CHAPTER - VI

ROLE OF JUDICIARY WITH REFERENCE TO NATIONAL HUMAN RIGHTS COMMISSION AND STATE HUMAN RIGHTS COMMISSION :-

The Judiciary is the part of Indian democracy and therefore all its implications must be imported into the judicial process. In a democracy, the Courts do not belong to the lawyers and judges, but to the citizen of India. Hence, it is required that the judiciary should shape the process of law to actualize the Constitutional resolve and human rights to secure equal justice to all.

It is well known that one of the primordial purposes of legal institution is to assure and deliver justice to the common people which include woman also. “Justice” as defined in the Blacks Law Dictionary, is the fair and proper administration of laws. In its common acceptance, it means, to have access for every person to render his or her rights. Hence, the concept of justice serves three great objects - the security of life, liberty and the pursuit of happiness. The judicial system of India has a key role to dispense justice to people in every part of the society. Article-50 of the Constitution provides for the separation of judiciary from executive. Hence the Indian judiciary have the independent status in case of giving justice to women which is very important for the protection of
Human Rights. Regarding independence of judiciary Article-10 of the Universal Declaration of Human rights states as:

"Every one is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him"\textsuperscript{299}.

The Supreme Court of India is the watchdog of the Constitution and thereby keeps all the legislative, executive, administrative, judicial and quasi-judicial matter within its legal purview. As an administrator of justice and protector of rights and fundamental freedom of citizen, the Court of law in India holds a key position in the life of the individual and the society. Without having judicial remedies, the rights of individual cannot be protected within the legal framework.

The concept of women’s human rights is an international subject and the judicial remedies against such violation are available in two folds - Judicial remedies at the international level and judicial remedies at the national level. The Human Rights Committee, Cedaw Committee, the Commission on the status of women etc. are the different Committees under which the human rights of women can be protected at the international level.

\textsuperscript{299} Sec.10, Universal Declaration of Human Rights, 194
The Supreme Court of India in Vishaka’s Case\textsuperscript{300} expressed the view that to protect the women’s right the Court can take help of the International Convention on the Elimination of Discrimination against Women to interpret the Indian statute. Therefore, it may be concluded that to avail judicial remedies against human right violation, women can take resort of the Indian Judicial system.

This Chapter contains only the role of the Indian judiciary regarding the protection of human rights of women and the core area of this study is limited to the Supreme Court of India, the Gauhati High Court and its subordinate Courts and Family Courts. Along with these, the case study of National Human Rights Commission\textsuperscript{301} and Assam Human Rights Commission are relevant to be mentioned here.

It is an undeniable fact that law is ever growing. With the development of society and its societal change, law tends to grow whether in the line of social, economical or fiscal. Today is the era of globalization and technological advancement. In today’s world, the judiciary is confronted with such issues which were never even thought before. The Supreme Court of India always try to uphold the supremacy


\textsuperscript{301} Constituted under the Protection of Human Rights Act, 1993.
of the rule of law, strengthen the sense of justice and resist the arrogance of power. The Government of India is also keen and adopt the Protection of Human Rights Act, 1993, which is the only law enacted directly for the protection of human rights of Indian man or woman. Under this Act, the National Human Rights Commission and Assam Human Rights Commission are constituted which can decide any human rights violation (as defined in Sec.2) perpetrated by the State agencies. But, women, who constitute almost half of the population in India are yet in the poverty line; it may be due to century old social exploitation against them. It is an undeniable fact that the remedy through judiciary is an expensive matter. Naturally, the percentage of women, demanding their rights through judiciary are quite negligible.

Another important point is the education, which plays a pivotal role for availing justice and demanding equality. Due to the lack of knowledge, majority of the women in India, as well as in Assam are reluctant to go before the judiciary for seeking justice. The age old Indian traditional culture and the practice of domination over women also resist them to go before the Court for judicial remedy. However, the spread of modernization, urbanization and westernization increases the female literary rate, though meagre, and it changes the previous status of woman.
In this way, considering the different angles and perspectives of the status of women and their role and position for seeking justice before Indian judiciary, it is discussed here the different cases filed under different laws enacted specially for women before the Supreme Court of India, Gauhati High Court, and its subordinate Courts, Family Court, and the National Human Rights Commission and Assam Human Rights Commission.

**The Supreme Court of India** :- The Supreme Court of India is the ultimate interpreter of the Constitution of India and the other laws of the land. It has appellate jurisdiction over all civil and criminal proceedings involving substantial issues concerning the interpretation of the Constitution. The Constitution of India, by Article-32 gives an extensive original jurisdiction to the Supreme Court to enforce fundamental rights. The Court also have exclusive jurisdiction to resolve disputes between the Central Government and one or more States and Union territories as well as between different States and Union territories. The Supreme Court of India is also empowered to issue advisory rulings on issues referred to it by the President. The Supreme Court has wide discretionary powers to hear special appeal on any matter from any Court except those of the armed services. The appeals to this Court are allowed from the High Court only when the matter is deemed to be important enough on the
point of law or on the subject of the Constitution of the Nation, and is Certified as such by the relevant High Court.

The Supreme Court of India decided a good number of cases against the violation of the rights of women. While deciding those cases, the Supreme Court of India often give the judgment in favour of women or sometime against the women, considering the factual content of each of the cases. Various Acts are enacted by the Parliament under which the disputes are to be settled by the Supreme Court.

The Gauhati High Court: The Gauhati High Court, without any parallel, is a single institution exercising jurisdiction over seven North-eastern States of India, namely, Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh. It administers justice in an area having enormous variations. Geographically, it is an assortment of hills and valleys. Ethnically, it is an extraordinary mosaic. The legal and judicial scenario is diverse. Divergent and assorted laws govern the people of the region.

On 9th September, 1947, the Assam Legislative Assembly adopted a resolution that a High Court can be established for the Province of Assam. On 1st March, 1948, the Governor General of India promulgated the Assam High Court Order, 1948, in exercise of power under sub-
Sec.(1) of Section-229 of the Government of India Act, 1935, as adopted by the Indian Provincial constitution (Amendment) Order, 1948.

