Women and Law

*Vageshwari Deswal**

1. Introduction

The judicial stance towards women's rights in India has evolved significantly over time, reflecting broader social, constitutional, and international commitments to gender equality. The judiciary has often acted as a progressive force, expanding women's rights even when legislative or executive action lagged. Guided by constitutional morality, the stance has been largely egalitarian and transformative, However, one cannot deny that the judiciary has occasionally been constrained by societal attitudes and gender stereotypes.

In this article, some of the significant judicial pronouncements of the Allahabad High Court related to women's rights, which were delivered during the last year have been examined through the prism of gender justice. This is an attempt to critically analyse the ongoing discourse regarding contested positions on women's empowerment in India. While the judiciary has excelled in its role as the guarantor of justice by rendering positive judgements on the rights, recognition, and protection of women, it is imperative to note that our legal justice system has also rendered conflicting and sometimes misogynistic remarks especially in cases related to sexual abuse.

2. Women's Rights

2.1 Right to Guardianship and Custody

Section 6 of the Hindu Minority and Guardianship Act, 1956 traditionally recognized the father as the natural guardian of a minor, with the mother succeeding only after the father. The provision reflected a patriarchal bias. On the other hand we have a secular law governing custody and guardianship for all communities known as Guardians and Wards Act (G.W.A.), 1890. This Act defines guardian as a person instead of male or female. Section 7 of the legislation is the hallmark of this statute which emphasizes upon the 'welfare of the minor' as the main consideration while making orders under this Act. The judicial approach towards custody and guardianship rights of women in India reflects the courts' evolving interpretation of family law in the light of constitutional principles of gender equality and the welfare of the child. While traditional laws often privileged the father as the "natural guardian" the judiciary has played a crucial role in redefining these norms to promote both the best interests of the child and women's equal parental rights.

It has been twenty-six years since the Supreme Court by the tool of interpretation had extended the right to natural guardianship to mothers as well under the Hindu Minority

* Professor, Faculty of Law, University of Delhi.

and Guardianship Act, 1956.[1] Despite this the legislature has not amended the statute yet and this requires the court to time and again reaffirm its stand.

Upholding the mothers right to natural guardianship and custody of her minor child, a division bench of justice Ashwani Kumar Mishra and Justice Donadi Ramesh observed that various physical, emotional and psychological needs of a four-year-old girl would be better protected in the care and custody of her mother even though the daughter was happily residing with her father.[2]

In this case, Amit Dhama (appellant-husband) and Smt. Pooja (respondent-wife) were married on 23.05.2010, and two children were born from their union - a son on 02.04.2013 and a daughter on 29.09.2020. After differences arose between the parties, they began living separately. The husband instituted divorce proceedings under Section 13 of the Hindu Marriage Act, 1955, which were pending. During this period, the wife filed a petition for custody of their minor daughter (aged 4 years and 3 months) under Sections 7 and 12 of the Guardians and Wards Act, 1890. The Family Court passed an *ex- parte* order on 31.08.2024 awarding custody of the daughter to the mother. The son was studying in a boarding school at Faridabad with fees paid by the father, while the daughter was living with the father at the time of the custody proceedings. The central issue was whether custody of a minor daughter below 5 years of age should be granted to the mother who is the natural guardian under Section 6(a) of the Hindu Minority and Guardianship Act, 1956, or whether the father's care and existing arrangement should continue, particularly when the Court must balance the welfare principle against the disruption that might be caused by transferring custody.

The husband contended that he was taking due care of his minor daughter and possessed sufficient resources to continue her care. He argued that the daughter was happily living with him and would be traumatized if custody was transferred to the mother. He maintained there was no valid reason for custody to be handed over to the respondent-wife, especially since he had been the primary caregiver during the separation period. The wife's counsel argued that by virtue of Section 6(a) of the Hindu Minority and Guardianship Act, 1956, the mother is the natural guardian of a minor child below 5 years of age. They emphasized that the mother was a graduate and was living with her parents in a stable environment. The counsel contended that no circumstances had been pointed out that would justify denying custody of the minor daughter to her natural guardian, especially when she was completely deprived of both children's company.

[1] *Geeta Hariharan* v. *Reserve Bank of India* (1999) 2 SCC 228.
[2] *Amit Dhama* v. *State of UP* 2025, AHC 5962 DB.

The High Court dismissed the appeal and upheld the Family Court's order granting custody of the 4-year-old daughter to the mother, while maintaining fortnightly visitation rights for both parents. The Court applied well-established principles of child custody law, acknowledging that the mother is ordinarily the natural guardian of a minor child below 5 years of age and would normally be allowed custody unless specific circumstances warrant a different course. The Court emphasized that in child custody matters, the primary concern is always the welfare and well-being of the child, not the convenience of parents. The Court while testing the conflicting interests maintained a delicate balance, recognizing that while transfer of custody might cause some psychological stress to the child, the larger welfare considerations supported custody with the mother. The Court noted that the mother was educated, living in a stable family environment with her parents, and had been completely deprived of both children's company since separation.

The judgment is reflective of the judicial approach which has categorically ruled from time to time that mother cannot be denied the status of natural guardian. Earlier in 2022, a Supreme Court bench of Justice Dinesh Maheshwari and Justice Krishna Murari held that a mother, as the natural guardian of her child, has the sole right to decide the child's surname and even give the child up for adoption. The child was two and a half months old when his father expired and an year later his mother married another man to whom she subsequently gave her son in adoption. The paternal grandparents filed a petition under the Guardians and Wards Act, 1890 praying to the courts for appointing them as the natural guardians of the boy. This petition was rejected by the trial court but the High Court in 2014 while upholding the mothers right to natural guardianship, issued directions for restoration of the biological father's surname. Setting aside the Andhra Pradesh High Court order the Supreme Court observed that Surname is not only indicative of lineage and should not be understood just in context of history, culture and lineage but more importantly the role it plays is with regard to the social reality along with a sense of being for children. Thus, the High Court's direction was held to be cruel by disregarding the impact that such a step would have on the mental health and self-esteem of the child, hindering a smooth and natural relationship of the child with his parents by continuously reminding about this adoption.[3]

In another case,[4] a habeas corpus petition was filed on behalf of Vanya Mishra, a minor aged approximately 6 years, by her father (petitioner no. 2). The child's father and respondent no. 4 (Smt. Jyoti Singh) were husband and wife who initially lived together lovingly and had a daughter. Due to subsequent differences, Smt. Jyoti Singh was residing at her maternal home and had taken the daughter with her. When the father went to meet his

