WOMEN AND THE LAW

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Introduction

Empowerment of women is one of the major objectives of the Ninth Plan. The Approach Paper of the Government also recommends an integrated approach towards empowering women. This underscores the harmonization of different fronts viz. social, legal, economic and political. It also recommends the expeditious adoption of the National Policy for Empowering Women.[1] Unfortunately, this National Policy has yet to be placed before Parliament for discussion and adoption.

Meanwhile, the legislations bringing about reservation for women in panchayati raj institutions and local bodies have come for scrutiny in at least two High Courts in the years under survey. The unreserved approval granted by the judiciary to the provisions that seek to implement the government's population control measures calls for critical comment. The decisions also reveal the problems faced by women after being elected to these institutions. They underscore the need to strengthen the legislations with a view to ensuring the continued participation of women in local governance.

Violence against women, both within the family and without, continues unabated. Women continue to be on the receiving end at the hands of the law enforcement machinery as well. The courts continue to engage themselves on the fine interpretations of the penal rovisions to tackle the dowry menace.

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[1] Ibid.

The landmark judgment of the Supreme Court in laying the framework for a law to provide redress to women facing sexual harassment in the workplace is a significant step forward. As mentioned in the previous survey[2], the Supreme Court continues to be sensitive to the question of gender justice[3]. It has, however, not committed itself only to propagating the importance of gender justice but has expanded it to include gender equality. In spite of the continuing concern of the apex court, gender justice and gender equality which would have led to the empowerment of women have remained elusive. According to the Approach Paper of the Ninth Plan of the Government[4] "gender justice has remained a distant goal as more than two hundred million women are still illiterate in the country".[5] Another factor contributing to the sad state of affairs is the total lack of coordination of the two branches of the government - legislative and the executive - with the third branch - the judiciary. The role of the judiciary in this field is necessarily confined to pointing out the lacuna in legislation or to the need for new legislation to meet the changed social and economic factors in the country.

Women and Governance

Panchayats

The 73rd amendment to the Constitution, introduced Part IX relating to Panchayats. If properly implemented, this would perhaps go a long way in changing the status of women as they would become a part of the governance of the State. The Statement of Objects and Reasons of the Bill preceding the amendment traced the need for the change thus: "In spite of the Panchayat Raj Institutions having been in existence for a long time these institutions have not been able to acquire the status and dignity of viable and responsible peoples'

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[2] "Women and the Law", XXXII *ASIL*, 453.

bodies due to a number of reasons".[6] One of the reasons was the insufficient representation of women.[7]

Clause (3) of Article 243 D of the Constitution stipulates that not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women. The second proviso to Caluse (4) of the same Article further stipulates that not less than 1/3rd of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women. Article 243 (4) envisages that such reservation will be by a law made by the legislature of a State.[8]

The Rajasthan High Court in *Bhanwari Devi v. State of Rajasthan*[9] explained the importance of elections to the Panchayats. "Elections to the Panchayat Raj provides apotheosis for a training and participation in the larger sphere of democracy. The member elected must be permitted to perform his duties as such for a statutory term. Subsequent disqualification to hold the elected post would require proof of the highest order".[10] However, in dealing with the validity of a provision prescribing disqualification on the basis of the number of children an elected member has, the same High Court has preferred to defer to legislative wisdom.

Through writ petitions in the Rajasthan High Court, twelve elected panches challenged the orders of the Chief Executive Officers of their respective panchayats disqualifying them on the ground that each of them had, after the commencement of the amendment to the Rajasthan Panchayat Act 1994

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[6] Constitution (73rd) Amendment Act - Objects & Reasons - Digest of Central Acts, vol. 30, 1993, p.72.
[7] Ibid.
[8] This is consistent with the position under Article 246 (1) read with Entry 5, List II, Seventh Schedule of the Constitution whereunder making laws with respect to local government is the exclusive domain of State legislature.
[9] 1997 AIHC 608.

(`Rajasthan Act') which introduced s. 19 L, a third child born to them.[11] S. 19L of the Rajasthan Act disqualifies a panch from continuing as such if there is an addition to the family bringing the number of children to more than 2 after the commencement of the Act - 27.11.95. The proviso to this provision is that if the birth of the child is born during the period between the passing of the Rajasthan Panchayat Act 1994 and its date of commencement, i.e. 27.11.95, the disqualification will not be attracted.

The principal challenge was to the legality of the orders of the Chief Executive Officer and to the jurisdiction of the Chief Executive Officer to hold an inquiry in the matter of declaring a panch or a sarpanch as disqualified under s. 19 L.[12] It was contended that the Executive Authority had made the orders by merely serving a notice and without waiting for a reply to the allegation in the notice that there was a child born in the family which had raised the number of children of the panch to be more than two after the commencement of the Act.

The High Court accepted the contention of the petitioners that in the absence of the allegation in the notice having been accepted, the Executive Officer could not, in the exercise of his powers under s. 39, seek to summarily disqualify a member or panch. It was for the civil judge, under s.40, to hold the enquiry and then give his decision about the disqualification. The High Court disapproved of the orders of the Chief Executive Officer passed without an enquiry being conducted by the judicial authority as required under the Act.[13]

However, the High Court negatived the challenge to the validity of s.19L which sought to implement the government's population policy. It was argued for the petitioners that (i) there was no authority under the Constitution for the State

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[10] Id at 611.
[11] *Mukesh Kumar Ajmera v. State of Rajasthan* AIR 1997 Raj 250.
[12] Id at 255.
[13] Id at 261.

legislature to make such a law; (ii) in the absence of similar prescription of disqualification for members of Parliament or state legislatures, the provision was on the face of it arbitrary and discriminatory;(iii) the provision violated the right to life which included the right to procreate; (iv) there was no reasonable nexus between the restriction imposed and the object of the parent legislation and (v) the provision offends the religious freedom enshrined in Articles 25 and 26 of the Constitution.

The High Court sustained the state's legislative competence by referring to both Entry 5 of List II and Entry 20 A of List III of the Seventh Schedule to the Constitution. The latter entry in the Concurrent List reads: "Population control and family planning". The second ground was knocked out by holding that "Art. 14 cannot be used for declaring a law made by the State unconstitutional by a comparative study with other State laws or the law made by the Union."[14] Article 14 does not prevent the legislature of a state from the gradual introduction of reforms and even a single institution can be selected for the purpose of implementing its policy. In answering the ground based on the right to life, the High Court declared that the right to marry or procreate children is neither a common law right nor a right recognized by the Constitution.[15]

Strangely, on the question of rationality and nexus, the High Court acknowledged that "having more than two children does not in any way affect the working of the sarpanch"[16] even while it upheld the validity of s. 19L on the ground that "These provisions have been enacted by the legislature to control the menace of population explosion.... The social policy is designed to secure

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[14] Id at .

[15] Id at 259. the High Court also pointed out that the right to be elected was not a fundamental right and the right to privacy was not absolute. The High Court never answered the point raised on the bais of the religious freedom guaranteed under Articles 25 and 26.