The Principal Seat of the Gauhati High Court (The High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh) is at Guwahati, Assam. At present, the sanctioned strength of Judges in the Gauhati High Court is 23 including the Hon’ble Chief Justice. The laws applicable to different areas may vary, but the entire area is administered by a common High Court. The Gauhati High Court is a Court of record. It has the appellate as well as writ jurisdiction. Since its establishment, it has decided many cases in divergent areas among which many cases are relating to protection of the rights of women.

It is because, the dispute under various Acts enacted for the protection of women, decided by the Supreme Court of India and the Gauhati High Court are relevant to discuss here. At the same time, it is also true that it I not possible to analyze in this thesis every case decided by the Supreme Court and the Gauhati High Court. As a result, some of the important cases categorized according to the nature of violation and decided by Supreme Court of India and Gauhati High Court are analyzed here.

302. ATMAN. Commensurating the Diamond Jubilee of the Gauhati High Court. Printed and published by Electric Media enterprises Pvt. Ltd.
Dowry Death (Sec.304B) :- Dowry is a growing social menace and violent abuse of human rights of women. This social menace has increased day by day, not only in Assam, but also throughout India. The demand of dowry by the husband or his family members and the subsequent harassment for dowry, which ultimately lead to the murder of women by her husband or his family, is the common practice in Indian society. Sec.304B of Indian Penal Code and the Dowry Prohibition act, 1961 are the relevant laws under which the relatives of victim can seek redress before the judiciary. The Supreme Court of India, while decided the case of dowry death, often have to release the accuseds due to lack of proof. The lacunae within the laws (as discussed in earlier Chapter) are the root cause of such injustices against women. Thus, in Biswajit Halder @ Babu Halder – Vs – State of West Bengal\(^{303}\), the Apex Court held that mere evidence of cruelty and harassment is not sufficient to bring an application under sec.304B, IPC. It has to be shown in addition that such cruelty or harassment was for or in connection with the demand for dowry. In this case the facts of the prosecution were like that – Deceased Rupali was married to the appellant on 6-3-1992 and she committed suicide at the house of appellant by consuming poison on 27-7-1992.

\(^{303}\) AIR (SCW) (2007) 2189.
Prosecution case was that deceased had reported time and again to her parents and brothers about persistent demand of the appellant for colour television, Scooter, money etc. Rupali's brother on different occasions requested the appellant not to harass Rupali for non-payment of those items. Trial Court and then High Court convicted appellants for offence u/s 304/34 and Sec.498A of the Indian Penal Code. But the Supreme Court held that there is no evidence to show that there was any cruelty or harassment for or in connection with the demand of dowry. There is no finding in that regard. The Court also reiterates the view that this deficiency in evidence proves fatal for the prosecution case. Still the Court allowed the appeal. The judgment of the above case reveals that though the Apex Court have the keen interest to protect the women's rights, but the lapse of adequate evidence compels the court to decide otherwise.

Similarly, the Gauhati High Court in case of Malim Debnath – Vs State of Assam 304, have to decide the case under Sec.304-B where the Appellant caused death of his wife by pouring Kerosene on her body and set fire on her within seven years of the marriage. Sri Chand Mohan Sutradhar, father of the victim Pranati Debnath, alleged that since after

the marriage of his daughter in 1995, the appellant demanded dowry and Rs. 2000/- from them. The Gauhati High Court found that in this case though the prosecution failed to prove the dowry harassment, but due to death caused within seven years, and burn injury, the Court affirmed the sentence of rigorous imprisonment of 7 years against the appellant.

In this way, Supreme Court has decided various cases relating to Dowry death and they are mentioned in Table of cases.

**Outraging the modesty of women** :-

Outraging the modesty of a woman is the violation of the women’s right to a dignified life. The Supreme Court of India in many instances have given the judgment against the outraging the modesty of women. However, the gravity of outraging the modesty of women depends upon the status of women. But in Rajendra Juwanmal Gandhi – Vs – State of Maharashtra[^305], the Supreme Court set aside the decision of High Court for holding the accused guilty of an offence of outraging the modesty of girl under Sec.354 IPC for committing rape on a girl of 8 years of age. In the instant case, the Court held that there was no penetration and therefore no sexual intercourse though the ingredients of attempt to commit offence of rape was present. The Apex Court reduced the punishment from 7 years

[^305]: Sec. 8 (1997) 386.
to 5 years imprisonment with fine of Rs. 40,000/- only. This judgment expressed the view that though there is no penetration still it is all attempt to commit rape and hence not the offence of outraging the modesty and convert the appeal from under Sec.354 IPC to that under sec.376/511 IPC and sentenced him as aforesaid. Rape committed on a female, whether a girl is minor or major is no matter, is a heinous crime committed on a weaker sex. Hence the punishment should be the same for the offence of rape.

Rape: Rape is a violent assault on the body of a female. A rapist not only violates the human rights of women but also degrades the very soul of the helpless female. The accused of such an offence does not deserve to be acquitted. The Supreme Court of India is very conscious about this inhuman behavior towards women. But the Apex Court, while deciding such cases, often have to relax or reduce the punishment to the offender due to lack of proof. The Supreme Court of India held that the Courts should impose a sentence commensurate to the gravity of the offence having regard to the facts and circumstances of the case. Thus in State of Rajasthan – Vs – Ram Narain & Ors., according to the

prosecution, a minor was induced to accompany by three accused of knife point to different places and after that the first accused raped her. The facts are that on August 14, 1983, when the victim Anoop Devi aged between 15 and 17 years was coming from the house of her uncle to her parents house, these accused enticed her to believe that all the women folk had assembled at the outskirts of the village to go to Circus and induced her to accompany them. Innocently believing their statement, she accompanied them to the outskirts but did not find womenfolk there. She was then taken at the knife point and raped by the first accused. The Supreme Court while deciding the case, reduced the imprisonment from 7 years, (as decided by Session Court) to 5 years along with the punishment of the co-accused with the 5 years imprisonment with fine. Hence sexual violence apart from being a dehumanizing act is an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her esteem and dignity. It degrades and humiliates the victim. The Courts are therefore expected to deal with cases of sexual crime against women with utmost sensitivity. Socio-economic status, religion, race, caste or creed of accused or victim are irrelevant consideration in sentencing policy.