[3] *Mrs.Akella Lalitha* v. *Sri Konda Hanumantha Rao and Others* (2022) SC.

daughter at the maternal home of respondent no. 4, respondents no. 4, 5, and 6 prevented him from meeting the child and forcibly ejected him from the house. Despite repeated attempts by the father to meet his daughter, the respondents continued to prevent such meetings and drive him away. The father contended that respondent no. 4 was living separately from him and was not allowing him to meet his daughter, thus keeping the child under illegal custody

The primary legal issue was whether a *habeas corpus* petition is the appropriate remedy for child custody disputes, or whether such matters should be adjudicated through detailed proceedings under the Guardians and Wards Act, 1890. The Court also had to determine what constitutes "illegal detention" in the context of family disputes over child custody and whether summary proceedings under Article 226 are suitable for determining complex custody rights.

The petitioner's counsel argued that innocent children being kept away from their father and being deprived of meeting him could not be compensated in any other manner. The act done by the respondents was indicative of cruelty and harshness towards minor children. As the father of the minor child, he was the actual guardian responsible for her proper care and education, and therefore the child should be released from the respondents and handed over to his custody.

The learned Additional Government Advocate opposed the arguments and drew the Court's attention to legal principles established in Supreme Court cases including *Syed Saleemuddin* v. *Dr. Rukhsana*[5] and *Tejaswini Gaud* v. *Shekhar Jagdish Prasad Tewari*,[6] emphasizing that ordinary remedies lie under specific enactments but, the welfare of child is paramount in custody matters.[7]

The Allahabad High Court dismissed the *habeas corpus* petition as not maintainable, and directed the petitioner to file a proper suit under the Guardians and Wards Act while granting interim visitation rights to the father. The Court extensively analysed Supreme Court precedents, particularly *Syed Saleemuddin* v. *Dr. Rukhsana*,[8] which established that in habeas corpus applications for custody of minor children, the principal consideration is whether custody is unlawful or illegal and whether child welfare requires change of custody. The Court also relied on *Tejaswini Gaud* v. *Shekhar Jagdish Prasad*

[4] *Vanya Mishra (Minor Corpus) and another* v. *State of UP and another, Habeas Corpus* Writ Petition No. 523 of 2025, Allahabad HC (2025 AHC 98816).

[5] (2001) 5 SCC 247.

[6] (2019) 7 SCC 42.

[7] Also see, *Javeriya Fatma* v. *State of UP* (2024); *Master Mahib Sajjad Masood* v. *State of UP* (2024); *Shiv Singh (Minor)* v. *State of UP* (2024).

[8] *Supra* note 5.

Tewari,[9] which held that ordinary remedy lies under the Hindu Minority and Guardianship Act or Guardians and Wards Act, and writ courts should exercise extraordinary jurisdiction only in exceptional cases. The Court emphasized that in child custody matters, there are significant differences between inquiry under the Guardians and Wards Act and exercise of powers by writ courts, which are summary in nature. Writ courts determine rights only on affidavit basis, whereas proper custody determination requires detailed inquiry with evidence. Where detailed inquiry is required, courts should direct parties to approach civil courts rather than exercise extraordinary jurisdiction.

However, in another case[10] involving a minor muslim girl, the court refused to apply secular principles. A habeas corpus petition was filed on behalf of Abdia Arif, a minor aged about seven years. The child's father, Mohammad Shan, died in a road accident on 16.07.2020. Subsequently, on 11.09.2022, the mother, Zubairiya Shan, solemnized a second marriage with Mohammad Siraj. At the relevant time, the petitioner-corpus was in custody of respondents no. 4 and 5 (the paternal grandmother and paternal uncle of the child, respectively). The mother had been assured by the paternal relatives that custody would be handed over to her in due course. However, when the mother's second marriage was solemnized, she voluntarily left the child in the custody of the paternal relatives. The mother subsequently filed Case No. 92 of 2023 under Sections 25 of the Guardians and Wards Act and Section 7 of the Family Courts Act seeking custody, which was pending. Simultaneously, the paternal relatives had also filed Case No. 250 of 2022 under Sections 7/10 of the Guardians and Wards Act, and the Family Court had granted the mother interim visitation rights.

The central legal issue was whether a mother who has voluntarily left her child with paternal relatives upon her second marriage can claim custody through habeas corpus proceedings, particularly when the child's rights are governed by Muslim personal law, which provides specific provisions regarding custody rights of mothers who remarry. The case also raised questions about the application of personal law provisions within the framework of the Guardians and Wards Act.

The mother contended that custody of the child was illegally withheld by the paternal relatives and that she was entitled to custody as the natural mother. The petition sought relief through habeas corpus on the ground that the child was being illegally detained by respondents no. 4 and 5. The paternal relatives argued that custody proceedings were already pending in the proper forum and that interim visitation rights had been granted to the

[9] S*upra* note 6.

[10] *Abdia Arif* v. *State of UP*, 2024 Supreme (All) 477.

mother. They contended that the mother had voluntarily left the child with them and that the custody arrangement was not illegal.

The *habeas corpus* petition was dismissed as not entertainable, with the Court holding that the material on record did not suggest illegal detention of the child by the respondents. The Court conducted a detailed analysis of Muslim personal law regarding custody rights, particularly referencing Mulla's Principles of Mahomedan Law. The Court noted that under Section 352, the mother is entitled to custody (*hizanat*) of her male child until he completes seven years and female child until puberty. However, Section 354 provides specific disqualifications, including that a mother loses custody rights if she marries a person not related to the child within prohibited degrees (i.e., a stranger), though the right revives upon dissolution of the marriage. The Court emphasized that Section 17 of the Guardians and Wards Act requires courts to decide guardianship questions consistently with the personal law to which the minor is subject, while keeping the welfare of the minor as paramount. The Court noted that applications for guardianship must be made under the Guardians and Wards Act as per Section 349 of Mulla's Principles of Mahomedan Law.

The judgment is a stark reminder of the intense scrutiny that women's rights are subjected to in the garb of religion and the problem is further compounded by the reluctance of courts to intervene in personal matters. Such cases should be reasons to expedite implementation of Uniform Civil Code across the country so that rights are no longer subjected to religious practices in a rights-based country.