[16] Id at 260.

social order for the promotion of the welfare of the people, adequate means of livelihood, raising the level of nutrition".[17]

It would, therefore, be clear that the main purpose of having the disqualification of more than two children is to implement the government's family planning programme. The object of the Panchayat Act as laid down in the Statement of Objects and Reasons introducing the Act, "to acquire status and dignity and to function as the units of self government", has taken a back seat. The hasty action of the Executive Officer in declaring more than 12 panches as disqualified brings out clearly the fact that there is a lack of coordination between the judicial and executive branch in the State. There obviously had been no effort to see that the legislation is implemented by the Executive Officer nor to make the officer understand the purpose of the new legislation dealing with panchayats.

The Haryana Panchayat Act too has a similar provision disqualifying a person from continuing to being a Sarpanch or a member of a Panchayat Institution if by the birth of a child one year after the commencement of the Act, the number of living children in the family is more than two.[18] This provision was challenged in a number of petitions before the High Court of Punjab and Haryana.[19] These petitions also raised similar grounds - that it impinged the right to life; that it was arbitrary and discriminatory as there was no corresponding provision disqualifying members of Parliament. [20]

The Haryana High Court rejected both these points of challenge. It referred to a decision of the Division Bench of that High Court[21] which had held: "to make life meaningful and worth living the legislature can provide (for) limiting one's family. How can the State assure one the right to work education and to public

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[17] Id at 259.
[18] S.175(1)(q)
[19] *Fazru v. State of Haryana* Punjab Law Report Vol.C XVIII (1998) 222. There were 20 other petitions in this batch.
[20] Id at 224.

assistance.... if there is no check on the ground of population?"[22]. The court also added that the petitioners had brought nothing special on record since the judgment given in 1996 for the court to come to a different conclusion.

The example cited by the High Court to meet the point regarding the absence of a similar disqualification for members of Parliament was that of nationalisation. It said: "There can be no doubt that nationalisation had to be done in a phased manner and all the institutions cannot be taken over at a time....The nationalisation in a phased manner contemplates that by and by the nationalisation will be taken over"[23].

One of the points which was raised in the Haryana cases which was not considered in the Rajasthan cases, was the objection of some of the petitioners that the two child norm and its violation leading to disqualification of the panches went against their personal law as some of the petitioners were Muslims. The claim was that there was nothing in their personal law which permitted family planning. The Court answered this by stating that personal law was not a fundamental right - the fundamental right was only to practice and propagate religion. But even this fundamental right is subject to public order morality and health. "The health can be of either spouse. Even for the sake of argument it be taken that under Mohameddan law such a restriction could not be imposed, still we have not the least hesitation in holding that there could be a proper Legislation for the health of the weaker section" and on that account the same cannot be declared to be invalid.[24] In any case the court pointed out that there had been no evidence given that the Holy Quran had implicitly prohibited family planning.

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[21] *Lala Ram v. State of Haryana* discussed op cit. at 223.
[22] Id at 224.
[23] Ibid.
[24] Id at 226.

Having disposed of all the objections raised by the petitioners, the Court explained the real purpose of s. 175 (1)(q) which disqualifies a panch from continuing to be a member of the Panchayati Institution if the person has more than 2 children after the commencement of the Act. "The Government is spending large sums of money propagating family planning. One of the agencies to which the project of family planning has been entrusted for implementation is the Gram Panchayat. The Panches and Sarpanches are to set the examples and maintain the norm of two children otherwise what examples can they set before the public?" Finally it said:"The Legislature has rightly come forward by imposing reasonable restrictions in the interest of the State ... how can one expect the citizens of this country to live with human dignity and social equality when the population goes on increasing by leaps and bounds".[25]

It bears mention that in neither decision of the High Courts is there an acknowledgment that the position of women in general in society gives them little say on the question of having a third child. The disqualification then makes it doubly discriminatory for a woman. It makes her suffer for a consequence she has no choice in bringing about. Secondly, no thought seems to have been spared to the harsh truth that it is the woman who is the prime target of all population control measures. Even while the debate on the safety of these measures for the health of the woman is raging, the linking up of the population control programme with the democratisation of grassroots governance raises doubts about the state's seriousness in seeing women play an active role in local administration.

Yet another problem that will require to be addressed is the dubious attempts already being made by the male members to avoid the pinch of such

[25] Id at 227.

disqualifications. These include disowning wives and children or giving away children in adoption. The woman, in such circumstances, would be rendered even more vulnerable. Parliament will need to relook at these provisions to plug these obvious loopholes.

The State should also bear in mind the reasons for which the Panchayat Raj Institutions had failed and it had became necessary to have the 73rd Amendment. If more than 20 civil writ petitions come before the Court on one point in one State only should not a second look be given to it so that it becomes more acceptable to the persons.

The decisions reveal that the Chief Executive Officer who is expected to implement the law continues to act in a arbitrary manner in total violation of the law. The legislation being of recent origin, and the awarenes of the provisions being low, it is conceivable that there were not too many challenges to doubtful decisions of the Executive Officers. The case of *Bhanwari Devi v. State of Rajasthan*[26] is an exception. The petitioner was elected as sarpanch of Gram Panchayat Ribiya. A complaint was filed by a Panch from the Panchayat that by delivering a third child after 27th November, 1995 she had become disqualified to continue as a sarpanch. On receiving the complaint, the Chief Executive Officer promptly set up an enquiry and after receiving the report issued a notice to the petitioner alleging that on birth of the third child she had incurred the disqualification to remain a sarpanch and gave a date within which if no reply came from her the assumption would be she had nothing to say. Bhanwari Devi's brother-in-law informed the Chief Executive Officer that she had not received the notice as she was staying with her parents and there was no way by which a reply could be got from her within the time stipulated. Without taking this into

[26] 1997 AIHC 608.

account, the Chief Executive Officer promptly declared her to be disqualified and held the post of sarpanch to be vacant.

Bhanwari Devi's challenged the order before the High Court. the Single Judge in his judgment explained that the ineligibility of a member to continue as provided under the Act can be divided into two parts - (1) a member becomes disqualified under Section 19(1) of the Act which deals with the provision about her having more than two children after the commencement of the Act (27th November, 1995); (2) the member incurs disability on account of his absence, removal from membership, resignation, death or his not taking oath on assumption of office (Section 39).[27] The law is clear that in the first case, i.e. under Section 19(1), the jurisdiction is given to the Civil Court. In the case of the second category the authority rests with the competent authority which is a quasi judicial body which could exercise the power of declaring a panch as disqualified after a proper inquiry.[28] Where in response to a notice regarding the attraction of disqualification under s. 19, there is an admission of the allegation, then the competent authority can declare the disqualification. Otherwise, the jurisdiction in such matters is that of the civil court.

In the instant case as there had been no admission by the petitioner about the birth of the third child, the disqualification, if any could only be determined by the court. The whole proceeding by the Chief Executive Officer was held to be "illegal and without jurisdiction".[29]

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[27] Id on p.609.

[28] Id on p.611. Sec. 39: (b) has absented himself from 3 consecutive meetings of the Panchayati Raj Institutions without giving information.
(c) is removed from membership or
(d) resigns from the membership
(e) dies or
(f) fails to take the prescribed oath or affirmation of the office with 3 months.

[29] Id at 612.

