CHAPTER 6

JUDICIAL INTERVENTION AND GENDER JUSTICE

Liberating the country from the British imperialism, we the people have given to ourselves the Constitution solemnly resolving to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic. We have also assured to ourselves:

Justice-economic, social and political, Liberty-of thought, expression, believe, faith and worship. Equality-of status and of opportunity, and Fraternity-assuring the dignity of every individual.

Based on the moral and prudent ideal inherent in the Constitution, the mandates on the constitutional obligation must be respected revealing it through the constitutionally assigned duties and obligation and responsibilities by every organ of the state formed thereby.

Out of the three organs viz. Legislature, Executive and Judiciary, independence and power of interpretation of the Constitution as well as other status, including regulations, by laws, notifications, is conferred upon judiciary.

The spirit of the Constitution permits the judiciary to exercise the power of interpretation, to safeguard the interests of the people, primarily that of the fair sex and the have-nots of the Indian Democratic Republic.
The Third Schedule of the Constitution of India, imposes a moral/spiritual but constitutional obligation, inter-alia upon the higher judiciary to discharge the function assigned, without any fear or favour besides defending the Constitution and the laws, through the oath of the office administered as per the constitutional provisions. This signifies the importance to be paid to the constitutionally imbibed moral and prudent responsibilities, inter-alia, of the higher judiciary of the state¹.

The Bench and the Bar, which together make up the delivery system, must bear true faith and allegiance to the vibrant values of the preamble to the Constitution. Secularism is the soul of our Republic, and it is rooted in religious pluralism, cultural diversity and lovely linguistic variety. However, many dark forces are trying to hijack the nation from a smooth and steady flight to forward frontiers of common prosperity and fair deal of the suppressed and neglected sectors of Indian humanity².

Indian judiciary has been playing a historical role in recent times, unmatched, perhaps, by any other judiciary in the world. Though in the initial stages after independence the political leadership was progressive, the judiciary was conservative³. The Indian politics at present is running on caste and communal (i.e.,

¹ Art 124(6) and Art 219 of the Indian Constitution. Art 124(6) and Art 219 of the Constitution provides categorically that every person appointed to be judge of the Supreme Court or to be judge of the High Court shall make and subscribe before the President or the governor as the case may be on the oath or affirmation on compliance to the form set out for the purpose, in the third schedule of the constitution.


³ The Zamin dari Abolition Act had been declared unconstitutional by the Patna High Court. Kameshwar Singh v. State of Bihar, AIR 1951 Pat 91(F.B), but in the view of the Constitutional Amendments which inserted Article 31-A and 31-B this decision is reversed by the Supreme Court in State of Bihar v. Kameshwar Singh AIR 1952 SC 252
feudal) vote banks, on the other hand, the Indian judiciary, particularly the Supreme Court, has played a progressive role by interpreting the Constitution in a novel way and playing an activist role.

Mr. Soli Sorabjee, former Attorney General of India pointed out:

"Indignant critics forget that it is the Executive failure to perform its duty and the notorious tardiness of legislatures that impels judicial activism and provides its motivation and legitimacy. When gross violation of human rights are brought to its notice, the judiciary cannot procrastinate. It must respond."

In the Indian Constitution the affirmative duties of the State are contained in the Directive Principles of State Policy\(^{(a)}\) which is Part-IV of the Constitution\(^{(b)}\).

Art 37 of the Constitution states "The provision contained in this part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country, and it shall be the duty of the state to apply the principles in making laws"

In the early period of its history, the Indian Supreme Court was of the view that "The Directive Principle of the State Policy have to conform to and run as subsidiary to the chapter on Fundamental

\(^{4}\) (a) The idea was borrowed from the Irish Constitution; (b) Art 37 to 51.
Rights\(^5\). However, later on this view is changed, and the present view is that neither the Fundamental Rights (The right of freedom of speech and expression, the right to life and personal liberty, right to practice one's religion, etc) nor the Directive Principles are superior to one another, but both have to be read in harmony\(^6\).

