CHAPTER IX
EVALUATION OF JUDICIAL ROLE

The Indian judiciary particularly, the Supreme Court has played a creative role in providing justice to women victims of violence and has given far reaching and innovative judgments upholding the basic principle of equality of sexes and tried to maintain the dignity and honour of women. It has been projected in a number of judgements that judiciary has been successfully proved to be the last resort of the victims.

Judicial intervention on various issues concerning women has been largely progressive and liberal. Judicial activism through the process of affirmative action and protective discrimination in favour of women has been, to a large extent, instrumental in the growing empowerment of women and in providing the necessary framework within which the woman of today is able to move around with confidence, assert her rights and gradually progress towards a position wherefrom they can stand on an equal footing with men in all walks of life.¹

However, one thing shall have to be clearly borne in mind, namely, the role of the judiciary, in the vindication of gender justice. According to Justice V.R. Krishna Iyer, "case – law, creative, imaginative and gender friendly, has its logic and limitation. Judges cannot make law but only interpret it and decide specific cases and controversies within defined bounds although in that process they do make law interstitially. But legislation is essentially a wider function

covering vaster spaces and free to weave fabrics of fundamental mutation. It is through the codification of substantive law by the parliament radical transformation of the social order is possible. Magnificently as the judiciary has acted, they have not and could not usurp legislative functions. Landmark decisions delivered by the Indian judiciary, in a particular, during last two decades; bear testimony to the fact that judges cannot be accused of gender injustice. They have shown the requisite sensitivity is individual and needs to be institutionalized. Judicial interpretation of gender jurisprudence in diverse situations has explained and expanded the law, some of them containing positive directives to empower women.²

9.1 Judicial activism

The Supreme Court has been made the guardian and protector of the constitution. The Constitution has assigned it the role to ensure rule of law including the supremacy of law in the country. For this purpose it has been conferred wide power of judicial review.

Judicial activism may be taken to mean the movements of the judiciary probe into the inner functioning of the other organs of the Government (i.e. the executive and legislature). The judicial activism is, no doubt, the result of the inactiveness on the part of the executive and legislature. It is the function the legislature to make law and of the executive to implement the law but both the

² Speech delivered by Justice Lahoti, in one day all India Meeting of Chief Justice’s of High Courts on Women Empowerment vis-a-vis legislation and justice decisions was convened in New Delhi at the Parliament House Annex on 11th December 2004 by the National Commission for Women.
organs have failed to discharge their functions satisfactorily, in such circumstances, it is not the power but duty of the Court to uphold the Constitution and compel the other organs of the Government to discharge their functions properly. The Supreme Court being the guardian of the Constitution cannot remain a silent spectator. It can direct the legislature and executive to discharge the functions assigned to them by the Constitution. No doubt, the doctrine of separation of powers says that each organ of the Government should perform its own functions and should not interfere with functioning of other organs or should not usurp the functions or powers of the other organs but at the same time the judiciary, in addition to its judicial functions, have been assigned the function to see that the Constitution is not violated by any person, body or authority including the legislature and executive. If the executive and the legislature do not perform the functions assigned to them by the Constitution, the Court may direct them to discharge the said functions. On several occasions the Court has directed the executive and the legislature to discharge their duties or functions. This is, in brief, called judicial activism.

The main object of judicial activism is to maintain the rule of law in the country. The rule of law requires each organ of the Government to perform the functions assigned to it by the Constitution. If the legislature does not make required law and the executive does not execute the law, for example does not arrest the law-breakers and does not collect evidence against them, there will be complete death of the rule of law. The Court cannot be and should not a party to it, as it is the guardian of the Constitution and protector of the rule of law in the
country. It has rightly been said that to safeguard the rule of law, the foundation on which the super-structure of democratic rule rests, judicial intervention becomes the need of the hour.\(^3\)

The Supreme Court and High Court in India has become active in espousing the rights of women through public interest litigation, liberalisation of *locus standi* and by awarding compensation to the victims of lawlessness and abuse of power. Development of Public Interest Litigation has also provided significant assistance in making the judicial activism meaningful. Now the Court entertains Public Interest Litigation at the instance of any public spirited citizen or organization acting bona fide for the enforcement of fundamental right of a person in custody or of a class or group of persons who by reason of poverty of disability or socially or economically disadvantaged position find it difficult to approach the Court for redress. The Court has given several important directions to the executive and legislature at the instance of the Public Interest Litigation. On account of the Public Interest Litigation the Court has found opportunity to give directions in public interest litigation the court has found opportunity to give directions in public interest and enforce the public duties. Several directions and orders relating to environment protection, labour welfare, investigation by C.B.I. or police, human rights, simulation, etc., have been issued in public interest litigation cases.

The procedural innovations in the public interest litigation can be discussed under the following heads (I) Liberalization of the rule of *locus standi*; (ii) Treating

\(^3\) V.V.Upadyay, *Judicial Activism-Its Origin and Relevancy*, AIR 1997 140.
letters addressed to individual judges as writ petitions (iii) *suo motu* intervention by the judges (iv) Adoption of non-adversarial procedure of justice and appointment of commissioners for fact finding, etc.

i) **Liberalization of the rule of *locus standi***

Ordinarily a person whose fundamental or other right has been violated may file a petition under Article 32 or 226. The public interest litigation is an exception to this general rule. The Court entertains public interest litigation at instance of public spirited persons acting bonafide for the enforcement of fundamental right of a person in custody or of a class or group of person who by reason of poverty or disability or social or economically disadvantaged or position find it difficult to approach the Court for redress.

Thus the fundamental right may become meaningful not only for the rich and the well to do who have the means to approach the court but also for the large masses of people who are living a life of want and destitution and who are by reason of lack of awareness, assertiveness and resources unable to seek judicial redress. In several dowry death and rape crimes the Supreme Court and High Court have accepted the public interest litigation. Accordingly in *Chairman, Railway Board v. Chandrima Das,*4 where a rape was committed on a Bangladeshi woman by railway employees, a practicing advocate of High Court filed a petition under Article 226, which included not only the relief for compensation but many other reliefs.