2.2 Maintenance

The judicial approach towards wife's right to claim maintenance has over the years evolved into one that strongly upholds financial security, dignity, and equality of women, consistent with the constitutional mandate under Articles 14, 15(3), and 21. Courts have repeatedly emphasized that maintenance is not a charity but a right, essential for ensuring social justice and preventing destitution.[11] Maintenance ensures dignity and sustenance and that is the reason why proceedings for maintenance should not be prolonged unnecessarily.[12]

2.3 Delay in Maintenance Payments Defeats the Purpose of the Law

Interim maintenance should be granted swiftly to avoid hardship.[13] Indian laws have several provisions providing for maintenance such as Section 125 Cr.P.C. (S. 144 B.N.S.S.) providing a summary remedy to wives, children and parents unable to maintain themselves.

[11] *Chaturbhuj* v. *Sita Bai* (2008) 2 SCC 316.
[12] *Bhuwan Mohan Singh* v. *Meena* (2015) 6 SCC 353.
[13] *Puneet Kaur* v. *Inderjit Singh Sawhney*, ILR (2012)I Del 73.

Then there is protection of women from Domestic Violence Act, 2005 which provides monetary relief including maintenance under Section 20. Personal laws such as the Hindu Marriage Act,1955 Hindu adoption and Maintenance Act, 1956 and also the Muslim Women Protection of Rights on Divorce Act, 1986 contain provisions providing for alimony. It has been held in *Shamima Farooqui* v. *Shahid Khan*[14] that a woman can claim maintenance under both Section 125 Cr.P.C. and personal laws, as these operate in distinct spheres. While avoiding double maintenance courts have to ensure that women are protected effectively. Maintenance under the Domestic violence Act and the Cr.P.C./ B.N.S.S. can co-exist but the amounts should be mindfully adjusted to avoid duplication. Such judgments reflect a pro-woman yet balanced approach. Upholding right to maintenance as a fundamental facet of equality, the judiciary has favoured fair maintenance for divorced as well as separated wives too. In the case of *Badshah* v. *Urmila Badshah Godse*[15] the Supreme Court while prioritizing social justice over technical legalities granted maintenance to a woman in a relationship resembling marriage when she was deceived into believing it was valid. Similarly courts have also upheld maintenance rights of second wives deceived into marriage, considering equity and the protection of women's dignity.

However, in order to maintain fairness courts have denied or reduced maintenance when the wife is financially independent or conceals her income. There is a need to distinguish between a wife who is gainfully employed and self-sufficient, and one who earns inadequately. The Supreme Court in *Rani Sethi* v. *Sunil Sethi*[16] held that a wife with independent, adequate income is not entitled to maintenance. But we have other rulings [17] wherein courts have held that mere employability does not disentitle a wife, what matters is financial capacity to sustain a similar lifestyle.

2.4 What Constitutes 'During the Proceedings'

"The doctrine of alimony and the maintenance allowance due to the wife from her husband finds its root in the economic and social conditions under which normally most of the married woman have to live and depend upon the income of their husband, who holds the position like that of a guardian of his wife. The provision for allowance is intended to secure justice to the wife who has no independent income sufficient for her support and necessary expenses of the proceeding while prosecuting or defending any proceedings under the matrimonial law. It is on this principle that the law relating to the matrimonial causes provides for rules for payment of maintenance *pendente lite* and expenses of the proceedings

[14] (2015) 5 SCC 705.
[15] (2014) 1 SCC 188.
[16] 179 (2011) DLT 414.
[17] *Kanchan* v. *Kamalendra* AIR 1993 Bom 493.

by the husband to the wife. These are the principles which have been incorporated in Section 24 of the Act which further lays down that any order for *pendente lite* maintenance and expenses for the proceedings can be made not only in favour of the wife but also in favour of the husband who has no independent income sufficient for his/her support and necessary expenses of the proceedings".[18]

In the case of *Ankit Suman* v. *State of UP*,[19] the court was faced with the predicament of analysing, the correct Interpretation of what constitutes 'during the proceedings' under the Hindu Marriage Act. Ankit Suman (petitioner-husband) filed a divorce petition against his wife Neeraj Saini (respondent-2) under Section 13 of the Hindu Marriage Act, 1955 on 20.07.2018. During the pendency of the divorce proceedings, the wife filed an application under Section 24 of the Hindu Marriage Act for interim maintenance on 26.03.2019. The family court initially dismissed this application on 30.10.2020, but the Allahabad High Court allowed the appeal on 18.11.2021, awarding Rs. 10,000/- per month to the wife and Rs. 10,000/- to the minor daughter. The Supreme Court later modified this to Rs. 10,000/- for wife and Rs. 5,000/- for minor daughter on 29.11.2022. The wife subsequently filed an execution case claiming Rs. 2,50,000/- as arrears till 26.08.2024. Meanwhile, the wife had also filed a transfer petition to move the divorce case from Pilibhit to Bareilly, which resulted in the High Court staying the divorce proceedings on 18.09.2023.

The main issue in this case was**,** whether maintenance under Section 24 of the Hindu Marriage Act continues to be payable when the main matrimonial proceedings are stayed by the court due to a transfer petition filed by the maintenance recipient. The Petitioner argued that Section 24 maintenance is only payable "pendente lite" (during pending proceedings). Once the High Court stayed the divorce proceedings due to the wife's transfer petition, the proceedings cannot be considered "pending". The wife cannot claim maintenance for the period when proceedings are stayed, especially when she herself caused the stay by filing the transfer petition. It is contradictory for the wife to get proceedings stayed and simultaneously claim maintenance for the stayed period.The respondent's counsel could not effectively contradict the legal position but maintained that the wife was in need of financial support

The Court extensively analyzed the scope of Section 24 of the Hindu Marriage Act. The Court relied on multiple precedents including *Amrit Lal Nehru* v. *Usha Nehru*[20] *and Vinod Kumar Kejriwal* v. *Usha Kumar Kejriwal*[21] cases to establish that "proceedings under the Act" should be given a wide interpretation covering all stages from filing to final disposal.

[18] *Ankit Suman* v. *State of UP* at para. 7.
[19] 2025: AHC:133601.
[20] AIR 1982 J&K 98.
[21] 1993(1) CCC 69.