The Supreme Court of India in a number of cases relating to rape has laid down that delay in filing FIR in itself is not fatal to the prosecution case but requires satisfactory explanation. Delay in lodging FIR cannot be used as a ritualistic formula for doubting the prosecution case. If prosecution fails to satisfactorily explain the delay, it would be fatal to the prosecution case\textsuperscript{310}.

Again, the laws relating to rape were extensively amended in 1983, mainly due to intense movements by women's organizations after Mathura rape case\textsuperscript{311} in which the Supreme Court of India acquitted two policemen, who were alleged to have raped and molested a young girl inside the police precincts, on the ground that the girl had not raised an alarm while raped. After that, the rape law was made more sensitive to women by introducing the concept of custodial rape. In cases of custodial rape, if a woman said that she had not consented to the act, the law raised a presumption of non-consent in her favour.

Regarding the cases from Gauhati High Court, the Supreme Court in abdul Gafur – Vs – The State of Assam\textsuperscript{312}, held that where in an offence of decoity Trial Court and High Court failed to analyse evidence


\textsuperscript{311} Tukaram – Vs – State of Maharastra, AIR 1979 SC 185.

\textsuperscript{312} AD (Cr) 1 (2008) 65.
correctly and acted on mere surmises and conjectures then accused persons were entitled to acquittal. The facts of the case is as follows: On the night of 11.4.88 at about 6-30 P.M. the accused Abdul Gafur along with co-accused, being armed with deadly weapons namely, dao, lathis, dagger etc. surrounded the house of Satyendra Nath Gupta, assaulted him, causing grievous hurt to him and his family and then committed rape on the relatives Mitra Gupta and Rubi Gupta. The Gauhati High Court convicted them under Sec. 395 read with Sec. 397, but has not found the alleged plea of rape. But the Supreme Court acquitted the accused from the charges and allowed the appeal accordingly. Thus, in this case rape was not found to be proved.

But in the case Bishnu Prasad Sinha – vs – State of Assam (Barnali Murder Case) 313, the Supreme Court took a different view. In this case, the deceased victim was a 7-8 years old girl, who with her parents and younger brother while travelling had to stay over for night in waiting room. Appellant No.1 was night chowkidar of waiting room and appellant No.2 was the handiman of the bus. In the past mid night, mother of the victim girl found victim missing and victim could not be traced. Body of the victim was later found and taken out from Ceptic tank. Appellant

No.1 made confessional statement before Magistrate. Confession was never retracted during the trial.

The apex Court confirmed the judgment of the Gauhati High court, but reduced the judgment from death sentence to life imprisonment.

**Cruelty** :- Section 498A of Indian Penal Code states cruelty by husband or his family on the wife. This Sec.498A has been introduced by Criminal Law (Amendment) Act, 1983 to combat the vice of dowry deaths. an unnatural death of a woman within seven years of marriage, whether by burns or injury or otherwise, taking place in the background of cruelty or harassment for dowry. Sec.498A has a wider scope for prevention of harassment for dowry. This section has given a new dimension to the concept of cruelty for the purpose of matrimonial remedies. Thus the Supreme Court of India in Hans Raj - Vs - State of Haryana\(^{314}\) held that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband does not automatically give rise to the presumption that suicide had been abetted by her husband. This judgment is found to be in favour of giving some relaxation to the husband.

Again, in State of Rajasthan - Vs - Teg Bahadur\(^{315}\), the deceased,

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aged about 18 years of age, got married to Teg Bahadur in 1993 and died on 1994 in her matrimonial house and was cremated without intimation to her parents. FIR was lodged and it was found that the first report and other report prior to the exhibited report was withheld. Hence, it required that the prosecution must prove that soon before death, the deceased was subjected to cruelty on account of demand of dowry. But in the instance case, there was no satisfactory evidence that the deceased was subjected to cruelty. Therefore, the Apex Court reiterated the views of the High Court and accordingly acquitted the accused.

From the above discussions, it is found that Supreme Court is of the view that dowry death and cruelty have close relationship to each other. To prove dowry death, cruelty must be established. But in Balwant Singh – Vs – State of H.P., the Apex Court held that Sec.304B and 498A of Indian Penal Code cannot be held to be mutually inclusive. These provisions deal with two distinct offences.

The Explanation to Sec.498A gives the meaning of cruelty. In Sec.304B there is no such explanation about the meaning of cruelty. But having regard to common background to these offences it has to be taken that the meaning of cruelty or harassment is the same as prescribed in the

316. 2008 (7) Supreme 1.
Explanation to Sec.498A under which cruelty by itself amounts to an offence. Under Sec.304B it is dowry death that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Sec.498A. A person acquitted under Sec.304B can be convicted under sec.498A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both sections.

Thus, all the discussions have made it clear that though Sec.498A provides for punishment for cruelty, in reality it is a strong ground for judicial separation or divorce.

In Assam apart from the disputes decided under Indian Penal Code, the Supreme Court of India have decided many cases under different laws which are made specially for women, some of which are discussed hereunder.

Normally, it is found that many persons by denying the existence of marriage take the advantage of the situation against the women. The Supreme Court in Smt.Seema – Vs – Ashwani Kumar, held that it would be in the interest of the society if marriages are made compulsorily registrable. As contended by the National Commission, in most of the

cases, non-registration of marriages affects the women to a great measure. Though the registration itself cannot be a proof of valid marriage per se, and would not be the determinative factor regarding validity of a marriage, yet it has a great evidentiary value. The divergence of law in case of marriage, divorce, judicial separation, nullity of marriage make the law far from uniformity, the impact of which is mainly observed upon the women. Therefore, the Supreme Court in Ms. Jordan Diengdeh – Vs – S.S. Chopra\textsuperscript{318}, held that it is necessary to make a complete reform of the law on marriage. The apex Court admits that the diversity of law on marriage mainly affects the marital status of women. The effect of this diversity of law was again observed in Lily Thomas – Vs – Union of India\textsuperscript{319}, where the Hindu husband converted to Islam and performed the second marriage without divorcing the first wife. The Court again reiterated the decision of the Sarla Mudgal’s case\textsuperscript{320} and held that change of religion does not dissolve the marriage performed under the Hindu Marriage Act between two Hindus.

\begin{itemize}
\item \textsuperscript{318} AIR (SC) (1985) 935.
\item \textsuperscript{319} AIR (SC) (2006) 1650.
\item \textsuperscript{320} 1995 (3) SCC 635.
\end{itemize}
Another complicated issue which normally deprived the women from their marital rights, came at large before the supreme Court is the bigamy and maintenance. In Ramesh Chandra Rampratapji Daga – Vs – Rameswari Ramesh Chandra Daga\textsuperscript{321}, a decree declaring the second marriage as null and void has been obtained by the husband on filing the petition. The question before the Apex Court was whether the wife is entitled to maintenance after the Court held that the marriage was nullity. The Court critically examined the provisions and held that the daughter and wife of the second marriage is entitled to maintenance.