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ii) Treating letters addressed to individual judges as writ petitions

Some judges have been strong protagonists of public interest litigation, on the Bench and outside it. In fact they have been mentioned as soliciting\textsuperscript{5} such petitions. The letters were, therefore, directly addressed to them. They used to place them on their own board after converting the letters into writ petitions, for disposal. The letters have been converted into writ petitions on the logic that Article 32(1) of the Constitution does not say as to who shall have the right to move the Supreme Court, nor does it say by what proceeding. The expression ‘appropriate proceedings’ is too wide, and so moving the Court through a letter can be appropriate proceeding because it would not be right to expect a person acting \textit{pro bono publico} to incur expenses for having a regular writ petition prepared by a lawyer. It has to be appropriate not in terms of any particular form, but appropriate with reference to the purpose of the proceeding. For instance, Four law teachers, Lotika Sarkar, Upendra Baxi, Raghunath Kelkar and Vasudha Dhagamvar wrote a letter to the Chief justice of India protesting against the Judgement in \textit{Tukaram v. State of Maharashtra}\textsuperscript{6}

iii) \textit{Suo motu} intervention by the judges

Justice M.P. Thakkar, a judge of the Gujarat High Court (before the came to the Supreme Court) converted a letter\textsuperscript{7} to the editor in a newspaper by a widow mentioning her plight because of the non payment of the provident fund,

\textsuperscript{5} Arun Shourie in an interview to facet, See facet, 1983, Vol. II No. 1, p.3.
\textsuperscript{6} 1979 (3) SC 143.
family pension after her husband's death, and ordered a show cause notice to be issued without any further formalities to the Regional Provident Fund Commissioner. *Suo motu* intervention by a judge is permissible on the basis of a letter to the editor, he could intervene on any other basis e.g., news item in any communication media, report given by a friend, somebody knocking at the door of the judge with his pathetic story and the like. Accordingly in *Bodhisattva Gautam v. Chakraborty,*\(^8\) Supreme Court in a historic judgement where it took *suo motu* notice of the facts in the complaint, and issued notice to him to show cause why he should not be compelled to pay maintenance to the woman he had cheated.

iv) Non adversarial procedure of justice and appointment of commission

Justice Bhagwati's reasons for disapproval of the adversarial procedure for public interest litigation matters are that it sometimes leads to injustice where the parties are not evenly balanced in social or economic strength, firstly, because of the difficulty in getting competent legal representation and secondly, because of his inability to produce relevant evidence before the court and genuine concern for the same is but natural, but then the Court must make a rational assessment if it is in a position to adopt non adversarial procedure in all public interest litigation matters and all that it involves.\(^9\) If the court has to manage the collection of facts, data and evidence on its own, it seems to be obviously desirable that a permanent, trained and experienced fact finding machinery is set up under the control and supervision of the Supreme Court.

\(^8\) (1996) 1 SCC 490  
\(^9\) *Bandhu Mukti Morchan v. Union of India,* (1984) 3 SCC 161
9.2 Judicial Activism and Women's Rights

Women's issues were put on the national agenda in December 1974 with the submission of the Report towards Equality. The Report has been a benchmark for the women's movement in the country and has become a part of the movement's engagement with the law. It was the first concrete step in post independent India to state that equality for women was not negotiable and was indeed a constitutional promise-awaiting fulfillment. If women were to participate in national development the promise of equality must be redeemed.

These were times perilously close to the internal emergency that was declared in June 1975. The political situation in the country changed dramatically. The repression of civil liberties, and the suspension of the right to life under Article 21 affected all the institution of society. The protection of the courts having been exhausted, the scene of struggle shifted and the engagement of civil society were with politics. The primary concern of all movements, including the women's movement, was the restoration of civil liberties. The post emergency period saw the apex court battle to reclaim much of its lost legitimacy. It is no coincidence that this period was one of increased judicial activism, witnessing the most spectacular contribution of the Supreme Court to the jurisprudence of public interest litigation. Internationally, this was a period that saw the development reflecting to some extent the development of community rights. The question of women’s rights, however, was still in the forefront.

10 Committee on the Status of Women appointed by the Government of India in 1971, of which Ms. Vina Mazumdar was the member secretary.
The cases of bride burning in connection with dowry demands reflect the inherent limitations of social legislations. Despite the fact that Parliament has enacted several laws and the Government of India has created infrastructures to enforce those laws, several women's lives continue to be extinguished within the dowry demands. Women's organizations have intervened in many bride-burning cases and the courts have allowed such interventions. Accordingly in *Joint Women's Programme v. State of Rajasthan*, a social organization took up a few cases of alleged dowry deaths in Rajasthan and Haryana. The Supreme Court took a path-breaking step directing State Governments to set up special dowry cells at the State level to investigate such unnatural deaths. But in the *Shalini Malhotra* case her father and women's organizations had made an intervention application, but the court rejected it.

**Judicial Activision and Rape Trials**

It asserted that public interest litigation has helped in maintaining or restoring rule of law in several cases like unfair police investigation, guidelines in respect of rape cases and payment compensations to rape victims. Unfair police investigation on rape of nuns of a Christian institution was alleged in a public interest litigation in *Gudalure M.J Cherian v Union of India*. This case is known as Gajraula. While FIR alleged participation of three persons, police arrested four persons. Petitioners stated that instead of arresting the real culprits, police was asking the victims to identify the arrested persons as culprits because

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11 AIR 1987 SC 2060.
12 D.N. Sandanshiv, Bride Burning: Perspective of Interveners, Kali's Yug, p. 94
13 1992 (1) SCC 397
of which the victims were not coming forward to identify the identification parade. Investigation was completed and charge-sheet was submitted to the court. The petitioner prayed for entrusting the investigation to CBI and transferring the case from Session Judge, Moradabad to Session Judge, Delhi. The Supreme Court observed that in ordinary circumstance, at the stage in which the case was, it was not for the court to open the investigation by entrusting case to a specialized agency like CBI. But in a given situation, to do justice between the parties and to instill confidence in public mind, the may ask CBI to investigate. The prayer for transfer of case was not accepted.

In another case, the Supreme Court has called for a report from the state government, the allegations being that an influential politician was involved a sex racket, in which minor girls were abducted and raped. Globalization and its attendant consumerism has brought with it crime of a high order, where women are viewed as purchasable commodities. One of the challenges before the Supreme Court in the coming days will be to deal with organized crime against women\(^\text{14}\) The victim in case of rape more tragic and unfortunate, wherein the victim become the target of a social ostracism and the offender, more often than not, goes Scot free. Judicial activism, in this area, has largely been instrumental in moulding public opinion. Sensitivity in favour of women and no mercy to the offender is the repeated reminder of the constitutional courts in number cases.\(^\text{15}\)

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\(^\text{14}\) Anweshi Women Counselling Centre v State of Kerla, Special Criminal Petition No 3725 of 1998
Therefore the judiciary made certain guidelines to deal with rape cases. Accordingly in Delhi Domestic Working Women's Forum v Union of India,¹⁶ the Supreme Court laid down guidelines for assisting rape victims. The facts brought before the Court in this case related to the rape of six women by army jawans on, train. The Court suggested, broadly, legal assistance at the police station, information on the rights of representation available to the woman, preservation of the anonymity of the victim, keeping in the police station a list of advocates willing to act in these cases, authorizing the advocate to act within the police station with respect to questioning of the victims without delay, and the setting up of a Criminal Injuries Compensation Board which would provide for compensation to the victim, whether or not a conviction had taken place. The Court also ordered that the scheme for compensation and rehabilitation of the victims be focused on by the National Commission for Women and a time period of six months for the scheme was set.