Citing *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association*,[22] the Court distinguished between "quashing" and "staying" an order. Stay does not wipe out the order from existence but merely prevents its operation during the stay period. The Court held that even transfer proceedings constitute "proceedings under the Hindu Marriage Act" and therefore maintenance remains payable during such proceedings. The Court cited numerous cases showing that Section 24 applications are maintainable even during appeal proceedings, revision proceedings, restoration applications, and jurisdiction challenge proceedings.

2.5 Able Bodied Husband Liable to Maintain His Wife Who is Unable to Maintain Herself

In the case of *Gaurav Sharma@Indramohan* v. *State of UP and another*,[23] Gaurav Sharma (revisionist-husband) challenged a Family Court order dated 13.08.2024 in Case No. 198 of 2021 under Section 125 Cr.P.C., where his wife Smt. Payal (opposite party no. 2) was awarded Rs. 4,000/- per month from the date of filing the application on 27.04.2021 to the date of judgment, and Rs. 8,000/- per month from the date of judgment onwards. The marriage was solemnized on 24.06.2019, and the wife alleged that her husband and in-laws demanded additional dowry in the form of a big television and Rs. 2 lakh cash. When she expressed inability to fulfil their demand, she was subjected to torture and cruelty. On 21.06.2020, her husband allegedly beat her, causing the death of her unborn child, and denied her medical treatment. In July 2020, her in-laws left her at the border of her parental village with a warning never to return without fulfilling the dowry demand. She subsequently filed Case Crime No. 38 of 2021 under Sections 498A, 323, 504, 506 I.P.C. and Section 3/4 Dowry Prohibition Act. The primary legal issue was whether maintenance under Section 125 Cr.P.C. should be awarded when there are contradictory statements regarding the husband's income and employment, and what factors should be considered while determining the quantum of maintenance when the husband's actual income cannot be precisely established but the wife is living separately due to matrimonial cruelty. The husband argued that the trial court failed to examine all documents and illegally passed the impugned order. He contended that the wife had left her matrimonial home without sufficient cause and on her own free will. The wife and her father had given false assertions that he worked in ICICI Bank as a cashier, with contradictory statements where the wife said he worked in ICICI Bank Delhi while her father said Bank of Baroda, Salempur Branch. He submitted that he derived his earnings from agricultural activities and had filed an income certificate from Tehsildar showing monthly income of Rs. 4,000/-. He also filed an affidavit

[22] (1992) 3 SCC1.
[23] 2025 AHC 95480.

under the Supreme Court's *Rajnish* v. *Neha* guidelines[24] stating he had a 1/5th share in 1.096 hectare agricultural land. He argued that the trial court imposed heavy maintenance liability without properly estimating his income.

The wife's counsel submitted that the trial court had framed four points of determination based on the parties' pleadings and decided all points after due appreciation of evidence. The findings recorded by the trial court were not perverse and need not be interfered with in the revision. The wife maintained that she was subjected to cruelty, harassment, and torture by her husband and in-laws due to dowry demands.

Allowing the revision partly, the Court affirmed the maintenance amount of Rs. 4,000/- per month from the date of filing the application to the date of judgment but reduced the future maintenance from Rs. 8,000/- to Rs. 5,000/- per month from the date of judgment. The Court conducted a comprehensive analysis of maintenance jurisprudence under Section 125 Cr.P.C. and held that the findings of the trial court were based on evidence and need not be interfered with. However, it found that the quantum of future maintenance fixed as Rs. 8,000/- per month appeared somewhat excessive and deserved reduction since it was not proved that the revisionist worked as a cashier in a bank. The Court applied the Supreme Court guidelines from *Rajnesh* v. *Neha*[25] regarding factors for determining maintenance, including status of parties, reasonable wants of the claimant, independent income and property of the claimant, age and employment of parties, maintenance of minor children, wife's earning capacity, serious disability or ill health, and right to residence. The Court also held that an able-bodied husband cannot shirk his responsibility to maintain his wife who cannot maintain herself, even if his earnings cannot be proved precisely.

2.6 Deductions from Maintenance Amount

In the case of *Rana Pratap Singh* v. *Neetu Singh and others*, the husband challenged the order of family court that required him to pay Rs. 15000 per month to his wife and Rs. 5000 each to his two children till they attain the age of majority. He argued that his wife was staying away from him without sufficient cause and despite a decree of restitution of conjugal rights being passed in his favour by the family court. On grounds of other expenditure such as loan instalments and LIC premium, he pleaded the court to reduce the amount of maintenance. The court refused to entertain his plea and observed that only compulsory statutory deductions such as income tax can be reduced from the gross salary of the husband while fixing maintenance.[26]

[24] Cr. Appeal No. 730 of 2020 (Arising out of SLP Cr. No. 9503 of 2018.
[25] *Ibid.*
[26] 2024 LiveLaw (AB) 203 Criminal Revision No. 1762 of 2023.

2.7 Living in Matrimonial Home After Husband's Death Whether Mandatory to Claim Maintenance from Father-in-law

In the case of *Shree Rajpati* v. *Smt. Bhuri Devi*[27] the respondent's husband (son of the appellant) was a daily-wage employee in the Irrigation Department and was murdered on 20 November 1999. She did not remarry and sought maintenance from her father-in-law under Section 19 of the Hindu Adoptions and Maintenance Act, 1956 . The father in law argued that since she had left her matrimonial home to reside with her parental family and that she had some deposit in her name. The Family Court in Agra disregarded his arguments and awarded maintenance of Rs 3,000 per month to the respondent. Hence this appeal. The main issue in this case was whether living in the matrimonial home is a mandatory precondition to claim maintenance? The court held that the obligation under Section 19 H.A.M.A. is to ensure the widow's maintenance when she cannot sustain herself and the father-in-law has means. This obligation does not hinge on co-residence in the matrimonial home. The court further observed that in our society many widows may choose to live with their parental family for varied reasons, and such a choice cannot automatically disqualify them from claiming maintenance. This judgment reinforces the protective and welfare-oriented purpose of Section 19 H.A.M.A., while underscoring the genuineness of dependency, means and circumstances of both parties matter more than formal residence status when awarding maintenance.