The revolution which the Indian Supreme Court has created is the enforcement of the Directive Principles by reading them into the Fundamental Rights. The rights mentioned in the Directive Principles (Part IV) are socio-economic rights, while those mentioned in the (Part III), i.e., the chapter relating to Fundamental Rights are the formal political rights. The Constitution made the former non-enforceable (vide Art 37) while the latter were enforceable (vide Art 13, 32 and 226). The Supreme Court however realized that without the former the latter were meaningless. Hence it started enforcing the former by reading them into the latter.

Thus the right to free and compulsory education of every child till the age of 14 years, which is in the Directive Principles (vide Art 45) was read into Art 21 (the right to life) in Unnikrishnan's case\(^7\). The right to health mentioned in Art 39(e) and 47 was also read into Art 21. The right to equal pay for equal work mentioned in Art 39(d) was read into Art 14 (the right to equality)\(^8\). The right to livelihood in Art 39(a) was read into right to life guaranteed by Art 21\(^9\).

\(^7\) Unnikrishnan V. State of Andhra Pradesh,(1993) 1 Sec 645.
\(^9\) D.K. Yadav v. JMA Industries, 1993(3) Sec 259.
The judiciary here is enforcing rights which were expressly declared as unenforceable by the Constitution. In a poor country, particularly the formal political rights became meaningless unless filled with substantial socio-economic content. The Indian Supreme Court has created new techniques for enforcing these socio-economic rights, e.g., by Public Interest Litigation\(^\text{10}\).

The Indian Supreme Court has also declared arbitrariness in state action as volatile of Art 14 of the Constitution (the right to equality).

This ruling has struck a powerful blow to feudalism and arbitrariness by state authorities. By saying "Be you ever so high, the law is above you" the Supreme Court has upheld the rule of law in the country\(^\text{11}\).

However, there is also a regressive role of the Indian Supreme Court. For instance, the Supreme Court, using formal model of equality to justify itself has acknowledged differences between the sexes, and protected the basis for those differences. The basis of the difference has been assumed to be natural and unalterable.

**Case Study: Air India v. Nargesh Meerza\(^\text{12}\) [Air Hostesses Case]**

The service regulation pertaining to the retirement of airhostesses of Air India and Indian Airlines was challenged as being violative of the right to equality under Indian Constitution. Under the

\(^{10}\) S.P. Gupta v. Union of India, AIR 1982 SC 149.


regulation, an Air hostess (AH) was retired from service on her attaining the age of 35 years or on marriage if it took place within four years of the service; and on first pregnancy. None of this applied to the Assistant Flight Pursers (AFPs) that is male stewards.

To begin with, it had to be shown that AHs constituted a separate class from the assistant Flight Pursers (AFPs), thereby warranting a different set of regulations. The Court took into account the entry requirement and the starting salaries, promotional avenues, and the number of posts, and declared that they are poles apart and thus constitute a separate class altogether. It upheld a circuitous argument that as AFPs were not required to be unmarried at the time of entry, they constituted a different class. Therefore there can be different regulations relating to termination and the same will not be violative of the constitutional guarantee of equality. Thus, it relied on the very difference alleged to be discriminatory by the petitioners to carve out a distinction between the AHs and AFPs, and utilized as the basis to declare that being unequal they cannot claim equal treatment.

The Supreme Court upheld the condition permitting the termination of an Air Hostess' services on her marriage within the first four years, but invalidated the condition that terminated her services on her pregnancy. The rationale informing the preservative of the former provision is as follows:

Supreme Court on the regulation terminating service upon marriage within first four years:

13 ibid. at 363
The regulation permits on the AH to marry at the age of 23 if she has joined the service at the age of 19 which is by all standards a very sound and salutary provision. Apart from improving the health of the employee, it helps a good deal in the promotion and boosting up of our family planning programme. Secondly if a woman marries near about age of 20 to 23 years, she became fully mature and there is every chance of such a marriage proving a success, all things being equal if the bar of marriage within four years of service is removed then the corporation will have to incur huge expenditure in recruiting additional AHs either on a temporary or on adhoc basis to replace the working AHs if they conceive and any period short of four years would be to little a time for the corporation to phase out such an ambitious plan.