The case of Bodhisattva Gautam v. Chakraborty,¹⁷ is one in which the Supreme Court yet again used provisions of criminal law to deal with a difficult situation. The appellant, a Bodhisattva Gautam (the irony of the name can hardly be missed), had persuaded a woman to have sexual intercourse with him on the promise of marriage. He then went through a fake form of marriage with her. She was twice pregnant and on each occasion he compelled her to undertake an abortion. He then abandoned her on the plea that he was never lawfully married.

¹⁶ 1995(1) SCC 14.
¹⁷ Supra note 8.
to her. In these circumstances, she lodged a complaint against him under sections 312, 420, 493, 496 and 498A of the Indian Penal Code. He applied to the high court to quash the prosecution, which it refused. The appeal to the Supreme Court resulted in a historic judgement where the Court took *suo motu* notice of the facts in the complaint, and issued a notice to him to show cause why he should not be compelled to pay maintenance to the woman he had cheated. The Court observed that offences like rape were crimes against the person's most basic cherished human rights, namely the right to life. The Court observed that under Article 32 it could take *suo motu* notice of the facts and directed the appellant to pay interim maintenance Rs.1000 per month to the woman pending the prosecution. Again of in *Chairman, Railway Board v. Chandrima Das*,\(^{18}\) where a rape was committed on a Bangladeshi woman by railway employees, a practicing advocate of High Court filed a petition under Article 226, which included not only the relief for compensation but many other reliefs as, for example, relief for eradicating anti social and criminal activities of various kinds at Howrah Railway Station. The true nature of the petition, therefore, was that of a petition filed in public interest, and therefore the writ petition was observed to be maintainable. In such a case, it could not be said that she could not file that petition as there was nothing personal to her involved in that petition. Where a Bangladeshi woman was gang raped by Indian railway employees in a railway building, the order allowing compensation to her does not suffer from any infirmity and relief can be granted to her under public law as there

\(^{18}\) *Supra* note 4.
was violation of fundamental rights firstly, on ground of domestic jurisprudence based on Constitutional provisions and secondly, on the ground of Human Rights Jurisprudence based on the Universal Declaration of Human Rights, 1948, which has international recognition as the “Moral Code of Conduct” having been adopted by the General Assembly of the United Nations. The International Covenants and declarations as adopted by the united nations have to be respected by all signatory states and the meaning given to the above words in those declarations and covenants have to be such as would help in effective implementation of those rights. The applicability of the universal declaration of human rights and principles thereof may have to be read, if need be, into the domestic jurisprudence

**Activism in other cases**

The Apex Court has ever remained vigilant of the issue of sexual harassment and from time to time dealt with cases of sexual violence more sternly. Though the Sexual harassment as a form of sex discrimination is recognized in *Vishakha’s case*, considerable public attention was drawn to this menace with a case of *Rupan Dool Bajaj v. Kanwar Pal Singh Gill,*\(^{19}\) besides other things this case is significant because of involvement of senior officers of Indian Civil Services, which is the premier service for governance in the country. In this case Supreme Court reversed the judgement of a High Court, wherein the court had quashed the Complaint of the victim, Mrs. Bajaj, a senior officer of Indian Administrative Services on some procedural grounds. She had

\(^{19}\) *AIR 1996 SCC 309:1996 Cr.L.J.381.*
complained of being slapped on her posterior by Mr. Gill, then Director General of Police, in full public view. The allegations involved outraging the modesty of woman under section 354 of Indian Penal Code or insulting the modesty of woman under section 509 of Indian Penal Code. High Court quashed the complaint finding the complained offence too trivial to be cognizable and for the reason of unreasonable and unexplained delay of eleven days in lodging the first information report.

Expressing its gender sensitive attitude Supreme Court observed that offence of outraging the modesty of a woman is made out. In the absence of any definition of modesty in the Penal Code court applied its dictionary meaning “in the present context” which is given as “womanly propriety of behaviours, scrupulous chastity of though, speech and conduct (in man or woman), reserve of sense of shame proceeding from instinctive aversion to impure or coarse suggestions”. Court concluded that keeping in view the total fact situation it could not but be observed that alleged act of the accused in slapping the appellant on her posterior amounted to outraging her modesty for it was not only an affront to the normal sense of feminine decency but an affront to the dignity of the lady – sexual overtones or not, notwithstanding. While rejecting the defence contention of absence of intention and of the triviality of offence the Supreme Court attempted to view the whole thing from a woman's perspective. Court observed that intention was immaterial if offence was likely to outrage the modesty of appellant, as the alleged act was committed in the presence of a gathering comprising the elite of society.
The gender sensitivity and sagacity of the court was reflected in not accepting the defence of triviality with the recognition that keeping in view Indian society Mrs. Bajaj or any woman of ordinary sense and temper would never buy even bigger ignominy and trauma to which she was subjected to was so slight.

Again in State of Punjab v. Ramdev Singh,20 it was observed that, "sexual violence apart from being a dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity. It degrades and humiliates the victim and more so where the victim is a helpless innocent children or a minor.21

In all these cases, the Supreme Court invoked and strongly relied on the provisions of international instruments, ostensibly to fill the void in the domestic law. This represented a significant departure from the Courts earlier stand keeping with the traditional rule as to the applicability of international instruments, which unlike customary international Law, ordinarily must go through "the process of transformation to municipal laws", before becoming enforceable by the domestic courts. Vishaka was a public interest class action that came up before Supreme Court at the instance of certain social activists and NGOs. The issue raised was prevention of sexual harassment of women in places of work. It was brought to the notice of court that workingwomen were vulnerable to harassment and neither the legislature nor the executive government was taking any effective preventive measure in this behalf.

21 Ibid, para 1 1291-92.
In its judgement the Supreme Court pointed out that it is the responsibility of the legislature and of the executive government to ensure that workingwomen could live with dignity and carry on their respective vocations in a safe environment. Suitable legislation and a mechanism for the enforcement of the rights are required, if the legislature and the executive failed to perform their duties, the Court said that it had to assume an active role to administer gender justice whenever required. In doing so Supreme Court referred to the Beijing Statement of Principles of the independence of the judiciary. According to the Supreme Court, the objectives of the judiciary is as mentioned that Statement include: (a) ensuring that all persons are able to live securely under the rule of law (b) promoting within the proper limits of judicial function, the observance and attainment of human rights and (c) administering law impartially among persons and between persons and the State.

Supreme Court also noted that the provisions of the Convention on Elimination of All forms of Discrimination against Women (CEDAW) required the states parties to take all appropriate measures to eliminate discrimination against women in the field of employment, as the right to work is an inalienable right of all human beings. Under the Convention, equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the workplace. CEDAW defines sexual harassment comprehensive terms: it includes unwelcome sexually determined behaviour, sexually coloured remarks etc. Such conduct can cause humiliation and problems related to safety and health of working women. The Government of
India ratified the CEDAW Resolution on 25th June 1993 and had also made an official commitment at the Fourth World Conference on Women in Beijing undertaking to formulate and put to operation a national policy on women and to take other measures as required under the said instrument. At the time of Vishaka, however, the legislature had not made any law to give effect to CEDAW resolution in this regard and as such there was a void in domestic law.

