Chapter IV

Position of working class women and Offences Against them
POSITION OF WORKING CLASS WOMEN AND OFFENCES AGAINST THEM

An attempt is made in this chapter to show the position and the important problems concerning life and work of the women workers in India. Though their problems are fundamentally the same as those of women workers in other occupations they differ many much in practical aspects.

To improve the position of women workers recommendations are also made for the improvement of the existing conditions and of the women workers in India either by amending the present legislation or by suggesting new legislations or by extending the application of the legislation to additional classes of women workers.

There should be special legislation for women with regard to their employment on dangerous, unhealthy and heavy work. It is a matter for medical experts to decide if women are more liable to dangers than men. If the same piece of work which comes under the category of dangerous work affects women more adversely than man, it is certainly necessary to protect women against such dangerous work. There maybe certain types of work women may not find themselves physically capable of doing and it is necessary to exclude them from such work.

Women should be prohibited from night work as night work is an abnormal activity for all workers, both men and women. Medical experts have proved that night work is more injurious in the case of women. It is therefore more necessary to prohibit night work for women.

The beginning of the modern industrial era starting with the industrial Revolution witnessed a tremendous change in the character of work assigned to women. ¹

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Chapter - IV

Historically, traditionally and culturally women have not fared well at least in the matter of education and employment in any region of the world vis-à-vis men. Triple E’s (Education, Employment, and Empowerment) have boosted women’s movement and taken as indicators of their freedom. Its testimony are all those convention, seminars and conferences organized by international bodies like, UN, and its various agencies like, ILO, UNICEF, WHO, RED CROSS and other national and international NGOs for the advancement of women.

Currently one of the most talked about and discussed subject has been women Empowerment. It took centuries and a lot of deliberations to come to a stage where empowerment of women is on high agenda. Traditionally women are denied land title right to heir ancestral property and even right to vote for a long time. Religions are blocked their way even in religions matters and hierarchy. Still these are monasteries, mosques and temples/deities when women are forbidden. More over religions scriptures of various faiths have assigned secondary status to women empowerment may not be possible unless equal legal rights are conferred upon them and accepted by the society. The importance of educating women has realized contributions of women without which economic development can not reach to its maximum still a lot is to be done in the area of accounting as a due place is given to women. Indirect contribution of women needs more attention that what the world has given to them. The equivalence accounting system is yet to be evolved and matured so that women’s non monetary work and time use are recognized in terms of protectively, value addition and reflected in a country’s GNP.

Gender differential in employment and there by in earnings is widespread. Moreover, status of women won’t change to desirable extent unless financial or economical freedom is not attained by them. Gender inequality in general and discriminatory practices in particular led to proliferation of literature

on issues pertaining to women. Employment has attracted enough attention to make a strong case for women as its results in economic empowerment. A gainful employment provides women not only financial freedom to a large extent but they also become a part in decision making a right which has long been denied to them particularly in developing regions. Simultaneously their status in the family gets elevated.³

Many people in our country are still of an opinion that proper place for women is her home. Freedom of choice of work and right to work are provided for in the directive principle of State policy of our Constitution. There has been a gradual switch-over of employment of women from traditional occupations to more remunerative and higher status jobs. The expert committee on unemployment (Dantwala committee on unemployment Estimates)⁴ has also shown grave concern over the reduction in the number of women workers in certain industries like textile, hosiery etc.

The committee has suggested that “it is desirable to encourage the employment of women at least up to a level at which it has been prevailing hitherto by offering some incentives to those employers who maintain the ratio of women in their labour force at a prescribed level,” the altitude of the employers has however, been rather Luke-warm towards employment of women due to the fact that there had been enforcement of legislative protection with reference to women employees in particular.

The enforcement of equal pay principle for men and women, the additional financial of maintenance of crèches and the payment of maternity benefits seems to have affected women’s employment. The restrictions on hours of work and prohibition of women employment during night shifts and

limitation on load wearying are real obstacles. In the greater absorption, of women workers in jobs particularly, in heavy industries.\(^5\)

Another plea, often put forth by employees for non-employment of women, is that women worker take long leave due to pregnancy and child birth. This argument can be nullified because even men go on long period of leave including sickness leave. No doubt, some women up jobs and leave then after getting married but the number of such cases is gradually decreasing irrespective of factors of mobility. Due to these reasons some women do have to undergo tremendous emotional and psychological torture of neglecting their homes, children and house chores. This factor does affect the carrier patterns of women as compared to those of men.

The development of education among women has affected their employment. The increased opportunities for training and education have enhanced their employment potential. However opportunities for entering an occupation and progressing in it have not increased proportionality white the need for women from lower middle class families to earn it basically to supplement their family income, women from higher income groups have been entering various professions with a view to utilizing leisure time or attaining social prestige and status. It is indeed a very happy trend that educated women in India today aspire for a professional carrier. The professions in which the education women have so far engaged themselves are mainly teaching, medical and health services, nursing and social work. There professions seen to be more suitable for women not only because of their professional training but also by impermanent. However, much has to be achieved so far as working women’s role in society and their total fulfillment as professional individual is concerned.\(^6\)

\(^6\) *Ibid.*, p.15
There has been and still is segmentation of women in employment. They are generally accepted and considered suitable for low paid jobs with very little promotional avenues, or for marginal economic activities, women are consequently predominant in the occupations of clerks, receptionists, houses keepers, primary teaching and nursing in most of the countries. In India Pakistan, Bangladesh and west Asia women are largely in such occupations due to suitability factor. The labor market is still highly segmented for women across the globe. Even in the west equal work does not command equal pay.

Another factor, which acts as deterrent women employment has been their immobility in terms of time, energy and space. Due to their familial responsibilities women are not considered mobile in terms of space. Hence they are discriminated against, at least in developed countries. A married woman in general and with children in particular is less mobile than married man with children. Women of course have familial ties in developing would make the less mobile.7

Gender inequality in employment is a well establish and documented fact. Societal attitude and attributes are mainly responsible for gender discrimination in employment, at least in developing countries. Young women have larger share in employment and hence age-based discrimination against women has also been noticed. It is true particularly in private sector of a developing economy. Moreover, similar trend has also been observed in the informal sector where most of women find employment. Such and other discriminatory practices are still prevalent and these may be attributed to societal attitude.

