserve.
Adultery

The framer of the code did not make adultery an offence punishable under the code. But the Second Law Commission, after given mature consideration to the subject, came to the conclusion that it was not advisable to exclude this offence from the code. Adultery figures in the penal law of many nations, and some of the most celebrated English layers have considered its omission from the English Law a defect.

In upholding the constitutional validity of sec. 497 of Indian Penal Code, in case *Sowmithri Vishnu Vs. Union of India*, the Supreme Court observed; section 497 does not envisage the prosecution of the wife by the husband for adultery. Indeed, the section provides expressly that the wife shall not be punishable even as an abettor. No grievance can then be made that the section does not allow the wife to prosecute the husband for adultery. The contemplation of the law, evidently is that the wife, who is involved in an illicit relationship with another man is a victim and not the author of the crime. The contemplation of the law, evidently is that the wife, who is involved in an illicit relationship with another man
is a victim and not the author of the crime. The offence of adultery as defined in section 497, is considered by the legislature as an offence against the sanctity of the matrimonial home, an act which is committed by a man, as it generally is. Therefore, those men who defile that sanctity are brought within the net of law. Law does not confer freedom upon husbands to be licentious by gallivanting with unmarried women. It only makes a specific kind of extramarital relationship an offence, the relationship between a man and a married woman the man alone being the offender. An unfaithful husband risks, or perhaps, invites a civil action by the wife for separation. The legislature is entitled to deal with evil where it is field and seen most: A man seducing the wife of another. Dealing with the defense argument that women, both married and unmarried, have changed their life style over the years and there are cases where they have wrecked the peace and happiness of other marital homes, the court further observed: "We hope this is not too right but an under inclusive definition is not necessarily discriminatory. The alleged transformation in feminine attitude, for good or bad may justly engage the attention of law-makers when reform of penal law is undertaken. They may enlarge the definition of 'adultery' to keep
pace with the moving times. But until then law must remain as it is. The law, as it is, does not offend either Article 14 or Article 15 of the Constitution".  

The proof of single act of adultery is sufficient. As held in the case of Rajendra Agarwal Vs. Sharda Devi\textsuperscript{175}, the proof of only one instance of voluntary sexual intercourse by the other party with another person except his or her spouse, is enough. This is so after the marriage law's (Amendment) Act, 1976. Prior to such amendment the word used were "is living in adultery" and a single act of adultery was not sufficient, but after the amendment of 1976, the husband need only to prove that the wife had voluntary sexual intercourse with any person other that the spouse and vice-versa. It need not be proved that other spouse was living the adultery' in case Somesh Shekharan Vs. Thankamma.\textsuperscript{176}

Where a change for adultery under sec. 497 of I.P.C. is defined as regard to the place where offence was said to have been committed but specific dates can not be proved on which sexual intercourse took place. The Calcutta High Court held in case Bholanath Mittar\textsuperscript{177}, it is sufficient to specify the period within which
offence was alleged to have been committed and omission of precise date would not affect the allegation of the husband. The aversement of adultery without proof by husband was a mental cruelty practiced upon the wife. But as held in *Paras Ram vs. Kamlesh*[^178] and *Sadan Singh Vs. Smt. Reshma*[^179], mere aversment of adultery in the writer statement without proof of adultery. The case of Madras High Court was in order to claim maintenance and the other two of the Punjab High Court and Allahabad High Court were on the Petitions for divorce and so for the purpose of divorce were averment of adultery without proof will not be mental cruelty.

In *Suchita Srivastava & Anr. v. Chandigarh Administration*,[^180] In a landmark judgment, the Supreme Court of India struck down a high court order to terminate the pregnancy of a mentally retarded woman, against her will. In the present case Supreme Court judgment reversing a Punjab and Haryana High Court order directing the medical termination of pregnancy of a young adult woman without her consent, on grounds of “mental retardation”, is a landmark decision in the area of reproductive rights. Some years ago, hysterectomies by the authorities on inmates at a mental home
for women in Pune focused attention on the rights of individuals categorised as mentally ill. Court held that, “Article 21 and sec.3&4 Medical Termination of Pregnancy act 1971 includes rights of women to make reproductive choices and further to even refuse to participate in sexual act and can insist on use of contraceptive methods or carry pregnancy to full term and thus give birth and raised child, even if the act places reasonable restriction on such right”.

The current judgment is also remarkable in that it takes on board and acknowledges that judges are also susceptible to unconscious prejudices that impact the judicial decision-making process.