The Supreme Court said in Vishaka It is now an accepted rule of judicial construction that regard must be had to the international conventions and norms when construing domestic laws. When there is no inconsistency between them and there is a void in the domestic law. Therefore, the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment at workplaces, the Court should lay down the guidelines and norms to be duly observed at all workplaces or other institutions, until legislation is enacted for the purpose.

Supreme Court even went to the extent of legislating (as some critics say) by laying down elaborate Guidelines and Norms for the prevention of sexual harassment at the place of work and the duty of the employers in this behalf. Comprehensive measures for the affinity and protection of workingwomen, against overt or covert acts or conduct amounting to sexual harassment was declared. Provisions were made for punitive and disciplinary actions in appropriate situations, including the development of a complaint mechanism the formation of Complaint Committee and the adoption of measures for adequate awareness campaign and holding of workers meeting for discussion and
dissemination of information, etc, Court made it clear that this should be treated as the law of the land declared by the Court under Article 141 of the Constitution.

Although guidelines made by the Supreme Court in Vishaka have been welcomed by women's organizations and women's groups, they have also been criticized. One of the criticisms is that the guidelines are not applicable to the self-employed and unorganized sectors like the agricultural and construction sectors, which employ a majority of rural women workers. There is however no discussion in the judgement at all of how such a law could be made applicable to, for instance, women who are not in an institution or factory. The guidelines have also been criticized as being unjust to employees since the complaint committees do not specifically allow for employee participation. Some experience of the working of these committees has shown that they have a tendency to acts as the mouthpiece of the employer. The Supreme Court has also not made the recommendations of the committee binding on the employer, and thus even when they do recommend a punishment, the employer can ignore the recommendation. The judgement, though progressive, in fact shows us the kinds of limitations that are possible when law is framed by the courts in an ad hoc response, and without sufficient discussion at the national level.

9.3 Limits of Judicial activism

Satya Rani Chandha's Dowry case\textsuperscript{22} is a landmark in public interest litigation which involved for the first time collaborative efforts of women's

organizations under the umbrella of a group called Solidarity with women". The case articulated in the forum of the Supreme Court the disenchantment with the casual manner in which dowry cases were being investigated and dealt with by the police and the subordinate courts.

Again the women organization intervened in *Sudha Goel case.*\(^{23}\) But the judgement of the court was startling as the accused were acquitted and this led to demonstrations by women's organizations outside the court to register their protest. This resulted in a petition for contempt being filed in the High Court against women's organizations. A resolution of the *Delhi* High Court Bar Association was also passed condemning the demonstration observed in the premises of the *Delhi* High Court. Judges Rajinder Sachar and Leila Seth heard the petitions against the women's organizations.

The court observed that, the respondents have undoubtedly crossed the permissible limit of fair criticism and their action makes them liable for being proceeded against in contempt. But I do not rule out the possibility that the Respondents may have believed genuinely that holding of such demonstrations was within law, and necessary to advance the cause of suffering women in this country. Their motivation, sincerity of purpose is of course unreservedly accepted. The need for improving the status of women is extremely pressing. How unjustly the women are dealt with in various spheres of social life has been highlighted. Accordingly the court felt that the ends of justice would be met by

expressing disapproval of their action and it was hoped that the Respondents would moderate their activities. Again in Mahila Dakshanta Samiti, a social organization engaged in handling cases of crimes against women, intervened in the matter of *Tripta Sharma Dowry Death case* \(^ {24} \) through their lawyer, for assisting the State. A transfer petition was filed before the Supreme Court but the court refused to transfer the case. However, it allowed the application and directed the Trial court to examine the witnesses named in the application. The court further directed that after examination of witnesses, liberty is reserved by the court to consider whether charged already framed should be maintained or altered. It is notable that interventions by women's organizations were allowed by the courts earlier in the *Sudha Goel case*.\(^ {25} \) In *Satyarani Chadha & ors. v. State of Delhi Administration*,\(^ {26} \) the Supreme court had permitted the women's organizations to approach the High Court and make submission. Interveners were allowed to make submission in *Shakuntala & Others v. State*.\(^ {27} \) *Haryana Mahila Sansthan and others v. Devi Lal & others*\(^ {28} \) is another case where the women's organization was allowed to intervene.

With this long list of cases wherein the women's organizations were allowed by the courts to intervene and make submission, the High Court, in *Shalini's case*\(^ {29} \) should have taken a positive view in public interest and for

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\(^{24}\) Supra note 22.  
\(^{25}\) Supra note 23.  
\(^{26}\) AIR 1986 SC 205.  
\(^{27}\) (25) 1984 DLT 33.  
\(^{29}\) Supra note 22, p.94.
social justice to permit the interveners to intervene and make oral submission. But the High Court decided otherwise and rejected the intervention application with a speaking order. Further the court rejected interpenetration application on the ground that the aims and objects of the applicant organizations are laudable, and the father of Shalini is interested in the result of the proceedings, but by itself this does not give to the interveners and right to intervene in those proceedings. It is observed that the grant of permission to the applicants to intervene as claimed by them would amount to extending the creed of populism in the realm of judicial action.

Now inspite of the passing of the National Commission for Women Act, 1990 and the law laid down by the courts, insurmountable obstacles are put in the way of women's organizations to intervene on behalf of disadvantaged sections. Nor has the Legal Services Authorities Act, 1987 been translated to provide legal aid to women. Most assistance to women who need it most is due to the personal efforts of some public-spirited lawyers, which can only make a very small dent. They too lack the resources to render lasting and sustained assistance. Further, the courts are every ready to expand and protect the right of the accused but are less keen when it comes to protecting the rights of women complainants. Even though Article 15(3) of the Constitution clearly sanctions discriminatory laws in favour of women, the courts are admissive.

The Judge's View

The Judges were positive in their approach and felt that if investigation of crimes against women was little improved, better results would be achieved.
They were positive that law is neutral and has no gender-bias and hence men and women, both, will have to be judged similarly. They were of the view that the Supreme Court has already given guidelines to handle trial of offences relating to women and those guidelines are strictly followed. These guidelines indicate that courts treat such crimes differently than crimes against property or the like. They suggested that it should be the endeavor of the investigation officer to cite honest and truthful witnesses who have actually seen the incident and avoid citing false witnesses.

Judges were somewhat critical of medical evidence in rape, sexual harassment and violence cases and suggested that Doctors should honestly write their reports and support the same in the courts. They felt that most of the medical reports lack objective material and express opinion without any basis. This should be avoided. They felt that honest and proper medical report would help them to do justice in the case.

As regards to delay in completing trial of cases, the judges blame prosecution. Much of the delay is due to non-availability of witnesses including the investigation officer. Though the Judges try to expedite trials, they would do better if police authorities and public prosecutors produce witnesses without delay.