Supreme Court on regulation terminating service on pregnancy:

If an AH after having fulfilled the first condition becomes pregnant, there is no reason why pregnancy should stand in the way of her continuing in service. In other words of the Court, termination of the services of an AHs under such circumstances would not only be a callous and cruel act but an open insult to Indian Womanhood - sacrament and cherished institution.

Pregnancy, motherhood and childcare are projected as the natural and biological role of women. As a result, the gender division of labour has not been addressed and the existing stereotypes have

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15 Supra note 12 at 371. It further states: "We are constrained to observe that such a course of action is extremely detestable and abhorrent to the nations of a civilized society. Apart from being grossly unethical, it smacks of a deep-rooted sense of utter selfishness at the cost of all human values."
been reinforced. Sharing child care responsibilities is one way in which the reinforcement of gender stereotypes in employment can be combated. The laws must also provide for appropriate measures to reduce the unequal pressure on women, particularly when they are employed. This provision should include paternity leave and other incentive for men to share in the burden of 'women's work', in the effort to develop a culture in our society whereby both parents share the burden of equality.

Solutions that can be effected from within the legal paradigm would invoke provisions of parental care, and crèche facilities to be provided by the employers irrespective of whether the employees are male or female. A legal mandate can be derived from Art 16(1)(d) of the Convention on the Elimination of Discrimination Against Women (CEDAW) which has been ratified by India. The said Article require State Parties to take appropriate measures to eliminate discrimination against women and to ensure on the basis of gender equality the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children.

In order to be gender equitable, full employment policies must be complemented by policies to ensure an equitable balance between work and family life. Attitudinal changes can be effected only through education, gender sensitization, and awareness. The law can change mind set in a very limited way. It can, however, be instrumental in altering instrumental practices of discrimination by stymieing all gender-based classification of work that creates disadvantages for women.

Sexual Harassment at the Work Place:

In Vishaka vs. State of Rajasthan\textsuperscript{17} the Indian Supreme Court defined sexual harassment to include 'unwelcome sexually determined behaviour such as

(a) Physical contact and advances;
(b) A demand or request for sexual favour;
(c) Sexually coloured remarks;
(d) Showing pornography
(e) Any other unwelcome physical, verbal or non verbal conduct of sexual nature;

The Apex Court has held that sexual harassment at the workplace is violative of the fundamental rights of working women regarding their life and liberty, and their right to work, carry out occupation, trade or business with dignity.

As there was no enacted law existing to protect working women from sexual harassment, the Supreme Court placed reliance on CEDAW and held that-in the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women of all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Art 14,15,19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein.\textsuperscript{18} In exercise of the powers under Art 32 of the Constitution, the Court

\textsuperscript{17} [1997] INSC 701, at http://www.commonlii.org/in/cases/INSC/1997/701.html

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formulated guidelines that would have to be complied with by employers in work places as well as other responsible person or institutions.

**Reform of the Muslim Personal Law:**

Art 44 of the Constitution is not a fetish to be worshipped but an active principle intended to promote other great values. The goal of a Common Civil Code has been spelt out by the Constitution and the people as well as the institutions of national life including the judiciary are committed to this secular promise. Six decades are too long for redeeming the pledge, and solicitude for the last fanatic's consent may well be constructed as political pusillanimity, even by the protestant youth in the Muslim Community. It is distressing for a court to discriminate against Muslim women who have for ages been subjected to several social disabilities clamped down on them in the name of personal laws. It is surprising that the dubious religious interpretations with values valid in a bygone age are being enforced in the current times by civil courts in professedly secular state when those values have become mere legal superstitions, if not a anathema for sections of society. The Indian Constitution directs that the state should endeavour to have a Uniform Civil Code applicable to the entire Indian community and, indeed, when motivated by high public policy. Sec 488 of the Cr.P.C. has made such a law, it would be improper for an Indian Court to exclude any section of the community born and bred upon Indian