But it is an undeniable fact that Indian women as well as Assamese women have to face critical and divergent situation for their matrimonial relationship. Women have to face mental agony, physical torture or even death in many cases for maintaining their matrimonial house. The status of Indian women was again reflected in the case of Murugaiah – Vs – Annathai\textsuperscript{322}. In this case Annathai, the respondent had filed a petition under Section-9 of the Hindu Marriage Act, 1955, seeking restitution of conjugal rights against the appellant. The gist of the case was that the appellant and respondent lived in houses opposite to each other and had relationship between them. They had sexual intercourse with each

\textsuperscript{321}. AIR (SC) (2005) 422.
\textsuperscript{322}. SCC 9 (2002) 604.
other and she became pregnant. At the intervention of the Sub-Inspector of Police, a meeting of the Village Panchayat convened and accordingly, the marriage was performed by exchanging garlands in the village temple. Thereafter, for a short time, they lived as husband and wife. She went to her father's house for birth of the child and gave birth to a male child. The appellant neither came to see her and the child nor showed any interest in looking after them. She filed the application under Section-9 of the Hindu Marriage Act, seeking restitution of conjugal rights. The Apex Court allowed the appeal and directed the trial Court to dispose of the case within 6 months.

Regarding the matrimonial relationship among the spouses, the Gauhati High Court in Drupadi Deora –Vs– State of Assam held that death of wife taken place within 4½ years of marriage in unnatural circumstances and oral documentary and circumstantial evidence established that deceased was treated with cruelty for not meeting demand of dowry by her husband; then conviction of appellant under Sec.304-B is affirmed. This is a case of tragic death of a house wife Kabita Devi Deora who sustained burn injuries on 15-2-94 at about 11.30 A.M. at her in-laws place. The occurrence took place at a time when her

cousin sister’s marriage was being solemnized at a nearby place. It was contended that in the instant case if the dying declaration are taken out for consideration there is no involvement of the mother-in-law. The Gauhati High Court concluded that the ill treatment was meted out to her by her husband Ramen. Therefore, the mother-in-law Drupadi Deora is released by the Court.

Sexual exploitation of children and flesh trade of women is a common phenomenon in the present day society. This social menace is increased day by day, not only in Assam, but all over India. This exploitation and flesh trade is the basic human right violation. The Supreme Court of India also forwards its step against this growing social menace. In Vishal Jeet - Vs - Union of India\textsuperscript{324}, the PIL Case, where the directions are sought for CBI enquiry which according to Supreme Court is neither possible nor practicable. The Apex Court recognized that it is a socio-economic problem, the measures to be taken in this regard should be more preventive rather than punitive.

This Writ petition under Article-32 of the Constitution of India at the instance of an Advocate was filed by way of public interest litigation seeking issuance of certain directions, directing the CBI to institute an enquiry against those public officers under whose jurisdiction Red Light

\textsuperscript{324}. AIR (SC) (1990) 1412.
areas as well Devadasi and Jogin traditions are flourishing and (i) to take necessary action against such erring police officers and law breakers, (ii) to bring all the inmates of the red light areas to the protective homes of the respective States, (iii) to bring the children of those prostitutes and streets girls pushed into flesh trade to protective homes and then to rehabilitate them. The Supreme Court relied that many unfortunate teen-aged female children and girls in full bloom are being sold in various parts of the country for paltry sum even by their parents finding themselves unable to maintain their children on account of acute poverty and unbearable miseries and hoping that their children would be engaged only in household duties or manual labour. But those who are acting as pimps or brokers in the flesh trade and brothel keepers who hunt for these teen aged children and young girls to make money either purchase or kidnap them by deceitful means and unjustly and forcibly inveigle them into flesh trade. These victims, though unwilling to lead this obnoxious way of life, have to submit their bodies to all the dirty customers including even sexagenarians with plastic smile.

The apex Court expressed the view that inspite of the Immoral Traffic (Prevention) Act, 1956 and rehabilitative provisions of law under various Acts, it cannot be said that the desired result has been achieved.
The court recognized it as a socio-economic problem and it should be more preventive than punitive and held that severe and speedy legal action is required but direction could not be given to CBI as desired.

The reproductive right of women is one of the most important right for the survival of the human race in this world. In many instances it is observed that, women are not yet getting the benefit of maternity under the Maternity Benefit Act, 1961. This injustice and irregularities were observed by the Supreme Court in Municipal Corporation of Delhi – Vs – Female workers (Muster Roll)325, held that there is nothing in provisions of the Maternity Benefit Act, which enables only the regular women employees to take the benefit of maternity leave and direct the Government to issue necessary notification under the proviso to Sec.2 to extend the Act to Municipal Corporation also. In this case the female muster roll workers of Delhi Municipal Corporation were denied the benefit under the Act.

Women have to suffer in various ways. Their rights are suppressed, violated or even terminated in different ways. These innocent victims, even in some cases are not allowed to take birth in this world. This gives

rise to a large number of female faeticide and pre-nuptial abortion. But in Surendra Chauhan – Vs – State of M.P.\textsuperscript{326}, the Apex Court held that if a person causes death with the intent to cause miscarriage of a woman will be convicted under Sec.314/34 of Indian Penal Code and the Medical Termination of Pregnancy Act will not be applicable in such cases. The brief of the case is that, appellant accused had illicit relation with the deceased. As a result she became 3 month's pregnant. Appellant had taken her to co-accused, an Electro Homeopath Doctor for abortion. Deceased died while abortion was being done.