As regards acquittals the Judges request the prosecutors to be better prepared for the case. The Public prosecutors, according to them, do not take

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their assignments seriously and hence the final result suffers. The Judges do not however, feel that they owe a duty to convict every on brought to the court for trial. Corrupt witnesses and ill-prepared prosecution is, in the main, responsible for increasing acquittals. They therefore request parties to a prosecution to consider their role and discharge their obligations honestly and sincerely. They frankly submit that an accused can be convicted and sentenced only if 'proved' guilty and not otherwise

9.4 An evaluation of judicial rule

The judiciary in several cases relating to crime against women made an attempt to eliminate male bias and make gender justice a reality. But many women’s activists found that what happened so far is not sufficient. The judges have felt that they cannot always do their best because of inherent limitations, the positive approach is also visible in some cases.

Dowry Trails

It has been claimed that many dowry murder cases have been prosecuted so badly in Court that conviction was hardly likely.31 Acquittal in most of the cases is grounded on failure of the prosecution to prove the case beyond reasonable doubt, delay in lodging complaint and FIR, on unreliability of dying declaration or some other technical and procedural grounds even in cases where constant dowry demands are proved. Accordingly in Manjushree Sarda v. State

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of Maharashtra,\textsuperscript{32} the Session's Court, Pune, convicted the husband of murdering his wife by poisoning. But the Supreme Court, acquitted the husband on the ground that, the husband's guilt was not proved beyond reasonable doubt and that the wife might have committed suicide out of depression.

Accordingly in Ashok Kumar Rath \textit{v. State},\textsuperscript{33} death of Maithili on account of burn injuries on her body was not disputed. Death was within two years of marriage. Investigation agency was defective and in absence of direct evidences including conduct of accused either for having committed dowry death or cruelty, circumstances did create some suspicion but as observed, suspicion can not take place of proof. It was a case of delayed and faulty investigation and prosecution laches and lapses on this ground accused was acquitted.

It is asserted that dying declaration not relied upon for not putting question regarding state of mind in \textit{RAJ Rani \textit{v. State of Haryan}},\textsuperscript{34} in the dying declaration, although the deceased Archana stated about her age, residence, name, and husbands name etc, correctly; also stated clearly that she was put on fire by her mother-in-law and she gave reasons also, but even then such a declaration was held not reliable because the magistrate did not put any question to her whether she was mentally capable to make such declaration. The mental state of mind can be asserted from the specific answers given to the specific questions. In this case it is doubtful if at all the High Court was correct in not putting any reliance on such a dying declaration on the ground of not put any

\textsuperscript{32} 1986 Cr.LJ 453
\textsuperscript{33} (1993(2) crimes 940 (Orissa)
\textsuperscript{34} (1993 (2) crimes 67
question to her whether she was mentally capable to make such declaration. Similarly, in Maniram v. State of Madhya Pradesh,\textsuperscript{36} Court wrongly acquitted the accused on the ground that, dying declaration recorded by Sub Inspector was in nature of F.I.R. and no attestation from doctor taken to the effect whether patient was conscious or not. There was no other evidence against accused except dying declaration, which was of highly doubtful nature. Even though there was an allegation that accused husband poured kerosene oil on deceased wife, set fire and ran away. There are instances where the court has acquitted husband on the ground that the bride death was due to bride’s own sensitiveness or sentimentality and her low tolerance power. There are instances where the court legitimized the demand of dowry by claiming demand of valuables by the groom’s family as reasonable expectation in marriage of their son. In this reference the case of Arjun Dhondiba Kamble v. State of Maharashtra,\textsuperscript{36} needs to be mentioned here specially. In this case, court legitimized the demand of valuables by groom’s family as reasonable expectation in marriage of their son. The learned judge held that “presents expected are customary in nature, they are like post marriage expectation, thus will not constitute dowry”. Surprisingly, even in presence of clear proofs about cruelty and harassment accused could not be held responsible for death of the bride; since according to Judges things demanded could not be named dowry.

\textsuperscript{35} AIR 1994 SCC 211
\textsuperscript{36} 1995 Cr. L.J 2731
Apart from a large number of acquittal in many cases where the guilt was proved, reduced punishment were awarded for instance in *Hem Chand v. State of Haryana*, the appellant had married the deceased and demanded a sum of Rs.25000 as dowry for purchasing a plot. The deceased had come to the matrimonial house with Rs.15000 and a request that her father be allowed to remit the balance within some additional time. Within five years of marriage, the deceased died of strangulation, the trial court held that there was demand for dowry and there was cruelty on the part of the accused and accordingly convicted him under sections 304-B and 498-A of the IPC, awarding a sentence of imprisonment for life. On appeal the Supreme Court reduced the sentence from 10 years to 7 years on the ground that awarding extreme sentence punishment for life should be in the rare cases and in every cases.

Again in *Pawan Kumar v. State of Haryana*, one Urmil was married to Pawan Kumar, the trial court convicted the husband and his parents for offences under sections 304B, 498A and 306 IPC. The High Court confirmed the sentence but reduced the husband sentence from 10 years to seven years. The Supreme Court found that the evidence clearly established that Urmil was tortured and harassed it could clearly construed to be a dowry demand within the meaning of section 304. An agreement for dowry would not always be necessary. Catena of Supreme Court decisions were cited in which death sentence awarded was converted into imprisonment for life. Considering all the aspect and the reasoning of the

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37 1994) 6 SCC 727  
38 (1998) 3 SCC 309
Supreme Court, the death sentence was set aside and the accused was instead sentenced to imprisonment for life.

There are decisions reflecting sensitivity and awareness of prevailing social reality amongst judges, exhibiting their determination to work towards the cause of eradicating this evil for instance in *Meesala Ram Krishan v. State of A.P.*, the deceased wife was not in a position to speak at the relevant time and as such her dying declaration came to be recorded by a magistrate on the basis of some nods and gestures made by her, making it clear that she was burnt, not accidentally, but by her husband. Such a dying declaration was held to be admissible and relied upon for conviction of the accused.

In many cases, courts have done away with the need of strict application of letter of law, to avoid hardships. Many of the technical procedures are interpreted broadly to impart justice. The requirement of corroboration of evidence of witnesses is often, ignored inspite of defense contention of ignoring most of the witnesses as interested witnesses being closely related to deceased, for holding the accused guilty. It ha been held that evidence of relatives of deceased without being corroborated from outside are admissible and this does not come in way of conviction.

Judiciary in various cases expressed the most glaring examples of this ideology. The only duty of the Court in considering a dying declaration is, as pointed out by the Supreme Court in *Uka Ram v. State of Rajasthan*, is that the
Court is obliged to rule out the possibility of the statement being the result of either tutoring, prompting or vindictive or product of imagination. Before relying upon a dying declaration, the Court should be satisfied that the deceased was in a fit state of mind to make the statement. Once the Court is satisfied that the dying declaration was true, voluntary and not influenced by any extraneous consideration, it can base its conviction without any further corroboration, as rule requiring corroboration is not a rule of law but only a rule of prudence.