Women are largely concentrated in low-paid jobs where advancement is either negligible or non-existent. It leads to segregation of occupation and hence dissimilarity indices have been developed. Since women are considered

7. Supra Note, 1 p.33.
immobile in terms of time, energy and space it also becomes a cause to discriminate them.

Dual labour market theory is based on the presumption of segmentation. Labour market divided into primary and secondary sectors has women in secondary jobs where organizational hierarchy does not exist. Thus advancement opportunities are negligible and working conditions are generally poor.

The encouraging note regarding women has been their increased share in total labour force. On the contrary, men's economic activity rate has generally declined. It does not auger well. An increased share of women in employment by displacing, if not replacing, men workers may not be taken as a good sign.

Data disaggregated at occupational level of women reflect striking similarities in different regions of the world. They have a relatively higher percentage in the professional, technical and related occupations which drops to a lower level for the occupational group of administrative and managerial positions in every region. Again, a peak is attained in the category of clerical, sales and services. They have a low representation in the occupational group of production, transport and workers. By and large, these trends reflect universal phenomenon. The only occupation where women dominate has been the clerical, sales and services.

Women are not uniformly distributed in the informal sector in various regions. African, Latin American and Asian particularly south-east Asian countries have significant employment of women in their informal sector. Africa tops the list in this regard.

Women employment is generally categorized into (i) employers (own-account workers) (ii) family labour, (unpaid) and (iii) employees. Women’s
contribution in the secondary category has turned out highest in every region. It creates the problem of accounting of women work which is generally under reported and sometimes misreported.\(^8\)

Gender discrimination in employment and wages is well established, at least in developing countries including India. It is reflected in the size of women's employment and disparity in wages. Women are still a fraction of total employment in the formal as well as informal sectors in Indian economy. Agriculture claiming sizeable work force of women has inequality between male and female workers in terms of size and nature of employment and wages. In fact wage differentials are more pronounced in agricultural or rural sector than elsewhere. Even feminization of work seems to perpetuate inequality between men and women workers.

What are the factors that have caused women lagging behind men in the world of work? These impediments may be categorized, though over-lapping is not ruled out.

The list is, however, not exhaustive rather indicative and suggestive in nature. A general description is given below:-

**RELIGIOUS FACTORS**

**Dogma**

Religious scriptures intended to provide a way of life to the followers where women have been assigned more or less secondary role in the society. They are directed and even commanded to follow men folk and hence women were deprived any role in decision-making. All this confined them within the four walls of the house and also discouraged women to be earners. Religious principles from which code of conduct emanated restricted the role of women in

general and in economic sphere in particular. Subordination of women is one of the commands common in most religions.

Categories of Factors Affecting Women's Employment

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<td>Dependency</td>
<td>Lack of Accommodation</td>
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Segregation

All religions generally preach segregation between spheres for men and women. It is one of the commands for women to be home-maker. Their duties are to look after families, take care of children and remain confined to home. In fact women's reproductive role demarcates them from productive role of men. Such a social milieu commanded by religion leaves little room for the employment of women.

Indian Society is still religious and largely believes in men-women inequality and to some extent, segregation in the work sphere. Still women are mainly recognized for their reproductive functions and familial ties in the Indian society where religion holds low level of women's employment, such an attitude which does not encourage women for employment has its roots in the patriarchy existing in the society since ages. It also relegated women to a

9. Supra Note 2 p.75.
secondary position and confined them to play the role of home maker. Society in India does not favour employment of women as they are still looked upon as reproductive and not productive actors. Though matriarchic at system prevails in some parts of India, especially in tribal belts, such examples may not be generalized to overrule patriarchy and hence men's dominance in the country at large. Working women is still an urban phenomenon due to changed attitude of urban society towards employment of women. The attitude of the society is changing mainly because of economic compulsions but has not changed enough to drastically affect the employment structure in the country.

**Traditions, Customs and Taboo**

Indian society values its traditions in the context of ancient civilization. Families still believe not to allow girls to work for income. And if they are allowed to work their income is not meant to run the house. Fathers are reluctant for their girls' employment in the first instance, and against utilizing their money for household expenses.

Customarily female children are discouraged to go out of town for education and particularly for employment. Again, economic compulsions are weakening such traditions and customs but not enough to mend societal attitude and make it positive for women's employment.

Certain occupations and jobs are considered favourable for women's employment. These are teaching, caressing and medical jobs. On the contrary a number of jobs are just like taboo in our society and women either discouraged or legally bar form employment. For example taxi, truck or auto driving is not meant for women in India as these jobs are considered not safe, this protective umbrella rules out employment of women in a number of occupations and professions. Women are movers in the society but earth moving jobs are denied to them.
Health and welfare

Problem of health and welfare are to a very large extent common for men and women. However, women at the reproductive stages are exposed to special risk during pregnancy and child bearing and material morbidity and mortality are factors which require special consideration. It could also be distinguished by the health standards of large groups of women workers, such as those in mines and plantation.10

Domestic Chores

Since ancient time women's prime responsibility has been domestic chores as if they are meant for it. Any time-use survey of women would show that they have to spend considerable time performing domestic chores day after day. These have a wide range and mainly consisted of cooking, dish washing, laundry house keeping and a host of other such activities. Even working women are not exempted from domestic chores.

It adversely affects their employment prospects. They have to do only those jobs which would give them enough time for domestic chores. Casualisation of women's employment is also because of their duty to perform domestic chores. Working women are not supposed to dispense with domestic chores and it seriously hampers their advancement. Those women who have nuclear family have to balance between domestic chores and job responsibilities. The same dilemma is faced by working women living with joint family. Women try to avoid those assignments in job which jeopardize their domestic activities and schedule. A compromise with their jobs due to unavoidable domestic chores affects their options in employment and promotions as well.

10. Supra Note 2, p.142.
Marriage

In our society marriage seriously undermines employment of a female. Consequently she enters late in the job market or makes re-entry because they have to, sometimes; discontinue their employment on account of marriage. This particular custom has priority over every other thing and marriage comes first in case of females. The prime age, that is, around twenty-five is important for males to find employment but females are to marry at this juncture, Hence they loose employment opportunity in their prime age. Consequently women face the problem of re-entry or hue entry into labour market. Therefore women's employment or prospects are compromised on account of marriage which is always on high agenda of every girl's parents.