Women, very often find to be paid less payment for the work of equal status. Thus, in Peoples Union for democratic rights – Vs – Union of India\textsuperscript{327}, the daily wager of construction of Asiad village, the petitioner alleged in the Writ Petition that the provisions of the Equal Remuneration Act were violated and women worker were paid on Rs. 7 per day and the balance of the amount of the wage were being misappropriated by the Jamider but the male worker gets Rs. 8.25 per day. The Apex Court dismissed the petition by directing the Government to take appropriate measure to pay adequate remuneration in future.

\textsuperscript{326} AIR (SC) (2000) 1436.
\textsuperscript{327} AIR (SC) (1982) 1473.
It is not irrelevant to mention that after enacting the Domestic Violence Act, 2005, the Supreme Court have to decide the dispute under this Act in S.R. Batra – Vs – Smti. Taruna Batra\textsuperscript{328}. In this case, under the Act, the wife claimed the right to residence in a shared household. The Apex Court opined that a shared household mean the house belonging to or taken on rent by the husband or joint property, but it is not the property of mother of husband. Same view have been expressed by the Apex Court in Vimalsen Ajitbhai Patel – Vs – Ajitbhai Revandas Patel\textsuperscript{329}, where it is specifically stated that a wife not only acquires a right to be maintained but also a right of residence. Regarding domestic violence, no reported case has ben detected in Gauhati High Court. However, list of some pending cases before the Gauhati High Court are already mentioned in the previous Chapter.

After a brief study of the judicial remedies awarded by the Gauhati High Court, it is observed that now-a-days a new stream of disputes relating to atrocities on women have developed side by side of the normal course of the awarding justice by the Gauhati High Court. It is

\textsuperscript{328} SCC 3 (2007) 169.

\textsuperscript{329} SCC 4 (2008) 649.
observed that since up to 1991, a very limited cases relating to women were filed before the judiciary of Assam. But after the imposition of President’s rule during the decade of 90’s changed the scenario in Assam. The deployment of Army Operation in 1991 under the name of “Operation Bajrang” and “Operation Rhino” to combat terrorism resulted a large number of cases seeking justice filed by women before the Gauhati High Court. Women were tortured, raped and killed by the army personnel during this period. The army atrocities on women in the name of searching terrorists destroy the moral taste of Assamese society. This resulted the increase of violence against women. Many petitions had been filed by women under the public interest litigation before the Gauhati High Court. The Constitutional validity of the Restricted laws like Assam Disturbed Areas Act, 1955, the Armed Forces Special Power Act, 1958 (as amended in 1972), the Terrorist and Disruptive (Prevention) Activities Act etc. are challenged before the Gauhati High Court. In many cases, the Court awarded compensation and direction by prohibiting harassment to innocent women. As it is not possible to include the list of all the cases during the period of imposition of President’s Rule, hence a few cases are discussed here.
Civil Rule No.2314/90\textsuperscript{330}, in this case the Court made a most dissenting judgment relating to the arrest by army authorities under Armed Forces Special Powers Act, 1958. The question before the division bench was that whether the Army authorities can arrest a female under the provision of the Armed Forces Special Powers Act, 1958 without any invitation on the part of police authority. Learned Counsel Ms. Haskar contended that the provisions of Sec.51(2) of Criminal Procedure Code is a specific provision to the contrary, and therefore, army authority cannot search for a female. But the High Court prefer to leave this question to be dealt in later.

Civil Rule (HC) No.16/91: Someswari Timung a grade-IV employee of the Majikuchi subsidiary Health Centre under Gohpur Police Station of Sonitpur District was killed by the Security personnel on 9-12-90, at about 3 to 4 A.M. After committing gang rape by the army and police personnel, the murder was committed by the raiding party. But Someswari was the sole bread earner of the family and was only 22 years of age. Considering these facts, the Court ordered Rupees Two lakhs to the parents of Someswari as ex-gratia payment.

\textsuperscript{330} (1991) \textit{1} GLR. 456.
After the withdrawal of President’s rule and the establishment of usual ministerial set-up, the High Court of Assam returned to its own traditional flow of justice. But the rise of terrorism remains the same and the armed conflict in Assam became the common phenomenon among the people of Assam. Consequently, violence and atrocities on women increased day by day.

The study have also been conducted in the various districts of Assam. After analyzing the cases collected from the different districts and Session Courts, it is found the rising trend of violation of women’s human rights. Some of the cases decided in different District Courts and Sessions Courts are discussed here.

(a) Session Case No.102 (T) 2004 (Tinsukia) State of Assam –Vs – Sri Dipen Saikia. Accused Dipen Saikia kidnapped and subjected the victim girl to sexual intercourse against her will. She was taken by accused to different places and lived together for more than one week after marrying her in a temple. Thereafter the accused repudiated the marriage and declined to marry her.

Findings of the Court are that the victim is a major and voluntarily had intercourse with the accused and accordingly acquitted the accused from rape and kidnapping.
(b) Addl. Session Judge-I (F.T.C.) Tinsukia,

Criminal Appeal No.6 (1) 2008.

Sri Badal Acharjee – Vs – State of Assam.

The victim was the daughter of Smti Dipti Nath, who directed her daughter to ask the labourers to erect the boundary fencing as there was a dispute between the parties. Sri Badal Acharjee – appellant arrived at the place and drugged her daughter by holding her hair as a result of which she sustained injuries on her left hand and leg. Police charge sheeted the accused under Sections-341/323/354 I.P.C.

Findings of the Court is the acquittal of the accused on the benefit of doubt.

(c) Haflong P.S. Case No.24/92 under Section-366(A) IPC.

On 4-4-92 complainant Sri Prothoma Sutradhar, S/o Late Nepal Chandra Sutradhar of Sarkari Bagan, Haflong lodged an ejahar at the Haflong P.S. through i/c Sarkari Bagan to the effect that his 11 year old minor daughter Smti. Mukti Sutradhar, a student of Class-VI was untraced since 2-4-92. Later on he came to know that Shri Lakhi Prasad Basfar, a neighbor had kidnapped his minor daughter. During investigation, the accused was arrested and rescued the victim girl. Later the accused was acquitted from the charge under Section-366(A) IPC by the Judicial Magistrate Court.
(d) Sessions Case No.50/2000, Barpeta

State - Vs - Sadek Ali.