In *Balaji v. State,*\(^{41}\) involving allegation of cruelty on husband it was observed, "it is not necessary that proof should arise from independent quarters. Solitary testimony of witness may be found sufficient. The event of harassment and cruel treatment to wife can occur only with in precincts of the matrimonial abode, thus the plausibility or possibility of such as occurrence being know to others is bleak if not impossible".

Judiciary from time to time through judicial interpretation has explained the meaning of term "mental cruelty" under Section 498-A, In the case of *State of West Bengal v. Orilal Jaiswal*\(^ {42}\) where a woman had allegedly committed suicide, the Court partly reversed the high court decision acquitting the accused husband and his mother of charges under sections 498A and 306 of the IPC. The Supreme Court convicted the accused under section 498A of the IPC. This case is an outstanding vindication of the law under section 498A for its states very clearly, that ‘cruelty’ can, not only be physical, but also, and principally mental.

\(^{41}\) AIR 1994 Cr.L.J 474
\(^{42}\) AIR 1994 SC 1418.
Thus repetitive taunting of the bride by calling her ugly, force to leave the matrimonial home, refusal to send to parents house, non-return or depriving of stretching etc., have been observed to amount to mental torture, by words and deeds, even without any physical torture or cruelty.

In yet another decision in *State of Karnataka v. Moorthy* the acts of the husband in not providing elementary means of subsistence to the wife and his infant child and deliberately and irresponsibly squandering his earnings on gambling, were observed to be amounting to cruelty punishable Section 498A.

Fortunately, whole of the judiciary is not obvious to these lapses and resulting injustices. Supreme Court took notices of lapses in investigation system in *Sri Bhagwat Singh v. Commissioner of Police Delhi*. It was asserted: "It is evident that legislative measures have not met with success. Where death in such case is due to a crime, the perpetrators of crime not infrequently escape from the nemesis of law because of inadequate police investigation. It would be of considerable assistance if an appropriately high priority was given to the expeditious investigation in such cases, if a special magistrate machinery was created for the purpose of prompt investigation of such incidents and efficient legislative techniques and producers were adopted".

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44 *Anjali Sharma v. Govt. of NCT Delhi*, 2000 (1) SCC (Delhi) 142.
46 *Surendra Kumar Yadav v. The State*, 2000 (1) SCC Delhi 245.
47 2002 Cr.L.J. 1683.
48 1983 (3) SCC 352
In *Indian Federation of Women Lawyers v. Smt. Shakuntala* and *State (Delhi Administration) v. Laxman Kumar.*49 These two appeals—one by Indian Federation of Woman Lawyers and the other by the Delhi Administration came up before the Supreme Court of India by special leave against the judgment of the Delhi High Court acquitting the respondents of a charge of murder under Section 302 read with Section 34, I.P.C. The Supreme Court awarded life imprisonment but observed that normally a death sentence would be an appropriate sentence in case of bride burning. It was given wide publicity both by the national and international media.

More than a decade long working of provisions related to dowry in various acts has brought home the fact that the combat for eradicating this evil is much more difficult than expected. It demands a comprehensive approach towards many problems concerning women and girls. The vicious circle comprising—birth as a girl child, illiteracy, economic dependability, marriage and dowry death—can not be penetrated without a complete overhauling of the system—legal, political as well as social.

**Rape Trails**

The democratization of the criminal justice system started when four law professors wrote an pen letter to the chief justice of India against the decision of the Supreme Court in *Tukaram v. State of Marhastra,*50 the judgment reflected a strong patriarchal bias and the black letter law approach of the judges and that

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49 AIR 1986 SC 250.
50 Supra note 6.
was the main criticism of the professor who wrote the above letter. The letter catalyzed the women movements against the law of rape. Woman organization filed a review petition against the decisions and although the decisions remain unchanged the debate paved the way for legal reform and change in judicial attitude. The public criticism of the Supreme Court decision had a salutary effect on its rape jurisprudence. It opened up one more dimension of public participation in the judicial process. A decision of the court could be subjected to the public criticism and such public criticism as a method of public advocacy of law reform was indeed a new leaf in the court-people relationship. Since then various studies have criticized decisions of the courts on the offence of rape.

The judgement was not accepted and there was remarked protest and it was highlighted that, firstly - there were inadequate laws to protect women who are victims of rape and, secondly there were no enough legal safeguards to protect women who are summoned to a police station. The case piloted the voice for amendment in the existing penal provisions to make them more effective in providing justice to women.

After, post-Mathura the Court has gradually begun to demonstrate remarkable sensitivity to issues of sexual violence against women. In *Bharwada Bhoginibhai Hirjibhai v. State of Gujarat*,51 where the Court observed that in the Indian context, refusal to act on the testimony of the victim of sexual assault in the absence of corroboration is 'adding insult to injury. The Court went on to ask: 'Why should the evidence of the girls or a woman who complains of rape or

51 AIR 1983 SC 753.
sexual molestation be viewed with the aid of spectacles tinged with doubt or disbelief? To do so is to justify the charge of male chauvinism in a male dominated society.

There have also been setbacks such as the controversial Suman Rani Rape case\textsuperscript{52} where the Supreme Court reduced the mandatory minimum sentence of ten years imposed on two police officers found guilty of raping a young woman on the basis of the 'peculiar facts and circumstances of the case coupled with the conduct of the victim girl. These peculiar facts' referred to the argument of the accused that the victim was a woman of questionable character and easy virtue with lewd and lascivious behaviour. This decision caused a stir, an agitation and a women movement by women's organizations led to gross criticism of the Supreme Court and resulted in the filing of a review petition. But the review petition did not succeed.

Responding to the voice of various women activists, the Supreme Court's decision in \textit{State of Maharashtra v. Madhukar N. Mardikar},\textsuperscript{53} was appreciated. The Supreme Court laid down that even a prostitute has a right to privacy. The unchastely of a woman does not make her 'open to any and every person violate her person as and when he wishes'. She is entitled to protect her person to there is an attempt to violate it against her wish. She is equally entitled to the protection of law. Therefore, merely because she is a woman of easy virtue, her evidence cannot be thrown overboard. At the most the officer called upon to


\textsuperscript{53} (1991) 1 SCC 57.
evaluate her evidence would be required to administer caution unto himself before accepting her evidence. In the circumstances of the case, however, there was sufficient corroboration of the fact of a police Inspector’s attempt to bend her by force to submission which evidence was generated by the inspector’s unsuccessful bid to camouflage the incident to a prohibition raid.

But where in a prosecution for gang rape, the victim did not make any complete to anybody for five days, giving a false explanation for the delay, the doctor found no injury on any part of her body and she was found to be a lady of immoral character or of lax morals, it was observed that it was unsafe to rely on her evidence.