In *Baldev Singh vs State of Punjab*,\(^{181}\) It was held that although a demand by the husband for a fair share for his wife in her father’s property did not constitute a demand for dowry there were other circumstances and evidence to prove that the wife was being harassed by her husband and her in-laws for dowry, and subsequently died, making it a dowry death.

Another area of concern has been whether the introduction of
irretrievable breakdown as grounds for divorce would work against the interests of women, given the gender disparities and large number of women deserted by their husbands. It is in this context that the Supreme Court recently had occasion to revisit the issue of irretrievable breakdown as grounds for divorce, in the case of Vishnu Dutt Sharma versus Manju Sharma. Vishnu Dutt Sharma and Manju got married on February 26, 1993, and had a daughter in December 1993. Sharma filed a petition for divorce alleging that soon after the marriage his wife started behaving cruelly towards both him and members of his family. He alleged that she did not stay for more than 25 days in the matrimonial home. Further, that on May 19, 1993, whilst still pregnant, she left the house and never returned. According to Sharma, Manju’s father, a retired Delhi police sub-inspector, and brother, a constable, both used to threaten him with implication in false cases.

If a woman employed in the defense services files sexual harassment charges at the workplace, she is likely to be further harassed by the initiation of disciplinary proceedings against her, as the recent case of the principal of Army Public School demonstrates
Earlier instances have been of complaints of sexual harassment in the workplace by women officers, with allegations against their superiors.

In the present case, reported as *D S Grewal versus Vimmi Joshi*, the Supreme Court dealt with a case of sexual harassment of the woman principal of Army Public School in Pithoragarh. Vimmi Joshi applied for and was appointed trained graduate teacher at General B C Joshi Army Public School in Pithoragarh. Later, she was appointed post-graduate teacher (mathematics) and worked as officiating principal from February 10, 2003, to August 10, 2003. Joshi was appointed principal of the school on February 10, 2004. Brigadier Grewal is chairman of the school management committee and Colonel Hitendra Bahadur, deputy commander, 69 Mountain Brigade posted at Pithoragarh, is the committee’s vice-chairman.

In connection with security cover for the Amarnath Yatra, Bahadur travelled to Sonamarg from where he wrote a letter to Vimmi Joshi. In the letter, Bahadur confessed his love for Joshi. The letter was full of compliments to Joshi, ranging from her intelligence and maturity to comments about her slender, fashionable body.
Bahadur expressed a wish to hold her hand, and the letter ended with “lots of love”.

Principal Joshi stated that Hitendra Bahadur used to make advances towards her, and reported the matter to Brigadier Grewal. Joshi’s father too met Grewal in this regard and alleged that Grewal abused him. On October 12, 2004, Grewal wrote a letter to Joshi referring to her allegations against Bahadur. The letter stated that her father had met Grewal and had made similar allegations. It went on to say that Joshi had been directed to forward the allegation in writing. It concluded that cognisance of the matter was not being taken as written allegations had not been received.

Thereafter, on or around October 25, 2004, the managing committee received two anonymous complaints against Joshi from headquarters. A memorandum dated October 25, 2004, was issued to the principal asking her for her comments on the allegations. Joshi gave her comments in a letter dated October 27, 2004. Her services were terminated by an order dated December 4, 2004, issued by Grewal. Joshi filed a writ petition in the high court questioning the legality of the termination order, alleging sexual harassment by
Hitendra Bahadur as one of the grounds. It was contended on behalf of Grewal and Bahadur that the termination order had nothing to do with the sexual harassment complaint. It was argued that Hitendra Bahadur’s letter could not be said to amount to sexual harassment. Further, that Bahadur, who had nothing to do with the school management, had sent the letter from Sonamarg, so the case would not fall within the ambit of sexual harassment at the workplace. In the interim period, an inquiry was said to have been conducted where the report, dated January 20, 2005, concluded that this was not a case of sexual harassment. The report recommended counselling for Bahadur.

Based on the contents of the letter, the admissions of both officers, and termination of Joshi’s services, the high court reached a finding of sexual harassment. It directed the secretary, Ministry of Defence and the chief of army staff to take disciplinary action against Grewal and Bahadur. The court observed that the order was being passed in view of the law laid down by the Supreme Court in *Visakha versus State of Rajasthan*\textsuperscript{184} with regard to sexual harassment in the workplace.
The standard response of managements, specially the defense establishment, to a woman’s complaint of sexual harassment in the workplace is to charge her for insubordination, disobeying the orders of superiors, and other acts constituting professional misconduct. In the present case, the army management went a step further and filed a First Information Report (FIR) against Joshi alleging financial irregularities. After an investigation, the police submitted a report exonerating Joshi which was accepted by the chief judicial magistrate, Pithoragarh, by order dated February 13, 2006.