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18 V.R Krishna Iyer, Social Mission of Law, Orient Longman.
earth from the benefits of that law, importing religious privilege of somewhat obscurantist order....The judiciary must move the system towards 'One Citizenship, One Law' and live up to national norms without eroding the essential sense of identity and cultural individuality of minorities.

The judiciary in Ms. C.B. Muthamma v. Union of India\textsuperscript{19}, declared, allowing the petition where rules regarding seniority and promotion in the Indian Foreign Service was denied only on the ground of sex, and where rule 8(2) of the Indian Foreign service (Conduct and discipline) Rules 1961 which requires that after marriage, a woman may be asked any time to resign if it is felt that her family life affects her efficiency as of right to be appointed to the service (IFS), contravenes Article 15 of the Constitution, which now stood deleted because of the intervention of the judiciary.

The Apex Court in Vishal Jeet v. Union of India\textsuperscript{20} observed that immoral traffic (Prevention) Act 1956 was passed by the legislature for abolishing the practice of prostitution and other form of trafficking including Devdasi system. The Court observed that in the absence of domestic law occupant the field to formulate effective measures to check the evil of sexual harassment of working women at all places the contents of International Convention and Norms are significant for purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14,15,19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein.

\textsuperscript{19} AIR 1990 SC 142
\textsuperscript{20} AIR 1990SC 142
The Supreme Court in Sarala Mudgal v. Union of India\(^{21}\), passed direction to the Central Government to take a fresh look at Article 44 of the Constitution which enjoins the state to secure a Uniform Civil Code which, according to the Court imperative for both protection of the oppressed and promotion of national integrity.

The Apex Court in Ms. Gita Hariharan v. Reserve Bank of India\(^{22}\) held that the father cannot claim that he alone was the natural guardian and his wife could take no decision without his permission. It was held that relegation of the mother of a minor relegated to an inferior position on the ground of sex alone was violation of Articles 14 and Article 15 of the Constitution. Hence, the mother can act as a natural guardian of the minor during the life time of the minor and during the life time of the father who would be deemed to be absent.

The Apex Court in Apparel Export Promotion Council v. A.K Chopra\(^{23}\) held that the courts are under an obligation to give due regard to International Conventions and Norms for construing domestic laws more so when there is no inconsistency between them and there is a void in domestic law.

The Supreme Court further observed that in cases involving violation of human rights, the courts must for ever remain alive to the International Conventions and Instruments and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field.

\(^{21}\) (1995) 3 SCC 635
\(^{22}\) AIR 1999SC 1149: 1999(2) SCC 228
\(^{23}\) 1999 (1) Supreme 110
The Apex court in Sarla Mudgal v. Union of India24 held that if a husband has converted to Islam to get married again, he will be guilty of bigamy under Hindu Personal Law. When the husband converts to Islam for the purpose of marrying again, he will be committing domestic violence against his wife, which amounts to be an offence punishable under Section 495 of Indian Penal Code.

The Supreme Court in S.R. Batra & another v. Smt. Taruna Batra25 ruled that the wife is only entitled to claim a right to residence on a shared household and a shared would mean the house belonging to or taken on rent by the husband or the house which belong to the joint family of which the husband is a member.

In Shanti v. State of Haryana26 the Court observed that for section 304-B IPC, the death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances. Such death should have occurred within 7 years of her marriage. She must have been subjected to cruelty or harassment by her husband or any relative of her husband. Such cruelty or harassment should be for or on connection with demand for dowry. The judiciary intervened here not only to take care of the fairer sex or the weaker sex but also have taken abundant care to protect the institution of marriage.