Siblings/Child Care

Indian society has tradition of assigning responsibility, partially if not fully to female children to look after young siblings in the family since female children are asked to take care of their young brothers and sisters, even in their childhood. Women have to devote a lot of time in taking care of their children as child care is taken as their sole responsibility in our society. Bearing and rearing children compels them to compromise with their employment. It acts as one of the main hurdles in the employment of women.

Migration

Women's plight is further affected by migration which is often thrust upon them by host of social and cultural factors, the incidence of migration among females (with in the country) is far greater than among the males.\(^{11}\)

Women have immobility in terms of space, time and energy. They are generally reluctant or have barriers to their movement from one place to another.

It is either their own sense of insecurity or familial ties which bar their mobility in terms of space. Similarly their mobility in terms of time also gets affected during pregnancy and few months after delivery of baby. It makes them not very suitable for employment in those occupations requiring field work or traveling frequently. Hence immobility of women is considered an obstacle in their employment. Or they have to forego such jobs where mobility is a prerequisite. It curtails their employment opportunities and options, and also acts as deterrent to their promotion in employment.

Dependency

The way female, children are brought up in our society, especially in villages and towns that they become dependent on male persons. When they travel even as grown up, females depend on some male member of the family. It is observed that female applicants appearing for interview are usually accompanied by some family member. Such dependency discourages them to go for employment, particularly out of town. It makes them to remain confined to their place and hence restricts their employment opportunities and options. Dependency of women thus hinders their employment.

Accommodation

Women who get job or employment out of their town face the problem of accommodation from the point of view of safety and security. Those who are in employment and have transferable job find it difficult to move to far away places or rural area due to fear that they may not get a suitable accommodation. Therefore women workers try to avert this situation, sometimes at the cost of their employment. The problem of safe accommodation for women, especially working women is so grave that various committees have been formed to find a solution. Since working women hostels are extremely limited in number, women avoid such jobs where they have to
move out from their town. Hence accommodation poses a big problem for working women and becomes a hindrance in employment, particularly out station employment in the interior places and rural area.\footnote{Supra Note 2 p.78.}

**ECONOMIC FACTORS**

**Education**

Investment in education gets priority for male children in Indian society. Female children rarely get preference in the matter of education especially at tertiary level. However returns to education in case of female education are high enough and make a strong case for education of girls. Parents usually compromise for the quality of education and expenses in case of female children as they invest just to educate them and not from the viewpoint of employment. On the contrary, male children's education primarily aims at their career and hence best possible education is provided to them. It is the reason for inequality in enrolment sex-ratio right from primary to tertiary level.

**Training**

Job-oriented courses of elementary nature are generally preferred for females rather than males. Women are largely in computer courses, boutique and fabric painting and similar elementary courses which lead them to low-paid jobs and land them in the secondary segment of labour market. Moreover, participation rate of women in training programmes to update knowledge and skills has been very low. Therefore, women's advancement in employment is generally hampered. Exclusive women training programmes are very few at least in the private sector. It partly explains the reason for women being largely in the low-paid jobs.
Unionism

Trade unionism reflects the consciousness of the right of the industrial workers and measured by this yard stick, it can well be said that class consciousness among women is increasing day by day.¹³

Unionism is traditionally a male bastion and women have not registered significance in this regard. Women generally lack unionism as they have dual responsibility, consequently women's unions are rare and as a member of common union they are occasionally active. In most of the organizations they are members as it is compulsive.

Lacking unionism among women workers make them relatively vulnerable and does not inspire to fight against sex based problems or odds. They rather depend on protective measures such as reservation in promotion and training programmes. As a result discrimination against women could not be eliminated in India.

Employment

A number of programmes have been launched with the ultimate objective of making women economically independent. Some of the programmes extent 30 to 40 percent reservation of benefit for women. These include Integrated Rural Development Programe (IRDP) Jawahar Rojgar Yojana (JRY), Nehru Rojgal Yojana (NRY) and Prime Ministers Rojgar Yojana (PMRY), Some programmes have also been undertaken which can be called women specific employment cum training programme. These comprises development of women and children in Rural Areas (DWCRA), Indra Mahila Yojana (IMY), Mahila Samridhi, Yojana (MSY), 1993 Balika Samridhi Yojana (BSY), 1997 etc.¹⁴

¹³ Supra Note 1 p.263.
Payment

Low payment offered to women has confined them to the lower cadre in employment. They usually accept discriminating wages and hence inequality has got perpetuated in rural and informal sectors. In small cities and towns women teachers, for example, get less remuneration than minimum wages paid to menial workers. Their own attitude is also responsible to some extent. They accept less remuneration rather than sitting idle at home. Wage differentials discourage them to go for performance and hence their career advancement gets blocked.

Supplementing Income

It is one of the objectives of most females seeking employment, societal attitude has inculcated in their minds that males are bread earners for the family and their role is secondary. Girls waiting for marriage work to supplement family income in large cases. This attitude is an obstacle for their career making. Similarly a large number of women particularly in the informal sector work to supplement family income.

Inheritance

Inheritance laws and traditions have made women more vulnerable in the matter of title to land and other assets. Customarily women do not inherit assets and property equal to their counterparts. Religion also plays a role in such law of inheritance. For example, Islamic laws entitle a female to inherit only half of male share in the family.

Infrastructure

Lack of infrastructure and other facilities is hindrance in women's employment. Women have relatively negligible access to facilities, especially in the matter of credit. Even collateral rule does not accept women as guarantors
unless they have fixed assets in their names. A discriminatory approach to provide infrastructural facilities to women is commonly observed in India. It also hampers their employment prospects.

Biological Factors

Women are discriminated against in employment on biological grounds, jobs requiring physical strength are denied to them. Security jobs particularly in the private sector are restricted for women due to protective measures. Reproductive nature of women restricts their employment opportunities as it is presumed to increase the rate of labour turn-over.

It has been observed and studied that young women are preferred in employment. Women beyond their prime age are discriminated against and those making re-entry find it difficult to get suitable employment. Age has become a deterrent for women above 40-45 age groups as there are very few takers in the job market.