Grewal and Bahadur appealed to the Supreme Court stating that the high court should not have arrived at the finding that Bahadur was responsible for sexual harassment so as to pass a final judgment, while simultaneously directing the initiation of disciplinary proceedings in the matter. Further, that Joshi was on one-year probation and that her services could be terminated by giving a month’s notice or salary, without assigning any reason. It was argued that Joshi had not submitted a written complaint despite having had the opportunity. Lastly, it was submitted that Bahadur had already undergone an inquiry, therefore the order of the high
court directing an inquiry was misconceived.

It was submitted on behalf of Vimmi Joshi that the letter had been written by the vice-chairman of the managing committee of the school to the principal who was his subordinate. It was argued that the matter had been brought to the notice of the chairman and that no further complaint in writing had been necessary. Further, that the circumstances of the case clearly show that termination of Vimmi Joshi’s services was malafide under the law.

The Supreme Court observed that as Joshi’s writ petition was pending before the high court it would not go into the merits of the case. However, it noted that in the Visakha case, the Supreme Court had laid down guidelines with regard to initiation of disciplinary proceedings, formation of complaints committees, and the putting in place of a complaints mechanism for cases of sexual harassment in the workplace. The complaints committee has to be headed by a woman; at least half of its members have to be women. A third party, like an NGO familiar with the issue of sexual harassment, must be involved in the committee to prevent undue pressure from seniors in the organisation. The court noted that a Protection of
Women against Sexual Harassment at Workplace Bill, 2007, had been drafted showing that lawmakers had accepted the guidelines laid down in the Visakha judgment.

Coming to the present case, the court noted that Vimmi Joshi was working as principal of the school and was drawing a salary. The Army Public School was a public enterprise. Joshi had been humiliated by the letter, and by Bahadur’s alleged advances. The court held that Joshi had reasonable grounds to believe that her objections would be a disadvantage in connection with employment, or would create a hostile working environment. According to Joshi, adverse consequences followed as a result of her job termination.

The Supreme Court noted that neither had a mechanism for redressal of Joshi’s complaints been put in place, nor had a complaints committee been constituted as required under law. It observed that it was a matter of “great regret” that the army had failed to put a complaints mechanism in place and had ignored the ruling of the apex court in the Visakha case. The judgment held that disciplinary proceedings could be instituted after a prima facie finding as to the role of the delinquent. The purported inquiry by the
army exonerating Hitendra Bahadur was found not to have provided a complete picture. The apex court held that the high court could not have reached a finding of it being a clear case of sexual harassment without further enquiry into the matter.

The Supreme Court directed the High Court to appoint a three-member committee headed by a woman. And in the event that the finding was of sexual harassment, the report should be sent to the army authorities for initiation of disciplinary proceedings. The management of the Army Public School was held guilty of violating the guidelines laid down in the Visakha case and directed to pay Rs 50,000 to Joshi towards expenditure incurred on the case.

In some cases, initiating PIL actions in one or more of the twenty-one state-level high courts of India instead might be more advantageous. The high courts may have a better sense of on-the-ground realities, and offer the logistical conveniences of litigating locally and implementing targeted remedies on a state-by-state basis. Much of the scholarship on the Indian legal system, the present work included, and focused on the Supreme Court, but this represents only a small fraction of legal activity in the country. Future research and
advocacy efforts focusing on social reform through lower courts will be critical for more comprehensively pursuing gender justice through the Indian judiciary.

The success of advancing women’s rights through the courts, in a society that is rapidly evolving yet still largely governed by traditional gender norms, will depend upon strategic mobilization by women’s rights advocates and committed efforts by judges to enforce the constitutional and international rights of women independent of mainstream biases and within the boundaries of the separation-of-powers doctrine. As Indian society develops its own theory of gender justice, informed by local realities and international norms, women’s rights advocates and the Supreme Court have the opportunity to play a critical part in shaping the legal discourse. If the Indian judicial system can assume a leading role in promoting the rights of disempowered women through the PIL vehicle, it could serve as an inspiring model for other constitutional courts and international human rights bodies.