The Apex Court in Gambhir v. State of Maharashtra27, observed that the circumstantial evidence must satisfy three tests.

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24 (1995)3 SCC635
25 AIR 2007 S. C. 1118
26 AIR 1991 SC 1226 : 1991(1) SCC 371
27 AIR 1982 SC 1157 :1982 SCC (Cr.) 431
a) The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established.

b) Those circumstances should be of a definite tendency pointing towards the guilt of the accused or

c) The circumstances taken cumulatively should be so compatible that there is no escape from the conclusion that within all human probability the crime was committed by the accused & none else.

The research scholar here takes a pause to point out that judiciary takes care of men and the protection of the interests of women in certain cases is ever overt looked.

In Kamala v. State of Punjab\textsuperscript{28}, the Apex Court held that dying declaration should satisfy all the necessary tests and one such important test is that, if there are more than one dying declaration they should be consistent particularly in material facts.

The Supreme Court in Rajbabu & Anothers v. State of M.P.\textsuperscript{29} observed that in appreciation of evidence, so far as abetment of suicide is concerned ingredient of abetment include - instigating any person to do a thing or an act or illegal omission takes place in pursuance of that conspiracy and in order to do that thing. In the instant case there is no direct evidence that the appellant either aided or mitigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide. The Court was of

\textsuperscript{28} AIR 1993 SC374
\textsuperscript{29} 2008 Cr. L. J. 4301 (SC)
the view that presumption under Section 113B of the Evidence Act, 1872 cannot be pressed into service merely because women committed suicide within seven years of her marriage. The judicial intervention here is impartial to show its wisdom while protecting women.

In Saroj Rani v. Sudarshan Kumar\textsuperscript{30}, the Supreme Court held that conjugal rights are not mere creatures of the statute. Such a right is inherent on the very institution of marriage itself. The Court held that on the privacy of home and married life neither Article 21 nor Article 14 of the Constitution has any room. The Court observed that there are sufficient safeguards on Sec 9 to prevent it from being a tyranny. The only sanction in a decree for restitution is by attachment of property against disobedience of a decree for restitution of conjugal rights where the disobedience follows as a result of wilful conduct, i.e., where conditions are, therefore, a wife or a husband to obey the decree for restitution but disobeys the same in spite of such conditions, the only financial sanction, provided he or she has properties to be attached, is provided for. It serves a social purpose and aid to the prevention break up of marriage. The judiciary holds that it cannot be said that the sanction is violative of Article 14 or 21 of the Constitution of India, if the purpose of the decree for restitution of conjugal rights is understood in its proper perspective and if the method of its execution in cases of disobedience is kept in view.

Under the Hindu Marriage Act, 1955 the Court strongly advocated for the incorporation of the concept of irretrievable

\textsuperscript{30} AIR 1984 SC 1562
breakdown of marriage in the law in view of the change of circumstances. Ultimately it is for the legislature whether to include irretrievable breakdown of marriage as a ground of divorce or not, but in court’s considered opinion the legislature must consider it as a ground for divorce under the Act. The marriage at times becomes a friction, though supported by a legal tie. By refusing to sever the tie, the law in such cases does not save the sanctity of marriage on the contrary the judiciary held that it shows scan regard for the feelings and emotions of the parties.

The Apex Court in Raghubir Singh and others v. Gulab Singh and others\(^3^1\) has held that for enlargement of limited interest possessed by Hindu widow, provisions of Sec 14 of the Hindu Succession Act must be liberally construed. The judiciary here tries its best for refining customs, traditions, practices and cope up with the changed changing circumstances.