Apart from the type of problems faced by Bhanwari Devi, women member of panchayats face other type of problems which have led to some of them challenging the orders which have been passed disqualifying them from participation. *Shobha Ashok Patil v. Smt. Mahananda Rajaram Nikam*[30] was the case of an election in the Grampanchayat of Village Madha (Bombay). It was a multi seats ward and three candidates had to be elected. One of the seats was reserved for a woman. The Returning Officer had declared a male candidate as being elected even though he had received less votes than the petitioner. The first candidate to be elected was a woman who had received the higher votes among the women candidates; the second was the male candidate who had received the highest number of votes. It was for the third candidate that the Returning Officer bypassed the petitioner and declared another male candidate who had received less votes than her as being elected. His reasoning was that she had contested from a reserved seat and not a general one and therefore could not be elected to the general seat. On her filing a petition, the civil judge upheld the decision of the Returning Officer. She therefore filed a writ petition challenging the decision of the Returning Officer and the Civil Judge.

On appeal, the High Court set aside the order of the Civil Judge and held that according to Rule 34 of the Bombay Village Panchayat Election Rules, the requirement is that the Returning Officer has to declare the candidate who has secured the largest number of votes as elected with the proviso that where a seat is reserved for Scheduled Castes or Scheduled Tribes that will be declared first followed by the result of the seat reserved for a woman. After declaring the results of the reserved candidates the remaining seats will go to the candidate getting the highest number of votes. This may result in all seats being filled by candidates belonging to a particular category like Scheduled Caste, Scheduled Tribe or women.

[30] 1997 AIHC 427

The question before the court was whether candidates who had contested from the reserved seat were barred from contesting for the seat in the Panchayat. Relying on the judgementof the Supreme Court in *V.V. Giri v. D. Suri*[31] the answer given was in the negative. The Supreme Court had made clear the position that a candidate from a reserved cadre does not forego his right to seek election to the general seat merely because he avails himself of the additional concessions of the reserved seat by making the prescribed declarations for that purpose. The claim of eligibility for the reserved seat does not exclude the claim for the general seat; it is an additional claim.[32]

The Division Bench before whom the case went referred to the fact that reservation for women and Scheduled Castes and Scheduled Tribes "is in the nature of a facility given to them or concession made to the weaker section of the society in order to offer them a reasonable opportunity of being represented in the Administration ..... there is no objection if more members from these weaker sections are elected to the Village Panchayat or other elected bodies".[33] The interpretation given to Rule 34 also ensures the fulfilment of another "important requirement of the democratic set up of the institution viz. those candidates who are favoured by the electorate and in whose favour highest number of votes are cast must represent the constituency".[34]

The election of the second male candidate was set aside and the woman candidate who had received more votes than him was declared elected along with the two other about whom there was no controversy.

There is another method by which Sarpanches are prevented from completing their term in office. This is by the adoption of no confidence against them.

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[31] AIR 1959 SC 1318.
[32] Id at 1326.
[33] *Smt. Manjuli v. Civil Judge* 1970 Bom 1.(?)
[34] Cited and quoted on p. 427 of supra note 30.

ile there are rules made as to how a no confidence motion must be handled - ke who will preside over the meeting and to whom should the notice of no confidence be sent, there is no requirement that the reasons for asking for a no confidence motion be given. Men are even today reluctant to accept a woman as a member and participate equally with them in the meeting. But as the law requires that atleast 1/3rd of the members must be women, as well chairperson, this has been one method adopted to prevent them from functioning.

In *Smt. Budho Devi and Another v Deputy Commissioner Gurgaon,*[35] a petition was filed by a member who had been elected as President of the Municipal committee for quashing the notice given by the Sub-Divisional Officer asking her to attend the meeting of a no confidence motion. The requisition to call the meeting was submitted by nine members - a clear majority[36]. But the clear 15 days' notice, mandated by the rule, was not given. The notice issued by the SDO was quashed thereby taking a strict view of the violation of a mandatory requirment notwithstanding that a majority of members had asked for the meeting.

In contrast to the case of *Budho Devi* was the case of *Dhumadandhin v State of Madhya Pradesh*[37] where a rule regarding the holding of a no-confidence motion was before the court. The petitioner in this case was elected as Sarpanch of the Panchayat Govindpur. Within a little over a year of her election, a notice to consider a no confidence motion against the petitioner was received by the prescribed authority. A tehsildar was appointed to fix the date of the meeting and preside over it. The date was fixed and the meeting was held where the no confidence motion was passed by a majority. The petitioner challenged the decision of the meeting on the ground of violation of Rule 3(3) of the 1994 Rules of Madhya Madhya Pradesh which lays down that there should not be more than

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[35] .Vol. CXX (1998-3) PLR 239.

[36] . Sub-Rule (1) of Rule 72A Haryana Municipal Election Rule 1978.

15 days from the date of the receipt of the notice and the date of the meeting. The meeting fixed by the tehsildar was beyond the 15 day period. The judge conceding that the rule casts a duty on the prescribed authority to fix the meeting within 15 days but added that questioning the validity of the meeting will mean that the will of the members who had voted for the no confidence motion will be defeated on account of delayed action of the prescribed authority. He therefore held that the "no confidence passed against the petitioner beyond a period of 15 days from the date of the notice cannot be held to be illegal".[38]

An additional ground for denying relief to the petitioner was that she had not challenged the notice fixing the date. No case had been made by her that she was in any way prejudiced on account of the meeting having been held beyond the period of 15 days. This decision requring the petitioner to demonstrate prejudice despite there being a violation of a mandatory provision does appear to be of doubtful validity. The rule certainly does not envisage the casting of such onus on the petitioner.

Municipalities

The provisions for reservation for women in municipal bodies introduced by the 74th Amendment to the Constitution are similar to the ones pertaining to Panchayats. The problems faced by women members are no different either.

In *Saroj Chotiya v. State of Rajasthan,*[39] the petitioner was elected as a member of a municipal board. Three months thereafter, on December 12, 1995, she gave birth to a third child. The child was conceived at a time when proviso (e) to s.26 (xiv) of the Rajasthan Municipalities Act, 1959 required the birth of the third child

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37. AIHC 1997 3694.
38. Supra note p. 3696.
39. AIR 1998 Raj 28.

ake place within one year from the date of commencement of the amended ovision (November, 1992) in order to avoid the disqualfication resulting from the birth of such third child. Even before the third child was born, the proviso was further amended with effect from April 26, 1995 to extend the one year period to three years.

A notice was served on the petitioner on November 30, 1996 seeking to disqualify her. The Deputy Secretary, Local Self Government, after considerng the petitioner's reply, placed her under suspension pending judicial enquiry. The pettioner challenged her suspension on several grounds, similar to the ones raised by the the panches in the case of *Mukesh Kumar Ajmera.*[40] Once again the High Court negatived the challenge. Terming the population problem as being "more dangerous than a hydrogen bomb,"[41] the High Court held the disqual;ification introduced to be based on "public policy and...in the public inerest and in public good."[42] The point that in the normal course, she would have given birth to the third child in November and in that event she would not have attracted the disqualification was rejected on the ground that "the petitioner was in the know of the law at the time she conceived."[43] The case serves as one more instance to show that population control has overridden the real intent of the 74th amendment which was to provide women opportunities to participate in local self government.[44]

The facts in *Ashok Kondiba Yenpure v. State Election Commission*[45] were that the State had reserved eight out of thirteen offices of Mayors in the Municipal Corporations. The post of Mayor of Pune Corporation along with four others were notified as being unreserved. The petitioner, who had been elected from