Therefore, in the concluding remarks it can be said that sections of Indian Penal Code in relation to the crime/violence
against women needs a check regarding the conduct of cruelty and dowry death on married woman by her husband or the in-laws or any relatives of the husband, so that it cannot be said of being misused by the woman or her relatives. It is only when she is pushed beyond endurance, after suffering repeated tortures, assaults and humiliations by her husband or her husband's relatives she resorts to the law. Moreover, such type of stringent legislation which has gained much importance in the present scenario, must be implemented in its true spirit, keeping in view the alarming increase in the cases of domestic violence, specially those relating to cruelty, dowry death and incest within the family. In addition to this the judiciary has also played a very vital role against other shameful offences like Incest, adultery etc. which have been discussed above.

Lastly, it has been nearly six decades that we inherited a well-entrenched system of judicial administration besides elaborate and codified, substantive and procedural laws from Britishers. These laws had generally stood the test of time. Therefore, India Judiciary adopted them with suitable corrections wherever required. Over the years, the judicial administration was fine tuned so as to meet the
needs of changing times and aspirations of the modern India. The role of Indian judiciary in the protection of the victims of domestic violence is a significant one. When considered in the light of existing legal provisions the role-played by judiciary is worth appreciation. The judiciary is strictly complying with the penal provision so as to prevent the escaping of any guilty person from the clutches of law and at the same time to save an innocent from being punished. No emotions or sentiments are allowed to influence their decisions.

2. **By other ways and means**

A. **Protection of women’s human rights through:**

   (i) **Governmental Organizations**

   The National Commission for women was set up as a statutory body under the National Commission for Women Act of 1990. The primary mandate of the commission is to review the constitutional and legal safeguards provide for women, recommend remedial legislative measures, facilitate redressal of grievances and advice the government on all policy matters affecting women.

   In the last decade the commission received more than 15,000
complaints related to different types of crime against women including domestic violence. The numbers of cases disposed off by the commission one third were successfully closed\textsuperscript{185}. Family disputes are resolved or compromised through counseling which takes place in the presence of member and the counselor. The commission can constitute the inquiry committee to look into serious crimes and also to make spot enquiries.

In a successful case, \textit{Ms. Suparna} lodged a complaint against her husband alleging mental torture. Both the parties were summoned in the commission and counseled. During counseling it was observed that there were temperamental differences between them. Earlier, the husband was not ready for divorce but after counseling he agreed for divorce. He also agreed to hand over the custody of the child to his wife. The complainant did not claim maintenance allowance for her and her child. On these conditions, both the parties agreed for a mutual divorce in the presence of two witnesses.\textsuperscript{186} The legal cell deals with the review and examination of legislation concerning women and coordinates the working of the Pariwarik Mahila Lok Adalats through which the Commission
provides speedy justice.

After discussions between the commission, institutions and different N.G.O’s on 'Increasing Violence Against Women' with senior police officers, Non-Governmental Organizations and legal specialists. In addition to the National Commission for Women, several states of India have established State Women's Commissions to check incidents of violence against women and to promote social, legal and economic equality of women.

National Human Rights Commission was set up in India on September 27, 1993. The total number of cases registered in the Commission during 2003-04 was 72990 while the corresponding figure for the year 2002-03 was 68779. The largest number of complaints registered was from the state of Uttar Pradesh, they numbered 40396 or 56.5 percent of the total number of complaints registered by the commission. 61 cases of allegation of violating the dignity of woman. 92 cases of sexual harassment, 616 cases of dowry deaths or its attempts, 266 cases of dowry demands, 139 cases of exploitation of women, 176 cases of rape of women\textsuperscript{187}.

The commission has suggested an amendment to section 30 of
the protection of Human Rights Act, 1993 which provides for Human Rights Courts at the district level. The commission also recommended a concerted effort is made to end the misuse of sex determination tests in the country since this has encouraged the evil protection of female foeticide, a gross violation of the right to life based on sex\textsuperscript{188}.

The State Commissions also organize the seminars and workshop with the NGOs to spread the awareness amongst the women.

(ii) Non-Governmental Organizations

From the mid-1970s onwards there was an emergence of many newly established organizations and activist groups. A large part of the activities of these groups has centered around combating atrocities and violence committed on women, dowry murder, brutal forms of maltreatment and exploitation. In many cases, women in distress have approached such groups or assistance in registering and follow up of cases, providing shelter etc. These activist groups have identified themselves with oppressed, victimized and harassed women and awakened new hopes, aspiration and consciousness.
among women on these issues.