The Supreme Court in Gangamma v. Nagarthnamma and others\(^3^2\). Observed that the Hindu Succession Act, 1956 has overriding effect and confers full ownership on Hindu female and rights conferred under Section 14(1) of the said Act to a Hindu female are not restricted or limited by any rule of Hindu Law. According to the Court Sec 14(1) of the Act is very large in its amplitude and covers every kind of acquisition of property by a female Hindu. Regardless of whether such property was possessed by a female Hindu on the that of commencement of the said Act or was subsequently acquired or possessed, she would be the full owner of the property. Hence, appellant is full owner of disputed property.

\(^{31}\) 1998(5) Supreme 399
\(^{32}\) AIR 2009 SC 2561
In Bhagat Ram (dead) by LRS v. Teja Singh\textsuperscript{33} the Apex Court has held that succession clearly falls under Sec 15(2) of Hindu Succession Act, 1956. The property would devolve after death of widow's daughter not on the heirs of her predeceased husband but would devolve on another daughter of widow, i.e., on sister. The judiciary thus tries to elevate the traditional position of women by constructive interpretation.

The Apex Court in Om Prakash and others v. Radhacharan and others\textsuperscript{34} ruled that the Hindu Succession Act 1956 does not put an embargo on a female Hindu to execute a will. However Section 15(1) of the said Act apply only in a case where a female Hindu has died intestate. In such a case the sound rule of Succession provided for by the statute must prevail for the aforesaid purpose and the golden rule of interpretation must be applied. While applying the provisions of Section 15(1),(2) of the Hindu Succession Act, 1956, the self acquired property of a female would be her absolute property and not the property which she had inherited from her parents. In such circumstances the provision of Section 15(1) of the Act would apply and not Section 15(2) of the said Act.

In Mohd Ahmed Khan v. Shah Bano Begum\textsuperscript{35}, the Apex Court has held that Section 125 of the Criminal Procedure Code is equally applicable to the Muslims and a Muslim husband is statutorily bound to maintain his divorced wife beyond the period of iddat. To avert this ruling of the Apex Court the Parliament has legislated the

\textsuperscript{33} AIR 1999 SC 1944: 1999(4) Sec 86
\textsuperscript{34} 2009(5) Supreme 181
\textsuperscript{35} AIR 1985 SC 945
Muslim Women (Protection of Rights on Divorce) Act, 1986. Now a Muslim husband is not under legal obligation to maintain her divorced wife beyond the period of *iddat*, unless, both the parties to marriage, i.e., husband and wife make submission before the court at the appropriate time that they would like to be governed by Section 125 of Cr.P.C. The judiciary as early as in 1985 only showed its far sightedness by giving such a ruling.

The Supreme Court in Municipal Corporation of Delhi v. Female Workers (Muster Roll)\(^{36}\) has held that workers, on casual basis and daily wages of Municipal Corporation are equally entitled to maternity benefits.

The Supreme Court in Pratibha Rani v. Suraj Kumar\(^{37}\) observed that ordinarily, the husband has no right or interest in *stridhan* with the sole exception that in time of extreme distress, as in famine, illness or like, the husband can utilise it but he is morally bound to restore it or its value when he is able to do so. It may be further noted that the right was purely personal to the husband and the property so received by him in marriage could not be proceeded against even in execution of a decree for debt. This is the interpretation given by judiciary while deciding the nature and character of *stridhan*.

The Apex Court in Gaurav Jain v. Union of India\(^{38}\) has held that to constitute the offence of prostitution the evidence of more than one customer's not always essential, but it is necessary to prove

\(^{36}\) AIR 2000 SC 1274; 2000(3) Sec 234  
\(^{37}\) AIR 1985 SC 628; 1985 Sec 25(SC)  
\(^{38}\) 1992(8) Sec 114
that girl/lady should be a person offering her body for promiscuous sexual intercourse for consideration which may be in cash or kind. Here sexual intercourse is not an essential element. The place being used as a brothel joined with surrounding circumstances may be sufficient to constitute that place in question as brothel. The Court here took necessary steps to throw light on the act and not on the procedures necessary to declare a place as brothel.