2.8 Family Dispute Between Mother and Daughter

Sangeeta Kumari v. *State of UP* was a peculiar case between mother and daughter. Sangeeta Kumari (applicant-daughter) filed an application under Section 482 Cr.P.C. seeking to quash criminal proceedings initiated against her by none other than her own mother over a family dispute between mother and daughter. The mother was admitted to Ispat Hospital, Ranchi, Jharkhand, during the proceedings. The Court attempted reconciliation by encouraging the daughter to visit her hospitalized mother and discharge her responsibilities, including paying medical expenses. The issue before the court was whether criminal proceedings between mother and daughter can be quashed when the complainant-mother passes away during the pendency of the Section 482 application. The case involved a family dispute requiring resolution. Mother needed medical care and financial support from her daughter. The petitioner initially sought quashing of the case on merits, but later expressed willingness to settle given the family relationship. The Court noted the family relationship and encouraged settlement, providing interim protection on deposit of Rs. 50,000/-. When informed of the mother's hospitalization, the Court encouraged the daughter

[27] 2024 AHC 140720 DB.

to visit her mother as a daughter, not as an opponent. Additionally, the Court directed the payment of 25% of the medical expenses and quoted Sanskrit principles emphasizing respect for elders and proper conduct. After the mother's death, the applicant argued that the application had become infructuous.

The court dismissed the application under Section 482 Cr.P.C. Upon production of complainant- mother's death certificate, the proceedings were dismissed as infructuous.

2.9 Right of Adult Daughter to Claim Maintenance

The Allahabad High Court while dealing with a case related to maintenance delved deep into the question of rights, of daughters to claim maintenance from parents after attaining majority and what would be the correct law to proceed with such applications. Whether she can claim under Section 125 of the Cr.P.C. Or under Section 20 (3) of the Hindu Minority and Guardianship Act, 1956? In the case of *Anurag Pandey* v. *State of UP* and another, the revisionist Anurag Pandey (father) challenged the Family Court order dated 30.07.2024 which granted maintenance to his major daughter Kumari Neha Pandey (respondent-2) under Section 125 Cr.P.C. The daughter was admittedly major at the time of filing the maintenance application, which was disclosed in the application itself. The Family Court, while acknowledging that major daughters are not entitled to maintenance under Section 125 Cr.P.C., nevertheless granted maintenance by applying Section 20(3) of the Hindu Adoption and Maintenance Act, 1956, within the same Section 125 proceedings.

The issue before the court was whether a Family Court can grant maintenance to a major daughter under Section 20(3) of the Hindu Adoption and Maintenance Act, 1956 in proceedings initiated under Section 125 Cr.P.C., and what is the correct procedure for such cases?

The petitioner stated that Section 125 Cr.P.C. only provides maintenance for minor children (except physically/mentally disabled major children).It was argued that if major daughter's maintenance is to be considered under Section 20(3) of Hindu Adoption and Maintenance Act, 1956, the proceedings should be converted to a civil suit with proper trial. The Family Court wrongly interpreted the Supreme Court judgment in *Abhilasha* v. *Parkash*.[28] On the other hand the argument on behalf of the daughter were that she was in need of financial support.

The Court clarified that Section 125 Cr.P.C. provides maintenance only for: Minor legitimate/illegitimate children (clause b) and Major children with physical/mental disability preventing self-maintenance (clause c).

[28] AIR 2020 SC 4355.

Thus, the court categorically stated that major daughters (not suffering from any disability)are excluded from the coverage of Section 125 Cr.P.C. Setting aside the order of family court, the high court allowed the revision. The court also remitted the matter back to the family court and directed the respondent number 2 to move an application for converting the application under S. 125 Cr.P.C. into a suit under Section 20(3) of the Hindu Adoptions and Maintenance Act, 1956.

2.10 Constitutional Rights

2.10.1 *Right to Marry a Partner of One's Choice*

In the case of *Naziya Ansari and another* v. *State of UP and others*,[29] an adult couple married on their own volition and against the wishes of their family members. The issue was whether an adult woman has the right to choose her spouse and live with him/her without being forced to return into the custody of her natal family? Declaring that held an adult has the fundamental right under Article 21 of the Constitution of India to go wherever she likes, live with the person of her choice, or marry according to her will, the Allahabad High Court quashed the FIR lodged by the girls uncle and relatives against her husband. The court further directed that the woman be allowed to live with her husband and that the police ensure her protection against any interference by her family. Criticizing the Magistrate's decision to send the adult woman back to family custody despite her clear statement of fear the court held that it was the duty of state machinery to protect life and liberty, especially in potential "honour killing" or family-revenge situations.

2.10.2 *Freedom to Abort Pregnancy Even at Advanced Stage*

In this case a 15 year girl who was kidnapped was recovered when she was 29 weeks pregnant. When she put up a plea before the Allahabad High court for termination of her pregnancy at 32 weeks, the court held that the decision has to be taken by the woman herself. Three teams of doctors examined her and concluded that though continuation of pregnancy would impact her physical and mental well- being, medical termination of pregnancy at this stage would pose a threat to her life. Despite the risks involved the girl's parents were willing to terminate the pregnancy. However the court counselled them to continue with the pregnancy and issued directions to the State to bear all expenses for the delivery and also to ensure that if the petitioner decides to put up the child for adoption after its birth, the State should carry it out as privately as possible.[30]

[29] 2024 AHC 102679-DB.

[30] *X (Minor Victim)* v. *State of UP* Writ C No. 21956 of 2024.

2.10.3 *Maternity Benefits*

In furtherance of India's international obligations under CEDAW and ILO and in accordance with the constitutional guarantees of maternity relief and the provisions of the Maternity Benefit Act, 1961 (as amended in 2017) our judiciary has by adopting a welfare oriented approach, repeatedly interpreted these statutory and constitutional provisions to expand rather than restrict women's rights related to maternity, employment, and health. Denial of maternity leave has been held to amount to indirect discrimination against women.[31] Denial of maternity leave even to ad-hoc employees is arbitrary, illegal and unconstitutional.[32] The law doesn't distinguish based on the nature of employment and even contractual employees are entitled to maternity leave as per the Maternity Benefits Act, 1961.[33] In the case of *Deepika Singh* v. *Central Administrative Tribuna*l,[34] reinforcing that maternity benefit is a social welfare measure, not restricted by technical employment categories the Supreme Court expanded the concept of "family" to include non-traditional relationships and held that maternity leave should not be denied merely because the child is not biological (e.g., adopted or step-children).