Child Rearing

Mothers with infants avoid employment as child rearing is considered their "natural" prime responsibility. Though the provision of crèches has been made mandatory, informal sector rarely provides such facilities to women workers with infants. Therefore child bearing and rearing are deterrent for women's employment.15

PSYCHOLOGICAL FACTORS

Insecurity

Women feel insecure and avoid employment in such places where their security is not up to the mark. The poor law and order conditions aggravate

15. Supra Note 2 p.79.
their sense of insecurity. Consequently, working at not-so-familiar places and interior rural area is generally ruled out by them. In some cases feeling of insecurity is so strong that women prefer to remain home makers.

**Confidence**

Women's confidence for jobs other than considered suitable for them is not so strong and therefore they do not go for employment in a number of occupations like sales representative etc. They also lack confidence in case of employment requiring frequent travel by public transport. A majority of women is risk averse or by nature and avoid employment where risk element has high probability.

**Inward Looking**

Women born and brought up in traditional setting are generally inward looking and do not give much weight to employment prefer a settled married life. Hence a large number of women never try for employment and remain home makers. In words looking altitude of Indian women, especially married women, deters them to go for employment. Their personal world revolves around their family.¹⁶

**PROVISIONS UNDER INDIA PENAL CODE, 1860**

Section 354, IPC has been enacted with a view to protect a woman against indecent assault as well as to safeguard public morality and decent behavior.

**Section -354 IPC. Assault or criminal force to woman with intent to outrage her modesty.**- Who ever assault or uses criminal force to any woman, intending to outrage or knowing, it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term

which shall not be less than five years but which may extent to two years, or with fine, or with both.

Provided that the court may for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term which may be less than five years, but which shall not be less than two years.\textsuperscript{17}

Ingredients

(1) A woman was assaulted or criminal force was used against her.

(2) The accused intended to outrage her modesty or knew that her modesty was likely to be outraged.

An indecent assault upon a woman is punished under this Section. Rape is punishable under Section-376; but the offence under this Section is of less gravity than rape. A person who is guilty of attempting rape cannot be allowed to escape with the lazier penalty of this Section. Where the accused walked into the room where a female child of seven and a half months was sleeping and committed an indecent assault on the child, he was held to have committed an offence under this Section as he had out raged and intended to outrage whatever modesty the little victim was capable of.\textsuperscript{18}

Unless culpable intentions is proved move touching the belly of a female in a public bus can not modesty of a female with in the meaning of this Section. In the circumstances of the cause the act of the accused was held to be accidental and not intentional.\textsuperscript{19}

Where the accused caught hold of a married women and tried to open the string of her salwar with a view to committing rape on her but being hit by

\textsuperscript{17} Section-354 Indian Penal Code,1860.
\textsuperscript{18} Major Sing v. State of Punjab AIR 1967 SC 63.
\textsuperscript{19} Divender Singh v. Hari Ram 1990 Cr LJ 1845 HP.
a woman with a kulhari field away, it was held that he could not be convicted under Section -376 read with Section-511 IPC as his action did not show a determination to have sexual intercourse at all events and in spite of resistance. The conviction of accused was accordingly changed to one under Section -354; IPC.  

Where a married woman alleged that the two accused persons had dragged her in her own home and raped her one after the another and the medical evidence showed that thought there were traces of semen on her clothes, there were none on the clothes of the accused persons, the court opined that the case was not made out; the presence of semen on the clothes of the married women is not unusual and therefore the accused could have been prosecuted only for outraging the modesty of a woman.

Some laborers, including a woman, were taken to a police Station for some work. When they demanded wages, they were betan up. The woman was stripped bare and thrashed. The matter came before Supreme Court in a writ petition under Article 32 of the constitution. The Supreme Court held that the offence under Section 354, IPC was established in reference to the woman and awarded compensations to be recovered from the salary of the guilty officers.

In another case the accused outraged the modesty of a woman. He was convicted under Section -354 solely on the basis of the evidence of the victim. The court observed the normally a rustic woman could not come to the court to implicate a co-villager if the imputation were not true. A victim under Section -354 is in the same category as an Infused witness. Her testimony was found to

be reliable. Due to the lapse of eight years since the incident the accused was not sent back to Jail. He was made to sit in the court for five days.\textsuperscript{23}

Where a nine year school going girl was criminally assaulted by the accused her evidence was corroborated and the accused had no explanation as to why she and her father would falsely implicate him, his conviction under Section -354 was upheld\textsuperscript{24} where the accused touched the hand of the belind prosecutrix, removed the quilt with which she was covering herself and put his hand in her midi, conviction of the accrued for attempt to commit rape was set aside but conviction under Sections 354, 457, and 506 was confirmed.\textsuperscript{25}

Women come out early in the morning to get water from the village well. The accused caught her hand and force fully pulled her to him to be taken to a nearby place. She resisted and raised shouts. Her bangle was broken and she was injured. The accused was found guilty of the offence under Section 354 and was convicted accordingly setting aside his acquittal.\textsuperscript{26}

Where the accused forcibly laid the prosecutrix on bed and broke the string of her pajama and force her under wear but did not undress himself, the offence fell under Section 354 and the offence of attempt to commit rape was not made out.\textsuperscript{27}

In a case a man forcibly carried away a young girl into bushes, over powered her and raped her. The prosecution failed to prove the charge under Section 376. The court convicted him under Section-354 and released him under the provisions of Probation of offenders Act. The High Court observed that the courts below should act with firm hand in awarding punishment under Section 354 and be not carried away by some decisions suggesting leniency.

\textsuperscript{25} Keshav Baliram Naik v. State of Maharasthra 1996 Cr LJ 1111 Bombay.
\textsuperscript{26} State of Maharasthra v. Manohar 1994 Cr LJ 2536 (Bombay).
\textsuperscript{27} Jai Chand v. State 1996 Cr LJ 2039 (Delhi).
The punishment was enhanced. Where the accessed person caught hold of a woman and removed the source from her person but ran away on racing some one approaching, their act attracted Section 354 and Section 375/511. Their conviction under Section 376/511 read with Section 34 was altered to one under Section-354/34.

**Rape** – defined under Section 375 of Indian Penal Code means- A man is said to commit “rape” who, except in the case herein after excepted has sexual intercourse with a woman under circumstances falling under any of the six following descriptions.