The accused Sri Sadek Ali used to visit the residence of the informant and on 2-11-98 the accused raped the minor daughter of the informant, Smti. Banisa Khatun. It was found that sexual intercourse between the parties was taking place regularly and a son was also born out of wedlock. There was a false promise of marriage accompanied by regular gifts. The trial Court held that since the victim girl was a consenting party, therefore, no case u/s 376 IPC could be made out. However the accused was found guilty of cheating u/s 417, and an amount of Rs.5000/- was handed over the victim girl.

Inference - Unwed motherhood is a newly emergent social problem in the Assamese society.

(e) Session Case No.73 (JJ)/96. Jorhat.

State - Vs - Ananta Saikia.

FIR was filed on 1-11-94 alleging that on 29.10.94 one Sri Ananta Saikia of Kachogoral Bhaskar Nagar under Jorhat PS raped one Smti Rupamoni Kalita at her house. The victim also fractured her left hand as a result of assault by the accused with bamboo stick.

Police arrested the accused who was subsequently released on bail. Charge sheet was submitted on 29-3-96. During trial, the prosecutor's
witnesses and the victim girl remained absent for a long time. The Investigating Officer also remained absent for a long time and the summon was also not returned. As a result the case was pending as it is.

(f) Session's Case No.97 (N)/97. Nowgaon.

State – Vs – A. Alam & Ors.

On 2.6.94 the victim Bahar Begum while returning from her work was waylaid by the main accused A. Alam who forcefully took her along with Johar Khan, Lirajuddin Ahmed and one Kasim and was repeatedly raped by three main accused. FIR was lodged on 12.3.95 and charge sheet was filed on 3.8.96. The Court of Sessions issued proceedings against the accused persons. Till 18-9-98 progress was not completed as the main accused was absconding. On 12.2.2000, the Investigating Officer informed that the main accused fled to Bangladesh. Thus, till date the case was pending as summons could not be served.

(g) Sessions Case No.10/02. Bokakhat.

State – Vs – Mani Chandra Bora.

The accused, a resident of Dagaon No.2 under Bokakhat Police Station, attempted to rape Smti Dipa Bora by trespassing the house of Praneswar Bora at night. FIR was lodged. Police after investigation submitted the charge sheet on 8.1.02. The case is still pending.

State – Vs – Bhola Nath Das.

In the evening of 22.7.2000, around 3.30 PM the victim girl was raped by her own father in their house against her will. The victim, Ms. Deepanjali Das stated everything to her grandmother, who lodged the ejahar. The victim girl is a minor, around 14 years old, and the accused was 65 years old. The victim girl, by an order of the C.J.M. was handed over to Nagaon State Home on 25.7.2000. charge sheet was filed. Medical report indicated no sexual intercourse and the accused was accordingly granted bail. The case is still pending.

(i) Diphu P.S. Case No.276/93. Diphu.

Under Section 376/511 IPC.

On 25.1.93 evening, Smti. Beauty Barman, daughter of Sri Probodh Barman near Diphu Govt. College, Diphu went to the house of one Rabindra Barman to attend birthday ceremony of Rabindra Barman. At about 7.45 PM Rabindra Barman accompanied Smti Beauty Barman and left her at her home. While on their way back to the victim’s house, Rabindra Barman attempted to commit rape on her. The accused also warned her not to disclose the matter to anyone.

During investigation, the Investigating Officer of the Police Outpost examined the victim, complainant and other witnesses. The I/O
seized the under-garments of the victim where human semen was detected and the same was sent to Forensic Science Laboratory, Assam, at Guwahati for examination and opinion and it gave the positive test for human semen. The victim was medically examined and her statement was recorded judicially. In her statement, the victim stated that she was raped by the accused. In the medical examination, the doctor opined that there is no scar of recent intercourse and no mark of violence detected.

During investigation, the accused person was arrested and forwarded into custody. The case had been finally charge sheeted under Sec.376 IPC. But unfortunately the case is still pending.

(j) Dhubri P.S. Case No. 210/96.

Under Section 366 (A)/376 IPC.

On 2.12.96 complainant Smti. Lakhi Shah, wife of Sri Kanai Shah of Ward No.3, Baluchar, Dhubri Town lodged an ejahar at Dhubri P.S. to the effect that her daughter Smti Saraswati aged about 8 years, was working as maid servant in the house of one Sri Matilal Bhatra of New Market, Dhubri Town. On 26.11.96 accused persons viz. Gutka Shah and Sankar Shah, went to the house of Matilal Shah and took the complainant’s daughter with them by deceitful means to Kokrajhar and raped her mercilessly. After investigation, both the accused persons were
arrested and forwarded into the Court and the case is now pending under trial.

(k) Maibong P.S. Case No. 15/97.

Under Section 448/354 IPC.

On 22.4.97 at 8.20 PM Sri Jay Ballab Naiding of Purana Maibang lodged an ejahar at the Maibang P.S. to the effect that on 22.4.97 at about 3 PM two persons in civil dress seemed to be of Army personnel were found passing through the road and one of them suddenly entered into his roadside house, situated at Maibang – Semkhor road near Purana Maibang and attempted to outrage the modesty of his wife. She had been suffering due to advanced stage. The person had torn the blouse and other wearing of his wife. His wife assaulted the accused with some blunt weapon to save herself from the clutch of the accused. The accused managed to flee. During investigation, it was learnt that accused NK Dip Thapa was found involved with the case. The case was pending for arrest of accused NK Dip Thapa who is not produced by the concerned Army Headquarter.

(l) Session Case No. 17 (N)/ 97, Nagaon.

State – Vs – Nooruddin.

On 22.9.98, Shahida Nessa was found dead at her residence with strangulation marks. Although the charges against the accused husband
were framed under Sec.498A and 302 IPC, the trial Court held that prosecution had failed to make out a case under Sec.498A and therefore acquitted the accused as not guilty u/s 498A and 302 IPC. Unfortunately the accused was sentenced to simple imprisonment of 1 month u/s 323 IPC only.

(m) G.R. Case No. 2056/97, Nagaon.

State – Vs – Nurul Amin.

On 1.12.97 the complainant Hafiza Khatun lodged an FIR that on 2.11.97, at about 9 P.M., her husband assaulted her bodily and tried to strangulate her and threw her out of the house. The accused husband had demanded dowry and when she refused, the accused along with his two brothers tortured her and threw her out. The case was pending as the accused had been declared as absconder and the warrant of arrest issued against him could not be executed till date.