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[40] supra note 11.
[41] supra note 39 at 32
[42] Id at 31.
[43] *Id* at 33.
[44] See Objects and reasons of the Constitution (74th Amendment) Act, Digest of Central Acts, Vol.30, 76.
[45] 1998 (2) Mh. LJ 741

an unreserved seat, submitted his nomination for election as Mayor. His nomination was accepted. The nomination of a woman councillor who had got elected from a ward reserved for women was also accepted. this was challenged by the petitioner contending that having been elected from a reserved ward, she could not file a nomination for the post of a Mayor of an unreserved ward. the Full Bench of the Bombay High Court rejected this contention and held that all "councillors... irrespective of the fact whether they have been elected on a reserved or unreserved category are leigible to seek election for the office when it is unreserved or falls under the general category."[46] The court also relied on a Supreme court ruling where the basis for having reservation was explained: "The idea of providing reservation for the benefit of the weaker sections of society is not only to ensure their participation in the affairs of the municipality but it is also an effort to improve their lot...[I]t would be a contradiction in terms if members belonging to that section are debarred from standing..."[47]

Parliament

A housewife in Kerala approached the High Court seeking a writ of quo warranto against two members of parliament (MPs) - Sharad Yadav and Tasleemuddin - for obstructing the passage of the Women's Resrvation Bill in Parliament and thus violating their oath of allegiance. She contended that it was the fundamental duty of every citizen to renounce practices which were derogatory to women and these two MPs had, by speaking against women in Parliament and preventing the discussion on the Bill of crucial importance, committed a breach of allegiance to the Constitution.

[46] Id at 747.
[47] Id cited at 748

A Single Judge of the High Court held that the question of disqualfication of MPs was to be decided by the appointing authority and not the court under Artilce 226 of the constitution.[48] The case is significant for the fact that a housewife, not perhaps personally affected, had decided to agitate the issue of reservation for women in Parliament in the High Court. It might well be possible that the sustained effort of a few more such women will also bring about the necessary changes to the state legislations governing panchayats and municipal bodies.

Violence against Women

Violent crimes against women are on the increase as revealed by the Report of the National Crime Records Bureau of 1998.[49] Crimes against women reported an increase of 8.3% over 1997.[50] As the Report mentions, the battle against crime against women have to be waged by the various sections of society. It includes reforms in the criminal justice system as the percentage of those convicted is dismally low - rape 4.4%, dowry deaths 4.9%, sexual harassment 14.4% and cruelty by husband and relatives 2.6%.[51] Despite urging that there should be campaigns and various programmes against the battle against crime against women, women continue to suffer due to lack of awareness of their oppressive practices and customs.[52]

It is against this background one will see how some of the cases were handled by the courts and the police.

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[48] *Suja Devi v.Sharad Yadav* 1998 AIHC 141. The Judge relied on a judgment of a Full Bench of that High Court in *K.C.Chandy v. V.R. Balakrishna Pillai* 1985 KLT 762.
[49] Crime in India 1998 National Crime Records Bureau, Ministry of Home Affairs.
[50] Id 5.3.1. at 156.

[51] Id Table 5.6 at 161.
[52] Id 5.1.1. at 151.

In *Balram Prasad Agrawal v. State of Bihar*[53] a young married woman of 28 years with two young boys drowned in a well in the middle of the night. The history of her married life was unrelieved misery. The ill treatment meted out to her was because she did not bring enough dowry and also did not have any children in the first years of the marriage. The usual threat of remarriage of her husband was added to her ill treatment. The father of Kiran, the young woman in question, got her treated and she had two boys. Unfortunately the ill treatment continued as the demand for dowry could not be fulfilled. Unable to stand the ill treatment any longer she tried to jump into the well but was saved by her neighbours. She then made a report before the concerned police station against her husband and in-laws. After that she started living in her parental house.

But as is usual in such cases, there was a compromise with the husband at the instance of Kiran's father and she went back to her husband's house. The situation did not change for her and one night unable to stand the torture any further she jumped into the well which was at the rear of the house - 25 yards away - only this time there were no neighbours to save her and she drowned to death.

Next morning her husband informed her father. After seeing the dead body of his daughter and hearing from the neighbours that the night before there was a lot of shouting and noise in the house and that they had heard his daughter crying and weeping as she was being assaulted by her in-laws, the girl's father went and lodged a complaint against the husband and the in-laws. After investigation, the police submitted a charge sheet under sec. 498A, 302 and 120B.[54]

The case was committed to the Court of Sessions and the learned judge after framing charges under Sec. 302 read with Sec. 34 came to the conclusion that

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[53] (1997) 9 SCC. 338

[54] s.498-A- torture or cruelty by husband and/or in-laws, 302 murder, 120B Criminal Conspiracy

osecution has failed to make out a case of murder . It is interesting the e did not rule out that there was evidence that Kiran used to be assaulted nd there was demand for dowry and there were threats given that they would kill her. However, since the marriage had taken place 10 years ago there could be no presumption that she might have been killed for dowry. What makes the situation incredibly difficult to understand in view of the growing violence to women by the husbands/in laws is the so-called helplessness of the judge who had "no doubt.... that the accused person committed murder of Kiran ... but in view of the fact that there was no legal evidence"[55] he was helpless. A single judge of the High Court was also of the same opinion that there was no evidence to show that the accused was responsible for the murder of Kiran. If the matter had rested there then obviously the accused person or persons could not be convicted and they would have gone free inspite of their heinous crime.

Fortunately, it was left to the Supreme Court to see that some justice was done. The Counsel had argued that Kiran had suffered a consistent course of cruel conduct and had even earlier tried to commit suicide. What other evidence was required by the Lower Courts is difficult to understand. It is hardly likely that a mother of two young children would throw herself into the well which was 25 yards away from the house in a winter's night unless she had been driven to it. The Supreme Court while agreeing that the prosecution had not been able to make out a case of murder against the husband held it was fully established that the accused did subject her to such cruelty which forced her to commit suicide. The Court also pointed out that "unfortunately the learned trial judge failed to examine the alternative case under s. 498 A which got squarely attracted on the facts of the present case.[56] The Court therefore convicted the husband and the brother-in-law of offences punishable under s. 498 A.

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[55] supra note 53 at 342

[56] Id at 343.

This case does show the need for judges of the trial court and even of the High Court that failure to convict for murder does not mean straightway that there will be no conviction.

In *Pyare Lal v. State of Haryana*[57] a young wife was harassed and treated cruelly by her husband. There was a demand by the hsband that a shop and two houses constructed by the wife's father should be transferred to him. The father did not oblige but gave himrs.5,000 instead. Matters did not improve and the duaghter lived with the father for almost two years at the end of which an agreement was signed by the parties and she went back to live with her husband. Unfortunately, the beatings did not cease. To add to the problems, her in laws turned out the son and his wife. The father-in-law could not be persuaded to keep them "even on invoking his compassion for the impending delivery of a second child by the deceased."[58] After moving to a rented house, she asked her father to come over to their house as the hhusband was illtreating and harassing her. However, the father said that she should have her child at her in-laws house after which he would bring her over. This happened again for a second time after which the girl committed suicide without leaving a suicide note.