- **First** – Against her will
- **Secondly** – without her consent
- **Thirdly**- with her consent, when her consent has been obtained by putting her or dry person in whom she is interested in fear or death, or of hart.
- **Fourthly**- with her consent, when the man knows that he is not her husband, and that her consent, is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
- **Fifthly**- with her consent when at the time of giving such consent by reason of unsoundness of mind or intoxication or the administration by him personality or through another of any stupefying or un wholesome, substance, she is unable to understand the nature and consequence of that to which she give consent.
- **Sixthly**- with or without her consent when she is less than sixteen years of age

**Explanation**- Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

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**Exception**- Sexual intercourse by a man with his own wife not being under fifteen years of age, is not rape.

**Sexual Intercourse**- To constitute this offence sexual intercourse by a man with a woman is necessary. A ‘man’ is defined by Section 10 of the India Penal Code.

In *Kripal S/o. Ram Shyam Lal Charmakar v. State of Madhya Pradesh*, the victim had gone to field to collect grass, on her way back accused obstructed her and proposed for sexual intercourse. On her refusal accused forcibly committed sexual intercourse. The evidence of victim and medical evidence confirmed fact of penetration of his male organ, it was held that in case of offence of rape penetration of male organ in female organ is a *sine qua non* which was satisfied in this case and hence conviction of accused for offence of rape was proper.

It was held in *Sakshi v. Union of India*, that by a process of judicial interpretation the provisions of Section 375 of IPC, cannot be altered so as to include all forms of penetration such as penile/vaginal penetration, penile/oral penetration, finger/vagina and finger/penile/and penetration and object/vaginal penetration within its ambit. Section 375 uses the expression "sexual intercourse" but the said expression has not been defined. The dictionary meaning of the word "sexual intercourse" is heterosexual intercourse involving penetration of the vagina by the penis. It was also held that only sexual intercourse, namely heterosexual intercourse involving penetration of the vagina by the penis coupled with the explanation that penetration is sufficient to constitute the sexual intercourse necessary for the offence of rape has been held to come within the purview of Section 375 of IPC. An exercise to alter the definition of rape, as contained in Section

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30. 2007 II Cri LJ 2302 (SC).
375 of IPC. by a process of judicial interpretation and that top when there is no ambiguity in provisions of the enactment is bound to result in good deal of chaos and confusion, and will not be in the interest of society at large.

It was also pointed out that the wide definition which the petitioner wants to be given to "rape" as defined under Section 375, IPC. So that the same may become an offence punishable under Section 376 of IPC, has neither been considered nor accepted by any Court in India so far.

In *Uday v. State of Karnataka,*\(^{32}\) accused expressed love and promised to marry the prosecutrix on a later date. Prosecutrix was quite aware that they belonged to different castes and proposal of their marriage will be opposed by their family members. Yet prosecutrix started cohabiting with the accused consciously and became pregnant. On a charge for rape the Court held that the consent given by the prosecutrix for cohabitation cannot be said to be given under misconception of fact i.e., a promise to marry but because she also desired for it. She had freely, voluntarily and consciously consented to have sexual intercourse with the appellant not only on belief of promise for marriage but because of their deep love with each other. The appellant made a promise to marry on more than one occasion and in such circumstances the promises lose all significance particularly when' they are overcome with emotions and passions and find them in situations and circumstances where they in a weak moment, succumb to the temptation of having sexual relationship. "This is what happened in this case and prosecutrix willingly consented to having sexual intercourse with the appellant. She had sufficient intelligence to understand the significance and moral quality of the act she

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\(^{32}\) 2003 Cr LJ 1539 (SC).
was consenting to. Hence appellant is not liable to be convicted for an offence of rape under Section 376, Indian Penal Code.

In *Pradeep Kumar Verma v. State of Bihar*, it was held that in case of a representation deliberately made by the accused with a view to elicit the assent of victim without having intention to marry her, will vitiate the consent given by victim. It was also observed that if on the facts it is established that at the very inception of the making of promise the accused did not ready entertain the intention of marrying victim and the promise to marry held out by him was a mere hoax, the consent ostensibly given by the victim will be of no avail to the accused to exculpate him from the ambit of Section 375 clause second. Such representation would only vitiate the consent.

**Sixth clause**—Sexual intercourse with a woman with or without her consent when she is tinder 16 years amounts to rape.

The prosecutrix left her mother's house and joined the accused because her mother has turned down the proposal of her marriage with the accused on the ground that she was too young. While she was with the accused he had sexual intercourse with her against her will. The act of intercourse with the prosecutrix will be covered by this clause.

A, a minor girl, aged 15 years having been rebuked by her mother leaves her house. At railway station she meets 'B' who takes her to his house. 'B' provides her clothes, money and ornaments at his house and has sexual intercourse with the girl with her consent. In this case since the girl has left her guardianship voluntarily and met B at the railway station who took him to his house, B is not liable for kidnapping from lawful guardianship. But B will definitely be liable for committing the offence of rape even though sexual intercourse was committed with the consent of the girl because the girl was a minor and could not give a valid consent in view of clause (6) of

33. 2007 IV Cr LJ 4333 (SC).
Section 375. The girl being below 16 years of age is not competent to give a valid consent.

**Indecent assault and attempt to commit rape distinguished.**—an offence of indecent assault on a woman cannot be complete unless there is intention or knowledge that the woman's modesty will be outraged. An indecent assault on a woman does not amount to an attempt to commit rape, unless it is shown that there was a determination in the accused to gratify his passion at all events, and in spite of all resistance.

**Corroboration of evidence.**—a woman who has been raped is not an accomplice. A woman who was ravished is the victim of an outrage and if she consented there is no rape. In the case of a girl below the age of consent, her consent will not matter so far as the offence of rape is concerned, but if she has consented her evidence will be looked upon with suspicion as that of an accomplice. The true rule of prudence requires that in every case of this type the advisability of corroboration should be present in the mind of the judge and that must be indicated in the judgment. But corroboration can be dispensed with if in the particular circumstances of the case the judge is satisfied that it is safe to do so.34

In *State of H.P v. Raghubir Singh*35 a girl Raksha Devi aged about 7/8 years was alleged to have been raped by Raghubir Singh aged about 16 years. Father of the victim saw the accused lying on top of the prosecutrix under the mango tree. On alarm being raised he ran away carrying with him his underwear. On examination the Doctor found her hymen ruptured and slight bleeding coming out of the vaginal edges. Blood clot was also present. Shawl on which the prosecutrix was made to lie while committing the rape was found having some mud and blood-stains. Mud was found on the shawl because it was raining at the time of occurrence. Doctor opined

34. AIR 1958 SC 143.
that the accused was capable of sexual intercourse and the girl was raped. It was held that circumstances such as absence of spermatozoa on the vaginal slide and absence of injuries on the male organ is not always fatal to the prosecution cases, these circumstances should be considered in the light of the peculiar factual set up of the case. There is no legal compulsion to look for corroboration of the evidence of the prosecutrix before recording an order of conviction. Therefore on facts, convincing and trustworthy testimony of the prosecutrix corroborated by medical evidence and testimony of other prosecution witnesses, conviction is maintainable.