In the case of *Charu Gaur* v. *State of UP and 2 others*,[35] Charu Gaur (petitioner) was employed as a teacher under the Basic Education Department of Uttar Pradesh. She had availed her first maternity leave and gave birth to a male child on 04.01.2021. Subsequently, she became pregnant again and applied for maternity leave on 11.06.2022. However, the Basic *Shiksha Adhikari*, Kasganj (respondent no. 3) rejected her application for second maternity leave vide order dated 25.06.2021, simply stating "Anumanya Nahi" (not permissible). The rejection was based on Rule 153(1) of the U.P. Financial Handbook Volume II to IV, which contained a restriction that second maternity leave could not be granted where there was a difference of less than two years between the end of the first maternity leave and the grant of second maternity leave. The petitioner challenged this denial, arguing that the Maternity Benefits Act, 1961 did not contain any such two-year gap restriction. The central legal issue was whether Rule 153(1) of the U.P. Financial Handbook, which imposed a mandatory two-year gap between first and second maternity leaves, could prevail over the provisions of the Maternity Benefits Act, 1961, which contained no such restriction, and whether the State Government's adoption of the central legislation through various government orders made the parliamentary act applicable with full force to state employees.

[31] *Anuradha Bhatia* v. *State of J&K*, 2022.
[32] *Dr. Kavita Yadav* v. *Secretary, Ministry of Health & Family Welfare* (2021) Delhi HC.
[33] *Shalini Singh* v. *State of Bihar* (2023)Pat HC.
[34] (2022) 7 SCC 491.
[35] 2024 AHC 195989- DB.

The petitioner's counsel argued that Rule 153 of the U.P. Fundamental Rules was *ultra vires* the Constitution of India, particularly Articles 42, 21, 14, and 16, as well as Section 5 of the Maternity Benefits Act. They contended that the State of Uttar Pradesh had already adopted the provisions of the Maternity Benefits Act, 1961 through government orders dated 08.12.2008, 24.03.2009, and 11.04.2011, and therefore the restrictive provisions of the Financial Handbook should not apply. They relied on previous single bench decisions in Anupam Yadav and Satakshi Mishra cases which had attained finality.

Initially, the State had opposed the petition by arguing that Rule 153 provided that a two-year gap was mandatory between first and second pregnancy for the benefit of maternity leave. However, during the proceedings, the learned Additional Chief Standing Counsel indicated that the State Government was in the process of reconciling the discrepancy between Fundamental Rule 101 subsidiary Rule 153 and the provisions of the Maternity Benefits Act, 1961, and that appropriate decisions would be taken after consultation with the Medical and Health Department.

The Division Bench allowed the writ petition, set aside the impugned order dated 25.06.2021, and directed the Basic Shiksha Adhikari to pass a fresh order in accordance with law within two months, ensuring all amounts payable to the petitioner were paid within the same timeframe. The Court extensively analysed the hierarchy between parliamentary legislation and executive instructions, holding that the Maternity Benefits Act, 1961, being enacted by Parliament under Entry 24 of List-III of the Seventh Schedule, would prevail over the Financial Handbook provisions which were merely executive instructions. The Court emphasized that in case of any inconsistency, the statutory enactment framed by Parliament would prevail.

2.10.4 *Eligibility of Daughter for Compassionate Appointment*

In the case of *Punita Bhatt* v. *BSNL New Delhi*[36] the widowed daughter of an employee of BSNL was living with her father along with her minor son after her husband's death in 2009. In 2016 she applied for a compassionate appointment under BSNL's scheme (adopting the Government of India Department of Personnel & Training's OM dated 09.10.1998) as a dependent family member of the deceased employee. BSNL and subsequently the CAT rejected her claim on the ground that a "widowed daughter" is not eligible under the scheme, i.e., that the category of dependent family member did not include a "widowed daughter" (or a married daughter).

[36] 2024 AHC-LKO 77237-DB.

The central issue in this case for determination was whether a widowed daughter of a deceased employee can be regarded as a "daughter" under the definition of "Dependent Family Member" in the compassionate appointment scheme (OM 09.10.1998) and thereby be eligible for consideration for a compassionate appointment, subject to dependency on the employee. The Bench held that the scheme's definition of "daughter (including adopted daughter)" is not preceded by the word "unmarried", and thus there is no express exclusion of married or widowed daughters under the scheme. Neither marriage nor widowhood of a daughter should automatically disqualify her from being a "daughter" under the scheme, if dependency is proved. The Court also reiterated that past jurisprudence has taken a purposive and expansive interpretation of "family" and "dependent family member" in compassionate appointment schemes, including married daughters. The Court further held that if a scheme excludes married or widowed daughters while including sons, that classification lacks a reasonable basis and violates equality guarantees under Articles 14, 15 and 16. Hence, the Court quashed the CAT's order and directed BSNL to reconsider the petitioner's application under the weightage/points system applicable in BSNL, without rejecting it simply on the ground that she was a widowed daughter. The decision is to be taken within two months.

This decision has reinforced that dependency, not the marital status of the daughter, is the key criterion for consideration under such welfare-schemes and adds to the jurisprudence of inclusive interpretation of "dependent family member" in compassionate appointment frameworks across public sector / government employment contexts.

In the case of *Akhtari Khatoon* v. *State of UP and others*[37] The petitioner, Akhtari Khatoon, whose had father died in harness while serving as a Centrifugal Mechanic, claimed to be his only dependant and sough appointment on compassionate grounds. She was divorced from her husband and had been residing with her father since 2008. She sought compassionate appointment under the employer's Dying-in-Harness rules as well as the release of family pension and retiral dues.

The authorities rejected her request on the ground that she was a married/divorced daughter and not a "dependent family member" under the U.P. State Electricity Board Recruitment of Dependants of Board's Servants Dying in Harness Rules, 1975 (as amended in 2012). The court dismissed her petition as she had failed to establish financial dependency on the deceased at the time of his death. Further she was also beyond the permissible age of appointment as she was 50 years old. Her claim for family pension, was also rejected as the petitioner had not cited any statutory provision entitling her to such benefit as a divorced

[37] 2024 AHC 55977.

daughter under the relevant pension regulations. Earlier in 2023 in the case of *Vimla Srivastav* v. *State of UP*[38] the Allahabad High Court had struck down the word "unmarried" in Rule 2(c)(iii) of the U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 as being discriminatory and unconstitutional. The court had directed that the term "daughter" in the Rules must include all daughters, irrespective of marital status, provided dependency on the deceased government servant is proved. After this judgment, married daughters are eligible to be considered for compassionate appointment under the 1974 Rules, subject to proof of dependency and fulfilment of other conditions.