The question arose whether the husband could be convicted for causing a dowry death witin seven years of marriage. The trial court convicted the husband for the offences under s.304 B as well as s.498 A IPC. The Supreme Court, in appeal, held that there was no evidence of a dowry demand. Merely because there had been demands and the suicide of the woman was within seven years of marriage, the offence would not autmatically come within s.304 B. The court conjectured that her action may have been prompted by her disappointment at her father's attitude in "not opening his arms to give her instant shelter".[59] The

[57] (1997) 11 SCC 552
[58] Id at 553.
[59] Id at 554.

conviction under s.498 A was, however, upheld. As he had already served three and half years'sentence, the court directed that the husband did not have to surrender to his bail bonds.

How low can a person stoop to get a large dowry is amply demonstrated in the case of *K.Sujathav. Government of Andhra Pradesh.*[60] In a writ of habeas corpus the petitioner, a young advocate, alleged that her father-in-law was illegally detaining her husband and sought his release. The two had met as law students and got married in Gujarat. Thereafter her in-laws created differences between the two and her husband was sent away by his father to Gujarat. All her efforts to trace her husband proved futile. The father-in-law even got an injunction against her from entering the house claiming that she was a stranger. She filed for restitution of conjugal rights and maintenance. At this stage the husband came forward with an incredible atory that he had been forced to marry the girl since she and her sister had threatened to commit suicide.

The girl's ftaher met the boy's father and paid him Rs. 1 lakh as dowry. The boy's father promptly accepted this but insisted that the amount was too meagre and that it should be Rs.10 lakhs. The High Court concluded that the marriage had failed on account of the father-in-law's insistence on dowry and the timidity displayed by the husband. The petitioner in frustration represented to the High Court that "enough is enough. I am tired of this life. From out of the hard earned money of my parents, already a good part of it was spent towards dowry, marriage and litigation expenses.If at least this is compensated in a sum of Rs. 2 lakhs, I would treat the whole thing as a bad dream and look forward to a new chapter in life."[61] The High Court directed that the girl be paid Rs. 2 lakhs by the husband and his father. The fact that the High Court virtually let the culprits off the hook after coming across such a glaring instance of giving and acceptance of dowry is not a little disconcerting.

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[60] 1997 (2) ALT 487

Violence against women can take many forms. Harassment need not be physical but a hapless woman can be subjected to continuous taunting for not bringing enough dowry. Worse still, she can be branded as a person of unsound mind and be packed off to a mental asylum. Anamika Chawla's husband and father-in-law got an order passed by the Metropolitan Magistrate behind her back to show that she needed psychiatric treatment. The Magistrate, relying on the certificates of two psychiatrists who did not even examine her, ordered Anamika to be admitted to a psychiatric centre at Delhi for treatment. Anamika then petitioned the Supreme Court which found, after a number of hearings, that there was not "the slightest abnormality in her behaviour".[62] After attempts by the court in bringing about reconciliation between the husband and wife were unsuccessful, the court felt that no useful purpose would be served in prolonging the mater. The curtain was brought down on the unhappy episode with the Supreme Court quashing the order of the Metropolitan Magistrate. The tame ending of the case is indeed disappointing. In the first place this whole exercise took two long years and the harassed woman was left entirlely to fend for herself. She was not awarded either compensation or costs for the agony she underwent. Neither of the psychiatrists who gave the false certificates that precipitated the illegality were pulled up for what clearly was professionally unethical conduct. Also the Court, in closing the case with a five paragraph order, did not acknowledge the need to prevent abuses of the process of law in future. It failed to make those responsible for Anamika's plight answerable in law.

Cruelty of the Wife

In contrast to the cases mentioned above, in two cases decrees of nullity and divorce have been granted to husbands because of the wife suppressing an

[61] Id at 495.

important piece of evidence and on account of her conduct being regarded as cruel to the husband.

In the first case[63] the wife had an operation a few years before her marriage to the petitioner, by which her fallopian tubes had been removed and she could, therefore, not conceive a child. The petitioner filed for divorce on the ground that his consent to the marriage was obtained by *supressio veri* . He produced the medical certificates which remained unchallenged by the wife. The High Court granted the husband a decree of nullity under s. 19 of the Indian Divorce Act, 1869.[64]

In the second case, the wife's petition seeking divorce on the ground of cruelty was rejected holding that it was the wife who had treated the husband with cruelty.[65] The wife's case was that she had been beaten up and turned out of her matrmonial home with her young daughter . On the intervention of the panchayat, she went back and stayed for four or five months when she was again beaten up and turned out of the house. The husband was also not paying maintenance. The husband while denying this stated that he was taken to the police station, detained there for five or six days and forced to give a divorce to his wife but that he declined.

According to the High Court the wife was unable to give any specific instance of cruelty and that even if she were to be believed "sometimes he beat her on any account but that is an ordinary wear and tear of matrimonial life, which only amounts to disharmony and not cruelty."[66] The court proceeded to conclude that

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[62] *Anamika Chawla v. Metropolitan Magistrate* (1997) 5 SCC 346.
[63] *Benjamin Doming Cardoza v. Mrs.Gladys Benjamin Cardoza* 1977 (1) Mh LJ 536.
[64] s.19: Nothing in this section shall affect the jurisdiction of the High Court to make decrees of marriage on the ground that the consent of either party was obtained by force or fraaud.
[65] *Rani v. Amar Nath* Vol CXV (1997-I) Punj LR 511
[66] Id at 513.

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[65] *Rani v. Amar Nath* Vol CXV (1997-I) Punj LR 511
[66] Id at 513.

it was the "wife who has treated the husband with cruelty. She cannot be allowed to take advantage of her own wrong."[67]

The judgment is, to say the least, extraordinary as there is no indication as to what would amount to cruelty - rather, how severe does the beating have to be!! It is regrettable that a learned judge of the High Court and that too a woman judge should condone domestic violence in this manner.

Women and Police

Where violence to a woman is concerned and lower courts have acquitted the culprit or culprits, the Supreme Court has, by carefully by scrutinising the evidence, convicted them by underlining the importance of s. 498A. But when the culprits have been policemen, the attitude of the Court has been rather ambivalent. Reduction of sentence has been the rule it would appear. In the two cases where the culprits were policemen this comes out clearly.

Phoola Devi was a member of the Janpad Panchayat and Gram Panchayat and was a social worker in the same area. According to the prosecution, 4 constables of the Special Armed Forces (SAF) were camping there to look after the law and order situation but they were indulging in anti social activities and were responsible for gambling and illicit distillation. Their actions had created a terror among the villagers and Phoola Devi had taken up the cudgels against them. She had also planned to submit a representation to the Company Commandant of SAF who was scheduled to visit the village. Unfortunately the visit was cancelled. However, the four constables and the major had come to know about her plans to complain.

[67] Id at 514.

Five of them, the four constables and the major, entered Phoola Devi's house on the pretext that they had heard that she was in possession of ganja and an unlicensed pistol. On her denial they abused her and one of them started beating her. Then all of them dragged her outside the house and continued to beat her and to also drag her to the police station. After reaching the police station they took an assurance from her that she would not lodge any complaint and would also pay them Rs. 150/-. They, then, let her go. She then went to Chatarpur and lodged a complaint after which she was sent for medical examination. The doctor gave his report but out of fear she did not return to her village but went to a nearby town where she died after 4 days.