Mumbai's Women's Centre publishes a newsletter in English. This centre and Street Adhar Kendra (Pune), Saheli (Delhi) and Sakhi Kendra (Kanpur) are centres that provide services to individual women.\textsuperscript{189}

The National Federation of India Women, The All India Women's Conference with 102 branches all over the country and hundreds of other women's organizations are rendering excellent services, to help victims reorder their lives. Dr. Vina Mazumdar, Director of the Centre for Women's Development Studies says that she was horrified when she listen the stories during a workshop conducted by her in the smaller towns and village of Punjab. Volunteers of Saheli, another large women's organization in Delhi had been approached by incest victims for help. In most court action is ruled out by the women themselves as the family's prestige must be preserved, at fell costs.\textsuperscript{190}

Suman Krishan Kant, Secretary of the Mahila Dekshita Samiti, Delhi says she was approached by a young women from Rajasthan who had been raped. The local police would not register
the complaint although she could identify her assailant and was prepared to get all the medical and then documents. She met an Member of Parliament from Rajasthan in Delhi and got the case registered.\textsuperscript{191}

Lawyer's collective and Action India both are Delhi based also worked on domestic violence against women with the recommendation of the definition of domestic violence in the Domestic Violence Bill, 2005.

There are so many Non-Governmental Organizations working in this field and helped women seeking redress either by offering them free legal aid or putting them in touch with lawyers concerned enough to offer their honest services. These organizations, despite the odds, have however, achieved some success in sparing their clients the drastic step of separation. Most have a family counseling center, volunteers of these organizations counsels the women who are facing domestic violence and their husband and in-laws to reduce them\textsuperscript{192}.

Women's social organizations or women's co-ordinating council are operating in West Bengal which coordinates the social
welfare activities of about 80 women's organizations, increasing women's awareness of their lights under the law. Even in comparative small place like Aligarh city there are two well known Non-Governmental Organizations providing reliefs to victims of domestic violence. Both the NGOs are government sponsored and redress the problem through counseling of both parties. Women welfare centre is being managed by advocate Ms. Roohi Zuberi and Family Counselling Centre, is looked after by dedicated persons likes Dr. Namita Singh.

Our study of law relating to domestic violence against women to provide relief to victims of domestic violence and analysis of the Response of judicial Administration as well as the role of social organizations convince us that though these agencies have done a lot in rescuing and rehabilitating women in distress much more need to be done in the field, Acknowledging it, Ram Ahuja also recommends a humanistic approach to the victims of domestic violence. According to him this approach includes (a) change of attitude, (b) creating rehabilitative programmes, (c) Evaluation organizational procedures.193
It is now generally realised by sociologists as well as by legal experts that crimes against women within four wall of house deserve a scientific study. The victims of domestic violence need a more humanistic response in our dealings. "Since crimes against women are partly the product of social systems and partly the result of individual pathologies, only a therapeutic attitude towards men committing crimes against women and a reformatory attitude towards institutional structures in our society can instill a healthy sense of confidence and dignity in women and help them lead a new life".\textsuperscript{194}

(iii) The Social Organization

One of the most important measures to prevent domestic violence is to redefine the concept of violence against women. This means seeing crimes like wife-beating, rape, dowry-death and murder as "acts of violence motivated by power and authority".\textsuperscript{195} Women organizations can bring to the notice of the public the dimensions of violent acts in the family. The masses have to be awakened and enlightened by organizing conferences, pressurizing legislatures and in many other ways regarding the concept of
violence. This task cannot be undertaken by an individual woman. An afflicted wife cannot easily convince fossilized members of the patriarchal society. But if a group of women of like-minded views join together and raise their voice against women's suffering through their organization, they can certainly make an impact. There is no denying the fact that through these organizations women can attack conservative and outdated social conventions and norms which require urgent overhauling.