**Accomplice.**—In a case of rape the victim is not treated as an accomplice. The evidence of the victim is to be treated almost like the evidence of an accomplice requiring corroboration. There must be an indication in the course of the judgment that the judge had this rule in mind when he prepared the judgment. Where the conviction is based on the evidence of a prosecutrix without any corroboration, it will not be illegal on the sole ground. In the case of grown up and married woman it is always safe to insist on such corroboration. Wherever corroboration is necessary it should be from an independent source but it is not necessary that every part of the evidence of the victim should be confirmed in every detail by independent evidence. Such corroboration can be sought from either direct evidence or circumstantial evidence or from both.36

It was held in *Aman Kumar v. State of Haryana*,37 that it is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is

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37. 2004 Cr LJ 1399 (SC).
physical as well as psychological and emotional. However, if the Court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance short of corroboration as understood in the context of an accomplice would suffice.

It was further held that to constitute the offence of rape, it is not necessary that there should be complete penetration of the penis with emission of semen and rupture of hymen. Partial penetration within the lebia majora of the vulva or pudendum with or without emission of semen is sufficient to constitute the offence of rape as defined in the law. The depth of penetration is immaterial in an offence punishable under Section 376 IPC.

**Section-376, Punishment for rape.**—(1) Whoever, except in the cases provided for by Sub-Section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,—

(a) Being a police officer commits rape—

(i) within the limits of the police station to which he is appointed; or

(ii) So the premises of any station house whether or not situated in the police station to which he is appointed; or
(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape—

Shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1.—where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this Sub-Section.
Explanation 2.—"Women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widows home or by any other name, which is established and maintained for the reception and care of women or children.

Explanation 3.—"Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

In *State of Chhattisgarh v. Derha*, evidence of doctor showed that the injuries suffered by the victim could not have been self-inflicted. There was blood on her private part, the hymen was torn and medial side of the labia minora was inflamed. This was even after 4 days of the incident. The doctor in specific terms had stated that the victim is not habituated to sexual intercourse. It was held that the mere fact that to a suggestion made in cross-examination that such injuries could be suffered by the victim by falling on a hard and blunt substance by itself would not suffice to reject the evidence of victim who had no enmity whatsoever to implicate the accused. The suggestion which has come in the form of Section 313 statements merely says that there was some enmity between the parents of the accused and that of the victim. Neither the nature nor gravity of enmity has been stated; therefore the explanation would be of no assistance to the accused to establish the fact that he has been falsely implicated. It is well settled law that if the Court is satisfied from the evidence of victim, a conviction can be solely based on such evidence without looking for further corroboration. Therefore the factum of injury suffered by victim and the opinion of doctor that such injury could have been caused by sexual intercourse and the victim having not been habituated to earlier sexual intercourse itself goes to show that the injury

38. 2004 Cr LJ 2109 (SC).
suffered by the victim was one that could have been caused only by an act of rape. Even the identification of the accused by the victim was not doubtful because he was known to the victim.

As far the delay in filing F.I.R. is concerned it was satisfactorily explained by the mother of the victim. Father of the victim was out of station on the date of occurrence. The fact that the accused did not suffer any injury on his private part will also not be of much help to him because he was medically examined 4 days after the incident. In the circumstances the acquittal of the accused would be liable to be set aside.

In *Rajendra Datta Zarekar v. State of Goa*,\(^{39}\) accused, Rajendra, an young man aged about 20 years was living in a room near the house of the victim's father. One day victim, Sonia, a girl aged about six year was playing in courtyard and her elder sister was studying at her home. At about 5 p.m. on the day of incident Pushpa, mother of victim heard cries of her daughter, Sonia from inside the room of Rajendra. She rushed of the room and found it closed from inside and therefore she knocked at the door and when Rajendra opened the door she enquired from the accused as to what he was doing inside the room along with her daughter, he kept quiet. Sonia the victim narrated to her mother that Rajendra removed her panty and also his own pant and lied down over her and did some movement on her private part. After sometime when father of victim come both victim's mother and father went to police station. The girl was medically examined. During trial the accused pleaded that he was falsely implicated.

It was held that rape leaves a permanent scar and has a serious psychological impact on victim and also her family members. Therefore, no one would normally concoct a story of rape just too falsely implicate a

\(^{39}\) 2008 I Cr LJ 710 (SC).
person. It was further pointed out that rupture of hymen is not essential to constitute rape. Therefore the accused was held liable under Section 376, 1PC for commission of rape.

In *State of M.P v. Bala, alias Balaram*,40 in case of conviction of accused for rape sentence was reduced below prescribed minimum without assigning satisfactory reasons. The Supreme Court held that reduction of sentence to nine and half months was liable to be set aside being below the prescribed minimum because in its opinion long pendency of trial, offer of rapist to marry victim or age of offender are not relevant reasons for reduction of sentence below prescribed minimum.

The Supreme Court in *Om Prakash v. State of U.P.*,41 observed that the Indian women who is a victim of sexual assault in normal course does not like to disclose such offence even before her family members much less before public or before police. The Indian women have a tendency to conceal such offence because it involves her prestige as well as prestige of her family. Only in few cases, the victim girl, or the family members have courage to go before the police station and lodge a case. Therefore, the suggestion given by the defence that the victim has falsely implicated the accused does not appeal to reason. There was no apparent reason for a married woman to falsely implicate the accused after scatting her own prestige and honour. Therefore the plea of false implication was held not tenable.