(n) Session Case No. TS (D) 18/99, Darrang.

Sri Gokul Roy – Vs – Ms. Ratna Saha.

This was a case u/s 13(i) (a) (b) of the Hindu Marriage Act, 1955. In this particular case the petitioner and the opposite party got married in 1997. As the opposite party deserted the petitioner, the petitioner filed the instant case. But after taking the evidences and upon hearing, it was found that the opposite party was driven out by the petitioner as the
opposite party failed to bring in the required amount of money as dowry. The case was pending for disposal as the opposite party had filed another case against the petitioner claiming maintenance.

(o) Title Suit (D) No. 02/02, Darrang.

Monika Sharma – Vs – Milan Ch. Gogoi.

Sri Milan Chandra Gogoi and Smti Monika Sharma Gogoi got married on 21.10.92. The petitioner stayed in the house of her in-laws for three months and co-habitated with her husband. However, her in-laws started treating her cruelly, using filthy language, misbehaving and at times leaving her outside the house at night and therefore she was compelled to leave her husband’s house.

Subsequently, smti Gogoi lodged an FIR on 22.3.2000. The case has not yet been decided.

(p) Misc. Case No.51/93, (Sonitpur).


The prosecution case was that the opposite party denied the entire allegation, the trial Court rejected the contention of the petitioner as she could not prove her case for maintenance.

Thus, all the above discussions regarding the cases in different districts, it is clear that the disputes in Sessions and District Courts are normally found to be either charge sheeted or released on bail or pending.
It is a well known fact that delay defeats the justice. Women are either denied their rights or debarred from availing justice.

**Family Court** :- The Parliament, by Act provides for the establishment of Family Courts with a view to promoting conciliation in, and scene speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith which is called the Family Courts Act, 1984. Enforcement of the Family Courts Act proves a live wine settlement of matters relating to marriage and relief to a number of Indian married women, especially to women struggling before the Court for release from broken married life from a long period. Sec.3 of the Act states that the State Government after consultation with the High Court may establish such number of Family Courts as the State government may deem necessary. Accordingly, on 21 March, 1992 Family Court was established in Guwahati for the women in Assam. Since after its establishment, the Family Court have decided innumerable cases relating marriage, divorce, restitution of conjugal rights, maintenance, conciliation etc. Thus –

(A) F.C. (Crl.)No. 145/92.

decided on 17.6.92.

Manjurani Nath – Vs – Baikuntha Nath.
Petition was filed by Manjurani Nath under Sec.125 of Criminal Procedure Code claiming maintenance against her husband. The allegation was that the petitioner was a victim of continuous physical and mental torture in the hands of her husband since their marriage on 23.8.84. The husband had extramarital relationship with other woman, the consequence of which was that she has been driven away from her marital home. Finding no alternative, the petitioner took shelter to her parents home. In the meantime, the husband married again and refused to maintain her. The Family Court directed the husband to give maintenance of Rs. 200/- per month to the wife and Rs.150/- per month to the son with effect from 17.6.92. Money was to be deposited at the Court on 18.1.94. But no payment was made by the husband.

In this case, it is found that bigamy was committed by the husband which has been totally ignored by the Court and allowed the maintenance of trivial amount by which it is not possible to look after her son and herself.

(B) F.C. (Civil) No. 24/93.

Decided on 22.11.93.


Under Sec.10 of the Hindu Marriage Act, 1955, the petitioner Smti. Saroj Mali filed the petition for judicial separation. As per the petition they were married according to Hindu rites and rituals on 27.3.73 at
Maligaon and out of their wedlock 3 children were born. Since 1982, her husband started physically assaulting her for no fault of her own. He was unnecessary by scolding her every now and then. Several times the respondent becomes so cruel towards her that he attempted to kill her with cutting weapon (bathi). Due to the fear of her life, she separated herself from her husband in 1989. Since then there is no marital relationship between the spouses, although the children were having visiting terms with the father. Now the petitioner prays for getting judicial separation from her husband. But the husband did not appear before the Court and the Court have granted the decree of judicial separation on 25.11.93.

It appears from the above judgment that the husband did not appear before the Family Court. Instead of compelling the husband before the Court, the Family Court took a lenient view about the presence of the husband and gave judicial separation by ex-parte decision. The question is whether the wife will get the benefit of judicial separation or not? Apart from those cases, there are a number of cases where the judgment and order are more or less the same. The only exception is that the amount of maintenance allowance has been increased.
The National Human Rights Commission :-

The National Human Rights Commission was established at Delhi as per the provision of the Protection of Human Rights Act, 1993. The purpose of the Act was to provide for the constitution of National Human Rights Commission, State Human Rights Commission and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto.

After the establishment of National Human Rights Commission, the Commission has performed different functions like deciding the cases suo moto, or cases referred from State Human Rights Commission etc. Apart from these, the Commission make the awareness programme. Nevertheless, the Commission have decided a very few cases of Assam. Some of them are mentioned here.

(a) NHRC Case No. 27/3/1999-2000.

Jawan rapes mentally disturbed girl in public.

The Commission took suo moto cognizance of a new item published in “The Statesman”.

The report from the Ministry of Defence confirmed the allegation that one Ajit Singh had raped the victim, a 15 year old mentally retarded girl at Kokrajhar and that an FIR was lodged by a civilian. The girl was examined medically and the Medical Officer had confirmed the offence.
Ajit Singh was arrested and placed in military custody. A summary general Court Martial tried Ajit Singh and awarded 8 years rigorous imprisonment and dismissal from service. The Commission awarded an amount of Rs. 25,000/- as compensation to the victim.

Hence, in this case the offender was punished, though the compensation is a meager one.

(B) NHRC Case No. 113/3/2000-2001.

Commission of rape by a Minister of State in the Government of Assam.