Social support is emerging as the single most important factor in mitigating the impact of highly stressful situations. Formal support systems such as women's organizations are often able to provide more expert information than informal providers such as neighbor friends or colleagues. The emergence of more formal social support systems have made it possible for the suffering women to seek redressal rather than weep helplessly. "The assistance has been emotional, informational and tangible in nature. It has taken the form of public demonstration, protest marches, Slogan-raising, giving media coverage, distributing pamphlets, holding exhibitions, enacting plays, assisting parents in filing cases..."
in court, pressurizing the police, pressurizing authorities to amend existing laws and follow-up cases within police and lawyers". 197

In one of the issues of Manushi, its editor M S Kishwar tried to outline what women's organizations can do in the Indian context. She observed: "Women's organization alone cannot ensure that violence is eliminated from society or that every perpetrator of violence is punished or restrained. Women organizations cannot act as a substitute for the economic, social and emotional support a women needs. Only a supportive environment which includes the family, community, neighborhood and the society at large can provide this support system. What women's organizations can do is to act as catalysts for action to combat violence against women... and to press for the building of that supportive environment so that injustice and maltreatment can be resisted. 198

Buzawa and Buzawa in their famous work Domestic Violence (1990) have observed that "The modern movement for change in the police response to domestic violence arose from an unusual confluence of political and legal pressure from women's rights and battered women advocates, legal research and organizational
concern over the possibility of liability if the police continued past practices of neglecting domestic violence victims". In U.S.A. the initial tactic of advocates of change was to publicize the failures of the criminal justice system and obtain a federal commitment to force structural change. Sympathetic congressmen in the late 1970s and early 1980s pleaded with the Government for new legislations to provide succour to afflicted women. Subsequently, a widely cited report was issued by the U.S. Commission on Civil Rights, *The Federal Response to Domestic Violence* (1982). In this report, domestic violence was called "a civil right problem of overwhelming magnitude".

Responding to public criticism, police departments as an innovation adopted "family violence crisis intervention teams" technique. Such teams were expected to provide safeguard to women in distress. But like the operation of black cats for V.I.Ps, such police teams had limited operation. Most feminist organizations strongly stated that they believed that domestic violence is fundamentally a crime with a victim and a perpetrator. As such, they believed that the conflict resolution model typified by crisis
intervention teams did not satisfy victim's needs for safety nor protect her legitimate right to seek retribution.  

(iv) Women's Organizations in India

In India Women's organizations taking up feminist issues from a new angle emerged sometimes in mid-seventies. These groups engaged not only in fervent activism to assert women's rights but also made serious endeavours to give vent to the root causes of women's suffering in homes as well as in places of work. Though earliest attempts to establish women's organizations could be traced to the era of social work in 19th century and more effectively during the Nationalist Movement under Mahatma Gandhi, the real work started after independence. The chief characteristics of autonomous Women's Movement, according to Vibhuti Patel, are as follows:

i. Women organize and lead the movement.

ii. Fight against oppression, exploitation, injustice and discrimination against women.

iii. It cannot be subordinated to the decisions and necessities of any political or social group/organization.
There is no denying the fact that western women's liberation movement and its literature gave impetus to women's organizations in India. In the beginning the feminists were subjected to jeers and humiliations. They were labeled 'ambitious, egocentric, individualistic or careerist'. But gradually they established their distinct identity and widened their area of operation to family circles. Since mid-seventies women activists have taken up issues related to oppression of women like dowry, domestic violence and sexual discrimination. During the International Women's Year (1975) women's organizations got a formal boost by government agencies. The following year *Manifesto of the Progressive Women*, 1977-78 appeared. In 1975 a conference of women activists was held in Pune. Manila Sangathan Vahini (Patna) became very active in these campaigns. Progressive-organization of women (Hyderabad) launched a massive campaign against easing and dowry during 1974-75. In Delhi, conscious women's groups have started raising their voice against dowry murders.\(^\text{202}\)

In last One of the main sphere of activities of the National Commission and State Commissions for women to create co-
ordination between all the institutions fighting for the rights of the women and to address the issues of violence against women through interactive meetings with victims of crimes, Non-Governmental Organizations and officials; hearing complaints, undertaking investigation on grave matters affecting the legal rights of women. Numbers of meaningful initiatives have been taken by the commission in the form of constituting a Monitoring Cell, a Research & study Cell, an Investigation Cell and a Public Relation Cell.

It also looks after a country wide legal awareness programme for women to impart practical knowledge about the basic legal rights and remedies provided under various laws to prepare them to face the challenges of real life situations.

The Commission has carried out various studies and brought out reports and monographs on several important issues. The commission also conducts seminars and workshops in collaboration with state governments and Non-Governmental Organizations for understanding the various problem areas in the field and to suggest action plan remedial measures to resolve these problems.
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166. Hindustan Times, New Delhi, April 2, 2000.

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