The decision in *Akhtari Khatoon's* case re-emphasizes judicial restraint in expanding compassionate appointment schemes beyond their statutory boundaries. While, *Punita Bhatt v. BSNL*, 2024 and *Vimla Srivastava v. State of U.P*(2023) have treated married/widowed daughters as dependents where the term "daughter" is unqualified, *Akhtari Khatoon* clarifies that each scheme must be interpreted in its own textual and regulatory context.

3. Divorce

3.1 Irretrievable Breakdown

In Divorce cases, the judiciary's approach has become progressively pro-woman, especially in safeguarding women's dignity, financial security, and autonomy, though courts now also strive for gender-neutral fairness in matrimonial disputes. By invoking the right to equality and dignity enshrined under articles 14 and 21 coupled with special provisions for women under Article 15(3), the judiciary has infused gender justice and constitutional morality into matrimonial jurisprudence by stepping in areas where statutes were patriarchal or silent. In the case of Naveen *Kohli* v. *Neelu Kohli*[39] the Apex Court observed that marriages "dead emotionally and practically" should not trap women; it recommended introducing irretrievable breakdown of marriage as a ground for divorce. This paved the way judiciary's gradual acceptance of no-fault divorce, making it easier for both spouses particularly for women in dead marriages to exit oppressive relationships. In Indian society the fear of stigma makes women cling onto their dead marriages and oppose divorce to continue in marriages where they are neither loved nor respected. Introduction of breakdown theory will enable the courts to set them free. In the case of *Shilpa Sailesh* v. *Varun Sreenivasan*[40] a Constitution Bench held that the Supreme Court can dissolve marriages under Article 142 on the ground of irretrievable breakdown even if one spouse opposes it, when reconciliation is impossible. This doctrine has often benefited women trapped in long,

[38] 2023 AHC 26379.
[39] (2006) 4 SCC 558.
[40] (2 SCC 4082023).

bitter litigations, as courts can now grant final relief without forcing them into lifelong litigation.

In the case of *X* v. *Y*,[41] the court observed that, "Under the Hindu law, marriage is a sacrament, a holy union for the performance of religious duties. It is not merely for physical gratification, but for spiritual and social obligations. However, while it remains a sacrament, the Hindu Marriage Act, 1955 has conferred statutory recognition to the right of dissolution in specific circumstances."[42] When the bond has been destroyed by persistent cruelty or total separation i.e. when the relationship has perished in substance, insistence on preserving the shell of marriage would do no good to either of the parties. Hence, while reaffirming marriage as a sacrament, the Court recognized that its sanctity cannot survive cruelty or long-term estrangement. The judgment bridges the gap between traditional Hindu philosophy and problems faced by modern couples in a rights based society.

3.2 Divorce Granted Where Breakdown of Matrimonial Bond is Beyond Repair

In *Apoorva Gupta* v. *Vandana Gupta*,[43] Apoorva Gupta (appellant-husband) married Vandana Gupta (respondent-wife) on 14.04.2012 at Hardoi. The husband filed a divorce petition on 06.08.2016 before the Family Court, Hardoi, alleging that the wife refused to live in Mallawan town and insisted on living in Delhi. Initially, he kept her in Delhi but later brought her to Mallawan with his parents when proper arrangements could not be made in Delhi. The wife did not cooperate in household chores and left for her parental home with her belongings. She lodged an FIR on 24.06.2013 under Sections 498A, 323, 324, 504, 506 I.P.C. and Sections 3/4 Dowry Prohibition Act against the husband and his family members, in which all were acquitted on 18.02.2014. The parties resumed cohabitation briefly but separated again on 09.05.2014. The wife delivered a daughter on 12.07.2014, but during the husband's visit to the nursing home, he was assaulted by her family members and was not allowed to participate in the child's ceremonies. The wife refused maintenance money orders sent by the husband and prevented him from meeting his daughter. The central legal issue was whether divorce should be granted on grounds of cruelty and desertion when there had been prolonged separation for over a decade with complete breakdown of matrimonial relationship, cross-criminal cases, and the wife's refusal to participate in appeal proceedings despite proper service of notice.

The appellant(husband) contended that the wife treated him cruelly by filing false criminal cases and creating disturbances in his family life. She deserted him without

[41] 2024 AHC 137694-DB.
[42] *Id.* at para. 27.
[43] 2024 AHC-LKO 59093- DB.

reasonable cause and had been living separately for over four years before filing the suit. He argued that she refused to cooperate in household responsibilities, indulged in daily quarrels and beatings, and got him threatened by her brothers. The wife's refusal to let him meet his daughter and her threat to entangle him in false cases constituted mental cruelty.

The wife denied all allegations in her written statement and claimed she was harassed for dowry demands. She alleged that the husband left her at her father's residence on 09.05.2014 and never inquired about her well-being thereafter. She maintained that she was willing to perform her conjugal obligations and resume marital life with the husband.

In the light of allegations and counter-allegations, the court noted that it was impossible for the parties to live together. "The long period of continuous separation of a decade establishes that the matrimonial bond is beyond repair. The marriage between the parties has become a fiction, though supported by a legal tie. By refusing to sever the tie between the plaintiff and the respondent, the family court has not served the sanctity of the marriage; on the contrary, it has shown disregard for the feelings and emotions of the parties which are not affectionate towards each other."[44]

Setting aside the Family Court's judgment dismissing the divorce suit, the High Court allowed the appeal, and granted a decree of divorce. Relying heavily on the Supreme Court judgment in *Rakesh Raman* v. *Kavita*.[45] The Court observed that cruelty includes both physical and mental elements, and where there has been prolonged separation exceeding a decade, it creates acute mental pain and suffering making cohabitation impossible, which falls within the parameters of mental cruelty. The Court noted that the absence of intention to inflict cruelty is irrelevant, as intention is not a necessary element for establishing cruelty.