Her death was reported and the doctor performed the autopsy. The report was that she had died of a ruptured liver and excessive bleeding. On receiving the post mortem report and after completing the investigation, the police submitted a charge sheet against the constables and the major. As expected the constables and the major completely denied the charges and their contention was that they had recovered an unlicensed pistol from the possession of Phoola Devi and that is the reason why they had brought her to the police station bur she had managed to run away from there. The Trial Judge after examining the eye witnesses and the medical evidence held that the assault by lathi and stick had resulted in the rupture of her liver which had led to Phoola Devi's death. Regarding the Major Sukhpal, the Trial Judge held that though he was present, he did not participate in the beating and he is therefore not liable for her death and he was acquitted. The four constables were sentenced to five years rigorous imprisonment.

The High Court concurred with the findings against the four constables but reversed the acquittal or Sukhpal.[68] The court held merely because he did not actually participate in the beating did not mean that he was not a party to it as he

[68] *Sukhpal v. State of M.P.* (1997) 9 SCC 773.

was present right through and did nothing to stop the beatings. Evidently he approved of the beatings and the other members were acting under his direction. The High Court therefore recorded the impugned convictions against him.

The vigilant Supreme Court pointed out that if the defence contention was correct that there was an unlicensed pistol recovered from Phoola Devi's house then a seizure memo should have been prepared and a case registered against her. Also their claim was that she had escaped from the police station. If so there should have been some daily diary entry and a prosecution launched against her for escaping from lawful custody. But neither of these were there to support the defence account.

The last point raised by the defence was that the parties could be held guilty only of causing hurt and not of culpable homicide not amounting to murder as the first doctor's report held that she had some injuries but not as serious as those found by the second doctor who had examined her 6 days after her death. Therefore it was conceivable that these injuries were sustained later. But carefully examining the reports, the Court clarified the difference between the two reports. The first doctor found 4 injuries and the second 6 injuries which were in the buttock and could not have been noticed without disrobing her. After her death there was no such inhibition by the doctors and both of them agreed that the death was due to ruptured liver and excessive bleeding.

The Supreme Court therefore confirmed the concurrent findings of the lower court and the convictions of the four constables and Sukhpal and held him guilty of culpable homicide not amounting to murder and all of them were responsible for the death of Phoola Devi. Regarding Sukhpal they held that the acquittal being set aside was fully justified.

But for reasons not spelt out clearly the Supreme court reduced the sentence of 5 years to three years. It is true that the Court decided to impose a fine on the police men - all five of them which if realised would be paid to the heirs of the deceased. The fine was to be Rs. 10,000 for the policemen and Rs. 20,000 for Sukhpal. But considering that this was the only case where a member of the panchayat was killed by the police when they were there to look after the law and order of the place but instead they were indulging in anti-social activities and created a terror among the villagers the sentence of reduction seems difficult to understand. Because Phoola Devi had taken up the cudgels against them they deliberately beat her up and did so mercilessly. If one considers the effect which a reduction of punishment will have on the other villagers one wonders why in the case of policemen the Supreme Court has adopted this attitude.

In the second case[69] the admitted facts were that the police misbehaved with 2 ladies and outraged their modesty and took them into the lock up in the early hours of the morning. When two persons tried to intervene they were beaten up. This led to an enquiry but they refused to appear before the Enquiry Officer. The Enquiry Officer was therefore constrained to record the findings and recommend the stoppage of three increments with cumulative effect based on the findings of the Enquiry Officer's report, the Superintendent of Police awarded the punishment of reduction in time scale of pay for three years with cumulative effect to one of them and removal from service for the other.

After considering the Report of the Enquiry Officer the Court considered the question of punishment and decided that the Enquiry Officer was justified to impose the penalty of stoppage of three increments. The Court therefore set aside the order of removal and imposed the punishment of stoppage of four increments with cumulative effect. To misbehave with women at night and then

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69 .*State of T.Nadu v. M. Natarajan* (1997) 6 SCC 415.

take them to the lock up at the middle of the night and regard this as only outraging the modesty of women does not say very much about the court's recognising the need for protecting the dignity and status of women. A critical comment made editorially was that "the conduct of the two delinquent policemen to say the least was outrageous...Flea bite penalties against police atrocities do not seem to accord with the call of the times.[70]

SEXUAL HARASSMENT

A study done by the International Labour Organisation in 1992 wrote that sexual harassment of women is acquiring a menacing dimension the world over compelling many of its victim to quit jobs or suffer humiliation. 23 countries were surveyed (but it did not include any of the South Asian countries). But the picture, as the Report said, was a disquieting one - 15 to 30 per cent of the women who were working had been subjected to sexual harassment. The sexual harassment they were subjected varied from explicit demands for sexual intercourse to offensive remarks and one out of 12 women had had to quit her job or had been fired.[71]

But in spite of this report no positive steps had been taken in India to deal with this problem but that did not mean that there was no sexual harassment faced by the working women. The fear of losing their jobs or being subjected to further humiliation kept many of them quiet. The two provisions of law which could be of help to any one wishing to take action was sec. 354 and sec. 506 of the Indian Penal Code.[72]

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70. Ed. Comment Ibid.

71 Reproduced in Noorani, A.G.` Sexual Harassment and the Law', Span, August 1993, p. 17.

72 . Assault or criminal force to woman with intent to outrage her modesty; criminal intimidation....impute unchastity to a woman.

There are however a few cases where the woman has taken up her fight seriously and also been able to win. Suman, a Doordarshan Producer in Hyderabad took her boss Chawla to Court. She had complained about his behaviour to the DD Welfare Association saying she was being harassed and teased by him for over three months. But the only outcome of her complaint was that she was transferred to Lucknow. But she pursued the case and filed two separate cases in the Metropolitan Magistrate's court and the first one was charging Chawla of outraging her modesty.

The second case is where a clerk in the pay and accounts office in Hyderabad complained to an NGO association against two male superiors who had tried to molest her during office hours. Though her complaint was followed by a series of dharnas, an inquiry committee headed by a woman exonerated the guilty officer. But under pressure from the activists the Government was forced to transfer them.[73]

The third case is one which should be given a great deal of publicity so that women who are being harassed will pick up courage to fight back. Shehnaz Sani, a Saudi Arabian Airlines employee was fired after she protested against her senior's sexual advances. The Bombay High Court has ordered that she be reinstated and paid 13 years' foregone wages. Her courage in fighting this case was tremendous as what added to her problems was the fact that her husband worked in Saudi Arabia and was threatened with retrenchment if his wife took an aggressive stand against the airlines. But as she said she could not submit and she "fought this battle entirely on my own".[74]

Sujata Kohli an advocate in the Sessions Court was allegedly molested and assaulted by the Secretary and a senior member of the Delhi Bar Association.

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[73] .Shama Chatterjee, The Free Press Journal 29.11.97 reproduced in RCWS Newsletter Winter Issue 1998 p. 9.

[74] Namita Devidayal. The Times of India 29.11.98 reproduced in RCWS Newsletter Winter Issue p.10.