The Apex Court in Atul Kumar Natawarlal Kodakia v. Jyoti Atul Kumar Kodakia\(^\text{39}\) observed that where the family court refused to grant decree of divorce to the husband, the party reached a settlement to get divorce by mutual consent during the pending of appeal in the Supreme Court. And the husband paid full amount of compensation stipulated between the party. Subsequently, the application for enhancement of maintenance by the wife and appeal by the husband the Court held that in such circumstances, though the memorandum of said settlement could be treated as an application for divorce by mutual consent under Section 13B of the Hindu Marriage Act, the same may be sent to the Family Court for the said purpose ,and for being proceeded with, in such circumstances, nothing survived after such mutual consent, although and the matter was remanded to the Family Court for deciding the issues involved, i.e., for settlement of application for divorce under section 13B of the Hindu Marriage Act, 1955. The Law Commission in its 59th report also stressed that in dealing with disputes concerning the family, an approach must be adopted which is different from civil procedures.

\(^{39}\) 1998(9) Sec 279
There are nonetheless situations where the judiciary’s pro-male biases are highlighted in a number of judgements, including the infamous Mathura Judgement and the Bhanwari Devi case. A number of other judgements are there to show the patriarchal attitude taken even by the highest judiciary in cases of rape and sexual assault of women.

T. H. Manoroma Devi was raped by the Jawans of the Assam Rifles and was murdered by the army personnel after two days of her arrest. After that twelve Manipuri naked women stormed the Army Headquarter in Imphal holding placards saying ‘Indian Army Rape Us’. Manoroma murder was far from being an exceptional case in Manipur where rape, abuse, and murder are everyday realities. This abuse of power by security forces have resulted tremendous human rights violation especially with women in the region.

In Assam, on the 22nd May night, 1997, a men from 16 Rajput Regiment went to Ambari Sorubhera village in search of militants. The villagers were gathered in the field nearby, meanwhile the Jawans raped Santhali (17 years old girl) and Rangeela (15 years old girl) in front of the villagers. Next day those Army again came to the village and raped Rumani (16 year old girl); a student of class nine and Thingigi, a student of class ten standard while they were in the way to school. A case was registered at Tamulpur police station but no investigation was carried so far. In this way, violations of human rights of women and girls have been taking place40.

40 Ramification of Human Rights in India, Anoop Kumar Singh
An incident took place in Beltola, Guwahati, Assam, where a tribal girl Lakshmi Orang was stripped of her clothes (Sari) by some local people and she ran naked through the road to save herself. Judiciary could have taken cognizance of the matter of this nature suo-moto as our constitution farmers cast the burden of securing civil and political rights of men and women in judiciary. Moreover, these are not only indication of human rights violation of women, but also a violation of our moral values, ethics and culture.

The powers of the higher judiciary for the protection of the constitutional rights of citizens are of the widest amplitude and there is no reason why the court should not adopt activist approach similar to courts in America and issue to the state directions which may involve taking of positive action with a view to securing enforcement of the fundamental right. The judiciary has been assigned this role under the Constitution. They are not expected to sit in an ivory tower like an Olympian closing their eyes uncaring for the problems faced by the society. They have to exercise their judicial powers for protecting the fundamental rights and liberties of citizens of the country. Therefore, in order to achieve this mission, the judiciary has to exercise and evolve its jurisdiction with courage, creativity, vision, vigilance and practical wisdom. Judicial activism and self restraint are facets of that courageous creativity and pragmatic wisdom. This exercise is not for vain glory but it is in discharge of its constitutional obligation. The executive and legislature are apathetic and have failed to discharge their constitutional obligations. The bureaucracy shows a total

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indifference and insensitivity to its mandatory duties. This in turn affects the basic rights of the people. When the law enforcing authorities show their brutality in the process of implementation of law, the judiciary should check the excesses and also direct the authorities to effectively implement the welfare legislation.

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