Story of Sexual Intercourse Held to be highly improbable without Corroboration It was held in the case of Hari v. State of Madhya Pradesh,54 prosecution has come out with a story, which is highly improbable. A girl although married, aged about 20 years, was successively raped by two persons and as the evidence goes, Clothes were stained with semen as the accused had discharged themselves, yet there is total lack of medical evidence to corroborate the prosecutrix. According to her, the bangles were broken and clothes torn, elbow scratched; yet there is no evidence to corroborate her statement. The torn clothes have not been produced. The Investigation Officer, who visited the spot, did not find any broken pieces of bangles on the spot. Doctor did not find any marks of injuries on her body.

54 1988 (3) Crimes 63 (M.P.)
Another victim, whose bangles were also allegedly broken, there was no evidence on the point. Every piece of corroborative evidence, which would have been otherwise available, was lacking in the case, thus improbablising the version given by the prosecutrices. The prosecution has suppressed material evidence in not producing the report of the chemical examiner. The medical opinion about rape having been committed is not positive. The immediate conduct of the prosecutrix after commission of rape is also extremely un-natural. Similarly, in Charan Singh v. State of Haryana,\textsuperscript{55} case, the lady doctor who examined the prosecutrix did not find any injury on her private parts or body. No tenderness, swelling or blood was found in the vagina. The vagina admitted two fingers easily. The doctor admitted that the prosecutrix would suffer tenderness and swelling of the vagina if two young boys subject her to rape and that the prosecutrix was used to sexual intercourse. The clothes worn by her at the time of the occurrence were soaked by semen. The available witnesses were not examined to corroborate the prosecution story. Even delay of one day for filing FIR was held to be fatal.

In the above two cases as it appears not much discussions were there on the evidence of the prosecutrix. Not that the evidence was not all trustworthy or believable despite of that some corroboration was looked for from other evidences, which when lacking, the conviction was not sustained.

By now enough of water has flown through the Ganges. The evidence of the

\textsuperscript{55} 1988 (3) Crimes 85 (P&H)
prosecutrix once found trustworthy and convincing conviction can be based on the sole evidence of the prosecutrix and corroboration need not be looked into.

Corroboration of the testimony by the victim of sexual offence may be considered essential to establish the offence the backdrop of the social ecology of the western world. But, it wholly unnecessary to import the said concept on a turnkey basis and to transplant it on Indian soil regardless of the altogether different atmosphere, attitudes, mores and responses of the Indian society and its profile. Rarely will a girl or a woman in India make a false allegation of sexual assault due to various psychological factors. And when the face of those factors, the crime brought to light, there built assurance that the charge genuine rather than fabricated. The testimony of the victim of a sexual assault stands on par with the testimony of an injured witness and entitled to great weight. The Supreme Court has held that a woman who has been raped is not an accomplice. If she was ravished she is the victim of rape and if she has consented, there no rape. The true rule of prudence requires that, in every case, the advisability of corroboration should be present in the mind of Judge and that must be dictated the judgment. But corroboration can be dispensed with by the Judge if in the particular circumstances of the case before him, he himself is satisfied that it is safe to do so. In State of Punjab v. Gurmeet Singh,56 it was held by the Supreme Court that unless there are compelling reasons, which necessitate looking for corroboration of her statement, the Courts should find no

difficulty acting on the testimony of a victim of sexual assault alone to convict an accused when her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, amounts to adding insult to jury.

Explaining further in *State of Rajasthan v. Noore Khan*, it was laid down that there is no rule of law that testimony of a rape victim cannot be acted upon without corroboration material particulars. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject-matter of a Criminal charge. However, if the Court finds it difficult to accept the version of the victim on its face value, it may search for evidence, direct or circumstantial, which would lend credence to her testimony. Credence, short of corroboration, as understood in the context of an accomplice would do.

In *State of Sikkim v. Padam Lall Pradhan*, the victim gave a vivid account of the entire episode as to how she on several occasions had been sexually assaulted by the accused even in the presence of his wife. The evidence of the neighbour and the doctors supported the case of the victim, and the medical evidence corroborated her statement. On going through the evidence of the aforesaid witnesses it was held that the victim had truthfully narrated the entire episode and there was no reason for it to be said that she tried to foist a false case on the accused.

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58 (2000) 10 SCC 112
Court atmosphere and piercing cross examination by counsel often the causes confusion and nervousness. The provisions of the Evidence Act regarding relevancy of facts and examination of witnesses (especially Sections 148-152) notwithstanding, some defence counsel adopt the strategy of continual questioning of the prosecutrix regarding the details of rape. She required repeating the details again and again to test her story for consistence. Cross-examination no doubt a means to test the credibility of the version of a witness but it should not be made a means of harassment for causing humiliation to the victim of rape. It is the duty of the Court to effectively control the recording of evidence and the Court should not hesitate to evoke the provisions of Section 150 of the Indian Evidence Act, when need arises.

The Supreme Court, in *State of Punjab v. Gurmeet Singh*,59 observed that it would be desirable to entrust the cases of sexual assault on females to the lady Judges for trial so that the prosecutrix can make her statement with ease and without embarrassment. The idea of entrusting the rape cases to the lady personnel welcome and it being followed in some states, but it will not yield the desired results unless the personnel chosen to perform these onerous responsibilities are compassionate, sensitive and responsive to the problem. Slipshod and defective investigation some times leads to the acquittal of the accused.60 The version of the prosecution often doubted owing to delay in

59 *Supra* note 54.
lodging complaint. The Supreme Court in *State of Rajasthan v. Shri Narayan*,61 observed as follows:

Indian society being what it is the victims of such a crime ordinarily consult relatives and are hesitant to approach the police since it involves the question of morality and, chastity of a woman. A woman and her relatives have to struggle with several situations before decide to approach the police, more so, when the culprit happened to be related. Such cases therefore, the delay understandable and merely on that account, the prosecution version cannot be doubted.

Again delay in the registration of an FIR has been addressed in several judgements and the Court has ruled that mere delay in lodging the FIR does not raise the inference that the complaint was false. In *Sri Narayan Saha v. State of Tripura*,62 the Supreme Court observed that in a rape case, that delay in lodging FIR does not make the case false.

In the instant case, there was evidence of delay and initial reluctance to report the matter to police by husband. He in fact had taken his wife to task for the incident and slapped her. The reluctance to go to the police is because of society's attitude towards such women. "It casts doubt and shame upon her rather than comfort and sympathy therefore delay does not necessarily mean that her version false". In normal course of human conduct an unmarried girl who victim of sexual offence would not like to give publicity to the traumatic experience. Thus delay in lodging FIR cannot be used as ritualistic formula for

doubting the prosecution case. This was stated in *Dildar Singh v. State of Punjab*,\(^\ddagger\) where her teacher raped a minor girl and there was delay of three months in lodging FIR. The Court further said that delay has the effect of putting the Court on guard to search if any explanation has been offered for delay and if offered, whether it is satisfactory.