It was held in *State of M.P v. Dayal sahu*,42 that once the statement of prosecutrix inspires confidence and is accepted by Court as such, conviction can be passed only on solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which

40. 2005 Cr LJ 4375 (SC).
41. 2006 Cr LJ 2913 (SC).
42. 2005 Cr LJ 4375 (SC).
necessitate the Courts for corroboration of her statement. Corroboration of testimony of prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Non-examination of Doctor who examined her and non-production of doctor's report would not be fatal to the prosecution case, if the statement of prosecutrix and other prosecution witnesses inspire confidence.

Section 376(2) (f).—In *State of Rajasthan v. Madan Singh*, a case relating to rape on girl below 12 years of age, it was held that imposition of sentence below minimum prescribed on the ground that accused was young and only bread earner of his family is not adequate and special reason for imposing sentence lesser than the minimum prescribed. Therefore the order reducing sentence to 7 years rigorous imprisonment was held liable to be set aside.

It was also observed that the measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. The socio-economic status, religion, race, caste or creed of the accused or the victim is irrelevant considerations in sentencing policy. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence.

**Rape on Pregnant Woman.**—The Supreme Court in *Om Prakash v. State of Uttar Pradesh*, observed that for punishing an accused by application of Section 376(2)(e) the prosecution has to establish that the accused knew that the victim was pregnant because it is

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43. 2008 II Cr LJ 1939 (SC).
44. 2006 Cr LJ 2913 (SC).
for this reason that stringent punishment is prescribed for offence under Section 376(2)(e). In this case there was no such evidence. The Trial Court has only come to conclusion that there was "full possibility" of the accused knowing that the woman was pregnant. It was held that there is a gulf of difference between possibility and certainty. What is needed under this Section is "certainty of knowledge and not merely" possibility of knowledge. "Where a case relates to one where because of the serious nature of the offence, as statutorily prescribed, more stringent sentence is provided, it must be established and not a possibility is to be inferred. The language of Section 376 (2) (e) is clear. It requires prosecution to establish that the accused knew her to be pregnant. This is clear from the use of expression "knowing her to be pregnant". On this criteria the judgment of the courts below are unsustainable. However, minimum sentence prescribed under Section 376(1) I.P. Code is clearly applicable. Therefore, the sentence of imprisonment was reduced from 10 years to 7 years.

**Gang rape.**—In *Santosh Kumar v. State of M.P.* the prosecutrix Halki Bai had been deserted by her husband. One day in order to maintain herself she came in search of work to Silvani by bus and reached at about 10 p.m. On 20-05-1985. When she was trying to get down from the bus, Munim Misra, conductor of the bus told her that she may sleep in the bus in night and may go in the morning to search work. She slept on the rear seat of the bus. At about mid night when all the shops at the bus stand had closed the driver of the bus Santosh Kumar, the appellant pressed her breast and started removing her dhoti which she was wearing. When she tried to raise alarm Munim Misra caught holds her hands and gagged her and then Santosh Kumar ravished her. Thereafter Santosh caught hold her and Munim Misra ravished her. Hearing her alarm three constables who were on petrol duty and some others came near the bus, but both the accused managed to run away. After investigation both the accused Santosh Kumar

45. 2006 Cr LJ 4594 (SC).
and Munim Misra were tried and convicted. The prosecutrix was medically examined at about 2.00 a.m. on 21-5-1985. No injuries were found on private parts of her body. Dismissing the appeal the Supreme Court held that absence of injury on private parts of prosecutrix is not a ground to hold that no rape was committed upon her since victim was a married and grown up lady, The deposition of prosecutrix and evidence of witnesses including the two police constables and other witnesses was sufficient enough to justify conviction of the appellant. The defence version that they were falsely implicated on ground of non-payment of 'hafta' was not found tenable. Hence the conviction of accused persons was found proper.

In *Priya Patel v. State of M.P.* the prosecutrix was returning by Utkal Express after attending a sports meet. When she reached her destination at Sagar, accused Bhanu Pratap Patel husband of the accused appellant met her at railway station and told her that her father has asked him to pick up from the railway station. Since the prosecutrix was suffering from fever, she accompanied Bhanu Pratap Patel to his house. There he committed rape on her. When Commission of rape was going his wife Priya Patel, the present appellant reached there. The prosecutrix requested the appellant to save her. Instead of saving her the appellant slapped her, closed the door of the house and left the place of incident. A report was lodged and after investigation Bhanupratap was charged under Section 323 and 376, whereas the appellant was charged under Section 323 and 376(2) (g) IPC.

The Supreme Court held that a woman cannot be prosecuted for gang rape. The Court held that Section 376(2) (g) provides that whoever commits gang rape shall be punished. The explanation only clarifies that when a woman is raped by one or more in a group of persons acting in

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46. 2006 Cr LJ 3627 (SC).
furtherance of their common intention each such person shall be deemed to have committed gang rape within Sub-Section (2) of Section 376. Since a woman cannot commit rape, therefore she cannot be guilty to commit gang rape as well. The explanation is only a deeming provision. By operation of deeming provision, a person who has not actually committed rape is deemed to have committed rape even if only one of the groups in furtherance of common intention has committed rape. The sine qua non for bringing in application of Section 34 IPC is that the act must be done in furtherance of the common intention to do a criminal act. The expression "in furtherance of their common intention as appearing in the explanation to Section 376(2) relates to intention to commit rape and therefore appellant accused cannot be prosecuted for alleged commission of the offence punishable under Section 376(2)(g).

It was held in *State of M.P v. Babulal*,\(^{47}\) that in case of conviction of accused under section 376, IPC for imposition of sentence less than the minimum prescribed recording of "adequate" and "special" reasons is a sine qua non. The reason that the accused was illiterate agriculturist" from rural area can neither be said to be special nor adequate for reducing sentence to period already undergone which was only two months and three days. Therefore, sentence was set aside. The Supreme Court further remarked that undeserved indulgence or liberal attitude in not awarding adequate sentence was not proper.

It was held in *State of Karnataka v. Raju*,\(^{48}\) in case of rape on a 10 years old child, the imposition of only 3-1/2 years imprisonment on the accused which is less than the prescribed minimum, on the ground that he is an illiterate and rustic boy of 18 years is improper and impermissible in the absence of any reason which could have been treated as "special" and

\(^{47}\) 2008 I Cr LJ 714 (SC).