Even the police in the police post in the compound refused to intervene. The case filed under sec. 354 and sec. 506 is still continuing and she is fighting a lone battle.[75] Gita Karlekar, a typist in a private firm in Mumbai lost her job for refusing to have an affair with her boss. She told the Labour Court about this reason for her termination but could not convince the judge who said "Why should any man want to chase you".[76] Chaula Karuva, the Public Relations Officer at the Gujarat Tourism Development Corporation was dismissed for having lodged a formal complaint against the misconduct of her IAS officer boss. She took the case to court and the Gujarat High Court ordered her department to reinstate her with full back wages and her boss was transferred following an inquiry. One of the few cases where the woman had the courage to take the case to court and also win but the IAS fraternity on her return to work continued to harass her for her crusade against one of their colleagues.[77] Another case was that of an officer in the nationalised bank in Delhi who had complained of harassment by her boss who insisted she stay back till late hours and tried to get physically intimate. She was charge sheeted and asked to explain why she talked about this to others and brought a bad name to the bank. When she complained to the grievance committee she was charge sheeted again.[78]

Often complaints are not taken seriously because the complainantis are told that he is a married man or that he is over fifty years of age. AIDWA had raised the question of the misbehaviour of a joint director married and in his late fifties who misbehaved with his female colleague. The advice given to the Association was that a "man of 55 years is harmless and they should withdraw the complaint". However when the Association brought this to the notice of the then Chief Minister Karunanidhi, he promptly got the officer transferred.[79]

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[75] .Laxmi Murthy, Business Line dated 15.9.97.

[76]. Shama Chatterjee, The Free Press Journal 29.11.97.

[77]. Shama Chatterjee, Ibid.

[78]. Ibid.

[79]. Ibid.

Women who are active in the work of the Union are particularly the target of harassment by the employers. Amarjeet Kaur of the All India Trade Union Congress gives a number of examples where this happened even in a place like Delhi. In a watch manufacturing unit in Daryaganj where the most dynamic woman worker leading the agitation was harassed by the management and even told to leave the Union because other Union leaders would force her into prostitution. The management of an electronic industry in Okhla wrote letters to the parents of the young women who were active in the Union complaining about their indulging in 'anti-social activities'. The young women had to face the wrath of their families plus the effort of the management to break their strike.[80]

No change have been made in the law to improve the situation even though as far back as 1984 an article had drawn attention to the fact "Sexual harassment of women at the workplace is an important instance of the oppression of women through sex and terror. This combination of sex and terror is central to the oppression of women in family, on the streets, at the work place".[81] It was the Supreme Court who in 1997 gave a landmark judgement to deal with this problem in *Visakha and others v State of Rajasthan and others.*[82] The petition was filed by a number of women's organisations following the gang rape of Bhanwari Devi, a Sathin in Rajasthan during the course of her work of preventing child marriage. The Supreme Court pointed out that each "incident reveals the hazards to which a working woman may be exposed and the depravity to which sexual harassment can degenerate and the urgency for safeguards by an alternative mechanism in the absence of legislative measure. Each such incident results in the violation of the fundamental rights of "Gender Equality" and "The Right to Life and Liberty".[83] The violations are under Articles

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80. Amarjeet Kaur AITUC, supra n 5.
81. The Sunday Observer 13/5/84.
82. (1997) 6 SCC 241.
83. Id on P. 247.

14, 15 and 21 and as it was pointed out that "one of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(g) to practice any profession or to carry out any occupation trade or business".[84] The responsibility for ensuring the safety and the dignity of the woman is through legislation and the executive taking action but the Court did not abandon its responsibility but felt that "some guidelines should be laid down for the protection of these rights to fill the legislative vacuum".[85]

The court said:"The power of the Court under Article 32 for the enforcement of the fundamental rights and the executive power of the Union have to meet the challenge to protect the woman from sexual harassment and to make their fundamental rights meaningful. ...Gender equality includes protection from sexual harassment and the right to work with dignity which is a universally recognised basic human rights".[86] The International Conventions and norms are therefore of great significance in the formulation of the guidelines to achieve this purpose.

The Government has ratified the recommendation of CEDAW and the relevant Article 11 - "Equality in employment can be seriously impaired when women are subjected to gender specific violence such as sexual harassment". The International Conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law is now an accepted rule of judicial construction.

In exercise of its power under Article 32 the court laid down guidelines and norms for observance at all working places and institutions until a legislation is

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84. Ibid.

85. Ibid.

86. Id on p. 249.

enacted for the purpose. The guidelines were directed to be treated as the law declared by the Court under Article 141 of the Constitution.[87]

Following the Supreme Court judgement, the University Grants Commission Directive forwarded to all the institutes of higher education to implement the Supreme Court guidelines on prevention of sexual harassment in the Universities. It has also circulated a set of guidelines to all heads of universities to set up cells to deal with individual cases. There is however some confusion in the Universities as to whether the UGC guidelines are recommendatory or mandatory.[88] The members of the Committee appointed by the JNU University were faced with this difficulty as their reports to the Vice-Chancellors about cases of sexual harassment with recommendation of action to be taken received the reply that only University authority according to the Rules can take action. Delhi University was taking a long time in setting up the complaints cell and ensuring the person about the confidentiality. SNDT Women's University set up a cell with 8 members including representatives of students council and teacher representative from the Association. Indian Association for Women's Studies and Human Rights Programme - Central University will be organising a two day consultative to clarify the questions about the UGC circular and its effect on the guidelines of the Supreme Court Judgements.

The judgement of the Supreme Court has been referred to as a landmark in judicial history. It "explicitly defined sexual harassment in workplace and laid clear guidelines to prevent their occurrence and required the fact that sexual harassment is an impingement of human rights.[89]

Towards a safer workplace:

87. Id on p. 251.

88. 15 July 1998 UGC/1598/102/98

89. Advocate Mihir Das of the Mumbai High Court and the other participants who participated in the seminar to discuss the judgement.

The guidelines of the Supreme Court in brief

1. It shall be the duty of the employer or other responsible persons in workplaces and other institutions to prevent or deter the commission of acts of sexual harassment, and to provide for the resolution, settlement and prosecution of sexual harassment by taking all steps required.

2. **Definition:** Sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as : (a) Physical contact and advances; (b) A demand or request for sexual favours; (c) Sexually coloured remarks; (d) showing pornography; (e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

   The Court noted "It is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work, including recruitment or promotion, or when it creates a hostile work environment.

3. **Preventive Steps:** All employers or persons in charge of workplace, whether in the public or private sector should take appropriate steps to prevent sexual harassment:

(a) Express prohibition of sexual harassment at the workplace should be notified, published and circulated.

(b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment, and provide for penalties against offenders.

(c) Steps should be taken by private employers in the standing orders under the Industrial Employment Act, 1946.

(d) Work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces.

4. **Criminal Proceedings:** Where such conduct amounts to a specific offence under the Indian Penal Code or any other law, the employer shall initiate action by making a complaint with the appropriate authority. In particular it should ensure that the victims or witnesses are not victimised or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator, or their own transfer if they so desire.

sciplinary Action: Where such conduct amounts to misconduct as defined by ne relevant service rules, disciplinary action should be initiated by the employer.

Complaint Mechanism: Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate, time-bound complaint mechanism should be created for redrassal of complaints.

7. **Complaints Committee:** The complaint mechanism should provide, where necessary, a Complaints Committee, a special counsellor or other support service. Confidentiality should be maintained in all these dealings. The complaints Committee should be headed by a woman, and not less than half of its members should be women. To prevent the possibility of undue influence from senior levels, such Complaints Committees should involve a third party such as an NGO or other body familiar with the issue. This Committee must make an annual report to the concerned Government Department regarding the complaints received and action taken.