Regarding acquitting the accused on minor discrepancies, the Supreme Court in *Bharwada Bhoginibhai HirjiBhai* case,\(^\ddagger\ddagger\) observed as follows: "Discrepancies which do not go to the root of the matter and shake the basic version of the witness cannot be annexed with undue importance. It neither appropriate nor permissible to enter upon a re-appraisal or re-appreciation of the evidence the context of minor discrepancies. By and large, a witness cannot be expected to be attained to absorb the details. A witness cannot be expected to recall accurately the sequence of events which take place rapid succession or a short time-span and liable to get confused or mixed up when interrogated later on".

Given the limits of discretion of sentencing by the legislature, the Courts have to decide the quantum of punishment to be inflicted in each case. The constitutional Courts i.e. the High Courts and Supreme Court have the responsibility of laying down the policy guidelines to be followed by the Courts below in exercising the discretion. So far as the offence of rape is concerned, a minimum of seven years imprisonment and a maximum of ten years

\(63\) (2006) 10 SCC 531.

\(64\) Supra note 51
Imprisonment or imprisonment for life has been the punishment prescribed by Section 376 (1). For aggravated forms of rape, rigorous imprisonment for ten years is the minimum punishment prescribed by Section 376 (2). The Courts are however empowered to award a lesser sentence than minimum prescribed for special reasons to be recorded in writing. The Supreme Court has taken the question of providing inadequate sentence or reducing the sentence seriously. In State of Karnataka v. Krishnappas. While considering the question of reduction of sentence rape cases, it was observed: The approach of High Court in this case was most casual and inappropriate. There are no good reasons given by the High Court to reduce the sentence let alone 'special or adequate reasons'. The High Court exhibited lack of sensitivity towards the victim of rape and society by reducing the substantive sentence in the established facts and circumstances of the case. The courts are expected to properly operate the sentencing system and to impose such sentence for proved offences, which may serve as a deterrent for the commission of like offences, by others.

Again in State of M.P. v. Balu, a minor girl of 13 years was raped due to animosity between families of victim and accused. The sentence of 7 years was reduced to period already undergone which was about 10 months. Ground taken for reducing the sentence was that the accused was 17 years old at the time of incident and was illiterate. The Supreme Court on appeal observed that none of the reasons are either adequate or special to reduce the sentence, “the High Court exhibited lack of sensitivity towards the victim of rape and society by reducing the substantive sentence in the established facts and circumstances of the case. The courts are expected to properly operate the sentencing system and to impose such sentence for proved offences, which may serve as a deterrent for the commission of like offences, by others.”

Court does not seem to have applied its mind to the gravity of offence. The sympathy shown by the High Court wholly misplaced and it has grossly erred in reducing the sentence.

In practice, in almost every rape case, less than minimum sentence is awarded and some of the reasons that have been recorded for awarding lesser sentences are; (a) old age; 67 (b) victim forgave the criminal and that they were relatives 68 (c) very young age and incident took place long back, mental agony and disrepute suffered during the course of proceedings, offence committed in fit of passion 69 (d) the humiliation suffered by the accused in the society, the prospects of his daughter getting suitable match marred, the stigma in the wake of finding of guilt recorded against him, offence occurring 6-7 years back. 70 However, the recent trend of Supreme Court has been to prefer deterrent approach to therapeutic or reformative approach. 71

The effects of rape on the victim are multi dimensional. She would be looked down by the society including her own family members, relatives, friends and neighbours. There are chances of losing the love and respect of her husband and the happiness of her matrimonial home would be shattered. If unmarried, it would almost be impossible for her to secure a suitable match from a respectable family. The family name and the family honour would be at stake leading to uncertainty in respect of the future of her brothers and sisters. None of

71 See State of Karnataka v. Krishnappa, AIR 2000 SC 1470:
these aspects taken to consideration while punishing a rapist. The tendency of the Courts to sympathy with the accused and take notice of the repercussions of the offence on him and his family. The Courts, including the apex court, do not even try to find what happened to the victim of the crime and there is no mention of the consequences of the offence on the victim any of the decisions on rape. *Madan Gopal Kakkad v. Naval Dubey*,⁷² one of the very few cases where the Supreme Court tried to find out the consequences of the offence on the victim. By and large therefore, the approach of the Courts towards rapists has been mechanistic and unimaginative. Reasons for confirmation, reduction or enhancement of sentences are adequately stated. Application for enhancement of sentence or appeal on behalf of the State for the purpose, seldom taken up, it is no doubt true that deterrence does not come from mechanical increase of punitive severity but from quick investigation, prompt prosecution and urgent finality. But it does not mean that undue leniency be shown to the rapists, thereby reducing the faith of the victims in Criminal justice admiration.

Public interest litigation has helped in maintain or restoring rule of law as is demonstrated in *D.D.Working Women Forum v. Union of India*,⁷³ has laid down broad parameter for assisting rape victims. The court in its innovative judgment, stressed upon the need to set up a criminal injuries compensation board for the traumatized victims. Again in *Gudalure M.J Chèrian v. Union of India*,⁷⁴ the Supreme Court directed the state government to pay compensation to the victims

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⁷² 1992 AIR SCW 1480
⁷³ Supra note 16.
⁷⁴ Supra note 13.
of rape. Again Bodhisattva Gautam v. Chakraborthy,\textsuperscript{75} is one in which the Supreme Court yet again used provisions of criminal law to deal with a difficult situation, where the Court took \textit{suo motu} notice of the facts in the complaint, and issued a notice to him to show cause why he should not be compelled to pay maintenance to the woman he had cheated. The Court observed that offences like rape were crimes against the person's most basic cherished human rights, namely the right to life. The Court observed that under Article 32 it could take \textit{suo motu} notice of the facts and directed the appellant to pay interim maintenance of Rs.1000 per month to the woman pending the prosecution. Again in Chairman, Railway Board v. Chandrima Das,\textsuperscript{76} where a rape was committed on a Bangladeshi woman by railway employees, a practicing advocate of High Court filed a petition under Article 226, which included not only the relief for compensation but many other relief's as, for example, relief for eradicating anti social and criminal activities of various kinds at Howrah Railway Station. The true nature of the petition, therefore, was that of a petition filed in public interest, and therefore the writ petition was observed to be maintainable. The court observed that central government is vicariously liable to pay compensation. However, the rate of conviction in rape cases has not improved. this is due to faulty police investigation, lack of infrastructural facilities such a timely medical examination and forensic reports and the hyper technical attitude of lawyers and judges.

\textsuperscript{75} Supra note 17.
\textsuperscript{76} Supra note 18.
In India, there has not been a strong tradition of juristic criticism of judicial decisions. Whatever critical writing has taken place analytical and critical of the judicial decisions from the standpoint of legal logical such as whether the judge has correctly interpreted the law, whether he has followed all relevant precedents and whether his interpretation is in accordance with well established rules of statutory interpretation. Criticism of a judicial decision on the ground that it reflected class gender bias was unknown until recently. The strong influence of the black letter law tradition among Indian lawyers and judges and academicians was responsible for this approach.