The Commission took cognizance of a complaint from a resident of Kokrajhar, Assam alleging that her 16 years old daughter had been raped by Rajender Mushahary, a Minister of State of Assam in Shantivan Hotel, Barobisa, West Bengal on 27th February 2000. The victim was, allegedly, raped again after one month and threatened with dire consequences if she divulged the matter. The mother therefore lodged a Complaint and a case was registered at Gosaingaon Police Station. However, no action was taken against the erring Minister, even though the young daughter had conceived. Upon notice being issued to the Government of Assam, a report dated 29th November 2000 was submitted by the Director General of Police, Assam which pointed to the involvement of the Minister in the commission of the offence amongst others. The Police had arrested three
persons out of the seven who were named. On asking the State Government about the action, the Government stated that the State CID had directed the SSP to take steps for DNA profiling in order to complete investigation in the case. In regard to the reservations expressed by the Commission in respect of the accused continuing as a Minister of State, the report indicated that the continuation of Rajender Mushahary in the Council of Ministers was to be based on the result of the investigation. Press reports thereafter appeared indicating that the Chief Minister had taken strong exception to the proceedings and view of the commission. The Commission then observed that the continuance of the principal-accused of such an offence as a Minister in the State Cabinet, in its view, is erosion of the rule of law, and as a consequence, it is a serious violation of human rights. Further investigation reports submitted by the Government of Assam to the Commission indicated that the DNA test established that Rajender Mushahary was the father of the child and accordingly he was arrested on 6th August 2001. Four others were arrested and two were absconding. In the light of the developments, the Commission did not find it necessary to pursue this matter any further.

This case shows the scenario of wide scale violation of women's human right in Assam.
(C) NHRC Case No.32/32005-2006.

Under trial lady prisoner in detention for 32 years.

This case relates to the release of an under trial lady prisoner who remained as an under trial prisoner for 32 years. The matter is still under consideration of the Commission.

**Assam Human Rights Commission** :-

The Government of Assam has constituted the Assam Human Rights Commission on 19th March, 1996. The Commission has its headquarter at Guwahati.

The Commission is empowered to perform all those functions which have been entrusted to the National Human Rights Commission. It may enquire into violation of human rights only in respect of matters related to any of the entries enumerated in List-II and III in the Seventh Schedule to the Constitution. Initially, the Commission decided suo-moto cases on the basis of the news appearing in various newspapers published in the State of Assam. Thus, the AHRC registered 8 cases of rape, out of which 5 cases are disposed, 6 cases of dowry death, all of which have being disposed of, 1 case of dowry harassment and 33 cases of violation of dignity of women, out of which 27 cases are disposed of in 1996[^331].

Some of the cases decided by Assam Human Rights Commission are described below –

(1) AHRC Case No. 4604 and 4650 of 2003.

Syed Abijan Begum .... Complainant.

Decided on 5.10.2005.

Both the cases were registered as the Complainant Syeda Abijan Bibi, village – Barmarwoi, P.S.-Kamalpur of Kamrup District filed two separate complaint petition regarding the alleged rape of her minor daughter Binowara Begum, aged about 15 years, on the night of 5.7.03. She had named 3 (three) persons, namely, Syed Jaimal Ali, Md. Rajib Ali and Md. Gafur Ali, all of village Barmarwoi. Her grievance was that police did not take action on the FIR.

The Commission made the communication with the police. The I/O of Police examined the victim girl and seized the wearing clothes and under wear. She was sent to the Guwahati Medical College. The Medical Report recorded that evidence of sexual intercourse not seen. She is habituated to sex. Violence or struggle has not been seen on her body or private part. The case is pending before the Court of SDJM at Rangia. Hence the commission has not taken any further action. For this reason the actual consequence of the case is not possible.
(2) AHRC Case No. 5255/2005.

Decided on 1-3-2005.

The General Secretary of Karbi Nimso Chingthur Asong, Central Committee (KNCA) and the Secretary of All India Progressive Women's Association (AIPWA), Karbi Anglong Committee, have filed this complaint petition jointly. On 25th July, 2004, at around 3 A.M. a group of Indian Security Forces raided the Dikrut Timung Village in Langlokoo area under Dokmoka Police Out-post, raped and subsequently murdered 3 teenaged girls, namely, Miss Renuka Beypi (20 years), Rupjit Teronpi (16 years) and Larsika Rongpi (17 years). No action have been taken by District Administration. On 7th February, 2005 a Jawan Goutam Tamang stationed at Diphu raped Miss Hanri Teronpi (12 years), FIR was lodged and the accused was arrested.

The Commission suggests the complainant to go before National Human Rights Commission as it is violation of Human Rights.

(3) AHRC Case No. 5523/2005.

Abdul Kalam Azad.... Complainant.


Complainant Abdul Kalam Azad has alleged that his young sister Abida was given in marriage with one Taraf Ali of Sitoly village under Baghbar Police Station of Barpeta District on 30.11.2003. Few days after
the marriage, said Taraf Ali and his family members started ill-treating, demanding dowry. On 24.11.04, Abida was allegedly poisoned by the family members of Taraf Ali and his elder brother Baskar Ali rushed to the spot and immediately shifted her to Mondia, then to Barpeta and on 25.11.04, the victim Abida was declared dead. Barpeta Police registered the case. Post mortem report could not hint the cause of death. Then the viscera were sent to Forensic Science Laboratory. But the police did not take action. When the Commission communicates to the Police, they informed that 5 persons were arrested by Police and they were remanded to judicial custody. Charge sheet was submitted by police and hence the Commission decided to close the case.

(4) AHRC Case No. 6/26/2007.

Smti. Nirupama Kakati .... Complainant.

Decided : 6-12-2008.

Smti. Nirupama Kakati, a resident of Bhagadattapur, Rupali Path, Beltola, Guwahati filed this Complaint petition before the Commission alleging, inter-alia, that on 6-1-07 some police personnel of Dispur Police Station accompanied by about 40/50 youths came to her house to serve a notice. She alleged that taking advantage of the absence of her husband at home at that time, they misbehaved with her using indecent language and
threatened her with dire consequences. Being aggrieved by the action of the police, she approached the Commission.

But the S.P. of the Police denied the allegation and the Commission decided not to proceed further.

Thus from all the above discussion, it is clear that though the judiciary always proceed to give remedy by giving justice against the human rights violation, yet in many instances, judiciary also become unable to fulfill the required goal.

Abbreviation:

C.I.D - Criminal Investigation Department.

S.S.P. - Special Superintendent of Police.

D.G.P. - Director General of Police.

D.N.A. - Deoxy Ribonucleic Acid.