8. **Workers' Initiative:** Employees should be allowed to raise issues of sexual harassment at workers' meetings and in other appropriate forums. It should be affirmatively discussed in Employer-Employee meetings.

9. **Awareness:** Awareness of the rights of female employees in this regard should be created, in particular by prominently notifying the guidelines (and legislation when enacted) in a suitable manner.

10. **Third Party Harassment:** Where sexual harassment occurs as a result of an act by any third party or outsider, the employer and person-in-charge will take all necessary steps to assist the affected person in terms of support and preventive action.

11. **The Central/State Governments are requested** to consider adopting suitable measures including legislation, to ensure that the guidelines laid down by this order are also observed by the employers in the private sector.

MISCELLANEOUS

Holy Men and Unholy Deeds

The fact that even High Court Judges are so influenced by "spiritual gurus" that their blind faith and bias may lead to a total denial of justice is demonstrated in the case of *State of Maharashtra v. Priya Sharan Mathur*. In this case this would

have happened to 3 young women but for the rational and balanced approach of the Supreme Court.[90]

The facts were that a 'spiritual leader' Priya Maharaj had a couple of ashrams and he would entice young girls and impress upon them that he is the incarnation of Lord Krishna & they should treat him as their husband and that what he was doing to them was in the nature of prasad of God.

The original charge filed was of kidnapping but during investigation a totally different picture emerged. Priya Maharaj who claims that he is a spiritual leader is a highly immoral person and in order to satisfy his lust used to entice young girls to have sexual intercourse with him. The Additional Sessions before whom there was an application for discharging the charge rejected it and the case went before the High Court.

The charges framed by the Additional Sessions Judge was that Priya Maharaj committed rape on Meera aged 26 years against her will posing as a divine spirit of Krishna. He committed rape again on her after sometime claiming the same. He committed rape on a young girl of 14 years posing as a divine spirit of Lord Krishna. He repeated the same act and also made the same claims of being a divine spirit with Hema, the sister of Meera.

The biased observations of the High Court[91] before whom there was an appeal was that the 3 girls continued to remain with the 'spiritual gurus' and continued to preach the tenets of the cult of the Maharaj. The 3 girls levelled allegations against the Maharaj after the lapse of considerable time i.e. months and years. According to the Court "there is unreasonable, inordinate or extraordinary delay in levelling allegations of physical molestation or rape committed ... against a

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90 1997 (4) SCC 393.

91 Id on p.395.

saintly old man of 69 years of age who renounced the world and became engrossed in spiritual world....[92]

No prudent man can dare to accept or believe the infirm and improbable evidence ... The girls evidently told lies and developed false story ...."[93]

The Supreme Court makes it clear in their observations that "The High Court was much influenced ... Kriapalu Maharaj is a saintly old man, who has renounced the world .... who has thousands/millions of disciples all over India and, therefore he was not likely to indulge in the illegal acts alleged against him". The Court added that it was not unusual to come across 'spiritual leaders' who exploit young girls.

Regarding the delay in reporting the Court, with extreme sensitivity and understanding that delay in reporting an act like this is often because of the fear and shame or uncertainties about what would be the reaction of parents or a husband if the young girl is married.

The judgment ends by stating very strongly that the "High Court was wholly wrong in discarding the material placed before the Court as false and discharging the accused".[94]

Character assasination

On the evidence of three eye witnesses to the murder of a six year old boy by his elder brother and the letter's father-in-law the two were were convicted by the trial court and sentenced them to life. The witnesses included the pradahn of the village and the mother of the boy. The motive for the crime was that the elder

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92 Id on p. 399.

93 Ibid.

94 Id on 40C.

son wanted to grab the share of the deceased father's property left with the mother.

The High Court reversed the conviction on the specious reasoning that the trial court had ignored the evidence of the daughter who stated that her mother was having an adulterous relationship with tow men even during the life time of her husband. She was alleged to be living ina kothri of a shop keeper.

The Supreme Court, on further appeal by the State, reversed the High Court and held that there was not even a rmote connection between the murder of the son and the mother's extra marital relationship.[95] The courts commented that "Law does not permit even the child of a prostitue to be murderd"[96] and no guilty person should escape even if the loose morals of the mother had been established.

Family Planning Incentive

In *Nirmal Kumari Lal v. State of Orissa,*[97] the grievance of the petitioner was that despite undergoing tubectomy operation, she was being denied the incentive of a green card which would entitle them to several benefits. The stand of the state was that the petitioner had undergone the operation even before the notification announcing the green card scheme became operational. The High Court rejected the petition since it was of the view that the government resolution was "for inducemnt and a motivational force... to go for the terminal method"but it could only be prospective. Interestingly among the five incentives given by the Orissa government for undergoing the operation, but not one of them recognises the need of the mother for health facilities or for education.

Deeksha

[95] *State of U.P.v. Raghubir Singh* (1997) 3 SCC 775.
[96] Id at 779.
[97] AIR 1997 Ori 169

A PIL was filed in the Rajasthan High Court seeking directions to prevent a girl of 16 years from taking deeksha of Jainism. The contention was that such deeksha could be taken only by widows and old women and that for minors it was unnatural and improper. The Court declined to interfere viewing it as an interference with religious freedom.[98] It drew comparisons with the thread ceremony performed by a high caste Hindu or a christian girl becoming a nun. While the court was perhaps right in recognising the right to practice one's religion the comparisons drawn with similar practices in other religions appears far fetched. For instance why would it be natural for a widow to accept deeksha and not for a 16 year old? Also is it explained toa 16 year old what deeksha means and can she give it up at a later stage? These questions remained unanswered.

CONCLUSION

The cases reviewed highlight the uphill task in enforcing and protecting the fundamental rights of women to life, to equlaity, to dignity and above all to justice. Although social behaviour and outlook has to change to bring about gender justice, there is the lurking possibility that law and the courts can abet stereotyping of women and thwarting their quest for justice. The corrective and hierarchical structure of courts is a definite check against this aberration. Reforms in the police force to make them gender and human rights sensitive is needed more now than ever before.

Laws and judicial pronouncements need to constantly tested to assess their true efficacy. This is true of the laws providing for greater particpation of women in governance as well as establishing a legal framework to redress the grievances of women facing sexual harassment at the work place. The reluctance on the

[98] *Shrimant Kumar v. State of Rajasthan* 1997 (1) Raj 421.

part of institutions, of which the foremost is the judiciary itself, to structure the disciplinary rules governing their employees in tune with the *Vishaka* guidelines calls for critical comment. One would have thought that in this area the judiciary would lead by example. There is a need to spread awareness among working women of the fora now created to voice their grievances against sexual harassment. Also fresh thought has to be applied to making this new regime safer for women and not result in their being subject to further inviduous discrimination. Only then will women be emboldened to speak out against the injustices they have to silently endure at the work place.

The linking up of the population control programme with the participation of women in governance is an unfortunate development. The two need to be delinked. In fact, the law needs to accommodate the health concerns of women generated by unsafe birth control measures repeatedly unleashed on them.

Whatever be the failure and shortcomings of these measures, there is an irreversibility of their presence that lends assurance to the struggles that women have to wage for justice. In the ultimate analysis, if they have to remain relevant, both procedural and substantive law will have to be flexible and responsive to women's cries against injustice and discrimination.