\(^{48}\) 2007 IV Cr LJ 4700 (SC).
"adequate reason". The measure of punishment in case of rape cannot depend upon social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. The socio-economic status, religion, race, caste or creed of the accused or the victim is irrelevant consideration in sentencing policy. Protection of society and deterring the criminal is avowed object of law that is required to be achieved by imposing an appropriate sentence. There are no extenuating or mitigating circumstances available on the record in this case which may justify imposition of a sentence less than the prescribed minimum on the respondent. To show mercy in the case of such a heinous crime would be a travesty of justice and the place for leniency is wholly misplaced.

Cruelty by Husband or Relatives of Husband

Section, 498-A IPC, Husband or relatives of husband of a woman subjecting her to cruelty.—whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall he punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—for the purposes of this Section, "cruelty" means—

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman, or
(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.
This Section was enacted to meet the cases of dowry deaths. It was introduced in the year 1983. Its objective is to protect a woman who is being harassed by her husband or relatives of husband. The act of harassment would amount to cruelty for the purpose of this section. In *Inder Raj Malik and others v. Mrs. Sumita Malik*, it was contended that this section is ultra vires Article 14 and Article 20 (2) of the Constitution. There is the Dowry Prohibition Act which also deals with similar type of cases; therefore, both statutes together create a situation commonly known as double jeopardy. But Delhi High Court negatives this contention and held that this section does not create situation for double jeopardy. Section 498-A of IPC, is distinguishable from Section 4 of the Dowry Prohibition Act because in the latter mere demand of dowry is punishable and existence of element of cruelty is not necessary, whereas Section 498-A of IPC, deals with aggravated form of the offence. It punishes such demands of property or valuable security from the wife or her relatives as are coupled with cruelty to her. Hence a person can be prosecuted in respect of both the offences punishable under Section 4 of the Dowry Prohibition Act and this Section. It is just a case similar to Section 5(2) of the Prevention of Corruption Act and Section 409 of the Indian Penal Code.

It was held in *B.S. Joshi v. State of Haryana*, that the object of Section 498-A of Indian Penal Code was to prevent torture to a woman by her husband or his relatives in connection with demand of dowry. This Section was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper technical view would be counter productive and would act against interests of women and against the object for which this provision was added. In the present case proceedings

49. 1986 Cr LJ 1510 (Del).
50. 2003 Cr LJ 2028 (SC).
were initiated by wife under Section 498-A against her husband and his relatives and subsequently she settled her disputes with husband and agreed for mutual divorce. Later she moved an application for quashing proceedings initiated by her against husband and his relatives.

The Supreme Court held that refusal by High Court to exercise the inherent powers under Section 482 Cr.P.C. to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Section 498-A of the Indian Penal Code.

It was further held that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Cr.P.C. does not limit or affect the powers under Section 482 of the Cr.P.C.

**Meaning of Cruelty.**—It was held in *Kaliyaperumal v. State of Tamil Nadu*[^51], that cruelty is a common essential in offences under both the Sections 304-B and 498-A of the Indian Penal Code. The two Sections are not mutually inclusive but both are distinct offences and a person acquitted under Section 304-B for the offence of dowry death can be convicted for an offence under Section 498-A of Indian Penal Code. The meaning of cruelty is given in explanation to Section 498-A. Section 304-B does not contain its meaning but the meaning of cruelty or harassment as given in Section 498-A applies in Section 304-B as well, under Section 498-A of Indian Penal Code cruelty by itself amounts to an offence whereas under Section 304-B the offence is that of dowry death and the death must have occurred within seven years of marriage. But no such period is mentioned in Section 498-A.

It was held in *Hansraj v. State of Haryana*,[^52] that the mere fact that a woman committed suicide within seven years of her marriage and that she

[^51]: 2003 Cr LJ 4321 (SC).
[^52]: 2004 Cr LJ 1759 (SC).
had been subjected to cruelty by her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband. The Court is required to look into all the other circumstances of the case. One of the circumstances which have to be considered by the Court is whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman.

It was further observed that when in a criminal trial against husband for abetment of suicide by his wife, the prosecution improves its case from stage to stage in as much as the allegations that the accused did not like to keep the deceased wife with him because she was not good looking, or that he was addicted to liquor or that the deceased had reported these matters to her parents and others, or that the accused intended to re-marry and had told his wife about it, or that the deceased had once come to her father's house in an injured condition, or even the allegations regarding beatings, did not find place in the statements recorded by the police in the course of investigation and these allegations were made at the trial for the first time and all that was alleged in the F.I.R. or even at the stage of investigation was that there were frequent quarrels between the husband and wife, sometimes resulting in physical assault, on account of the husband being addict to the consumption of 'bhang' and the other allegation that the accused was aggrieved of the fact that his sister was not being properly treated by her husband who was brother of deceased also appeared to be untrue, it was held that the presumption under Section 113-A of the Evidence Act could not be invoked to find the accused guilty of the offence under Section 306 of IPC.

It was further held that having regard to the facts of the case, though the prosecution failed to establish the offence under Section 306 IPC, the
Cruelty for dowry demand and murder. — In *Balbir Singh v. State of Punjab*, the deceased Amarjeet Kaur was married to appellant. She had been complaining of ill-treatment at the hands of her husband and in-laws. Sometime a Panchayat was held to settle the dispute but ill-treatment continued while her husband had come home on two months leave. She in view of a settlement came to her matrimonial home on 12-10-1995. She received 90% burn injuries. In her dying declaration before the doctor the victim had stated her husband had put kerosene oil upon her and upon igniting locked doors of both the rooms from outside. The victim was rescued by neighbours. Victim in her second dying declaration before the investigating officer not only named her husband but also her mother-in-law. Witnesses in evidence stated how she was maltreated at the hands of accused persons on account of non-fulfillment of their demand of dowry. The Supreme Court held that in view of the fact that victim was rescued by neighbour case of suicide must be ruled out and the conviction of accused under Section 302 I.P. Code was held proper. However, in view of inconsistencies between two dying declarations benefit of doubt must be given to mother-in-law as for the offence under Section 302 is concerned. However, conviction of both the accused under Section 498-A was held proper. The mother-in-law was already in custody for four years therefore, she was ordered to be released forthwith. It was also made clear that only because dying declaration was not recorded by a Magistrate it by itself may not be a ground to disbelieve entire prosecution case.

53. 2006 Cr LJ 1243 (SC).