In another case involving a medico couple,[46] the husband Dr. Prabhat Kumar Singh (appellant) married Dr. Sudha Singh (respondent-wife) on 14.12.1985 according to Hindu rites at Fatehpur. Both were medical professionals - the husband worked as a consultant in Iran initially and later joined SGPGI Lucknow, while the wife completed her MBBS and eventually opened her own nursing home "Paurush Hospital and Diagnostic Centre" in 2003. They had a son (born 26.04.1990) and daughter (born 16.08.1997), but tragically lost their son in a road accident on 03.08.2002. The husband alleged that since 2008-09, the wife became rude and intolerant, started living in a separate room in the same house, maintained complete independence with separate ingress and egress, and was extremely cruel to his elderly mother (aged 83 years), even attacking her with a kitchen knife on 15.11.2012. He

[44] 2024 AHC-LKO 59093- DB at para. 21.
[45] 2023 SCC OnLine SC 497.
[46] *Dr. Prabhat Singh* v. *Dr. Sudha Singh* 2025 AHC-LKO 13912-DB.

also alleged that the wife practiced occultism and involved herself with supernatural forces, maintaining close relationships with a tantrik from District Barabanki against whom police had found criminal cases. Since 2017, the husband left Lucknow and took a job in Patna to distance himself from the wife. The wife denied all allegations and claimed they had been living peacefully for 32 years. She counter-alleged that the husband was having an illicit relationship with one Geeta Vashist, a lady working in SGPGI Lucknow, since 2008, and that he filed the divorce suit to marry her. She claimed the husband forcefully shifted her to a separate room since July 2013 and left for Patna in 2017 specifically to abandon her. She maintained that Geeta Vashist was the root cause of all differences between the parties and alleged that the husband and Geeta Vashist were often found in compromising positions.

The primary legal issue was whether divorce should be granted on grounds of cruelty and desertion when both spouses were living separately in the same house from 2008-09, and in different cities from 2017, with allegations of the wife's involvement in occult practices, domestic violence against the elderly mother-in-law, and counter-allegations by the wife of the husband's extramarital relationship. Relying on judgments delivered by Supreme Court in *Satish Sitole* v. *Ganga*,[47] and *Vikas Kanaujia* v. *Sarita*[48] the court noted that since 2013 the parties have been living separately, they have financially independent lives, they have neither attempted to live together nor even visited each other. Thus, there are no chances of living together again.[49] The court held this to be a case of irretrievable breakdown of the marriage.

While the above cases point towards implementation of the breakdown theory by the court, there is another decision of Allahabad High Court in the case of *Pawan Kumar Pandey* v. *Sudha*[50] wherein the court, while acknowledging the possibility of relief in cases of breakdown of marital ties, has insisted on procedural fairness and evidence In this case, the husband filed a suit for divorce under Section 13 of the Hindu Marriage Act, 1955 alleging his wife is suffering from a continuous and incurable mental disorder (schizophrenia), is incapable of performing marital duties, and that the parties had been separated for a long period. The wife denied the husband's claims and alleged instead that she was harassed by the husband's family for dowry, that she never had a mental illness, and that she had been forced to leave the matrimonial home. After the Family Court dismissed the husband's suit on 29 April 2023, he approached the High Court in appeal. Denying relief, the High Court held that

[47] (2008) 7 SCC 734.
[48] 2024 SCC OnLine SC 1699.
[49] *Id.* at para. 32.
[50] 2024 AHC-LKO 71619-DB.

the husband had failed to establish mental illness in his wife so as to entitle him to divorce on that ground.

3.3 Divorce by Mutual Consent

In the case of *Angad Soni* v. *Arpita Yadav*[51] the appellant married Arpita Yadav (respondent-wife) on 05.08.2024 as per Hindu rites and rituals, with a written notarial marriage deed executed on 12.08.2024. The parties solemnized their marriage a second time on 03.09.2024 as per Hindu rites. However, hostility developed quickly between them. On 10.09.2024, the husband applied through IGRS Portal to the Superintendent of Police, Ambedkar Nagar, stating he was under threat of false complaints from the wife. In retaliation, the wife lodged FIR No. 96 of 2024 under Sections 115(2), 352, and 351(3) of Bharatiya Nyaya Sanhita on 11.09.2024. The wife later applied on 24.09.2024 to withdraw this FIR, stating a compromise had been reached. However, relations deteriorated further, and on 29.11.2024, the wife lodged another FIR No. 261 of 2024 under Sections 376, 506 I.P.C. and Section 3/4 P.O.C.S.O. Act. The husband then filed a Criminal Misc. Writ Petition seeking to quash the FIR, which resulted in a High Court interim order staying his arrest on 12.12.2024, referring the matter to mediation, and directing him to pay Rs. 50,000/- to the wife. Given the continuing hostility, both parties jointly filed a petition under Section 13-B (mutual consent divorce) along with an application under Section 14 of the Hindu Marriage Act seeking permission to file divorce before completion of one year of marriage.

The central legal issue was whether an application under Section 14 of the Hindu Marriage Act, 1955 can be allowed to waive the mandatory one-year waiting period for filing divorce petitions under Section 13-B (mutual consent divorce), particularly when both parties mutually agree to dissolution due to exceptional circumstances arising immediately after marriage.

The appellant's counsel argued that the opening phrase of Section 13-B "subject to the provisions of this Act" clearly establishes that provisions of Section 13-B are subject to other provisions of the Act, including Section 14. He contended that Section 14 was part of the original enactment (1955) while Section 13-B was subsequently inserted by Act No. 68 of 1976, suggesting that the original provision should have precedence. The counsel cited multiple High Court precedents from Delhi, Karnataka, Kerala, and Punjab & Haryana High Courts where similar applications were allowed, arguing that various High Courts had recognized that parties with mutual agreement for dissolution should be permitted to file divorce petitions under Section 13-B before the one-year period in exceptional circumstances.

[51] 2025 AHC-LKO 32543 DB.

Notably, the respondent's counsel supported the appellant's submissions and agreed that the one-year period should be relaxed since both parties wanted divorce as soon as possible to lead separate lives. This unanimous position of both parties strengthened the case for exceptional circumstances requiring judicial intervention.

The High Court allowed the appeal, set aside the Family Court's order rejecting the Section 14 application, and granted permission to file the mutual consent divorce petition before completion of one year of marriage. The Court directed that the divorce petition under Section 13-B would be treated as filed on 26.03.2025, enabling the parties to make the required motion under Section 13-B(2) after six months from that date.

The Court conducted a detailed analysis of the interplay between Sections 13-B and 14 of the Hindu Marriage Act. The Court noted that Section 14(1) creates a general bar against entertaining divorce petitions before one year of marriage, but the proviso allows exceptions in cases of "exceptional hardship to the petitioner or exceptional depravity on the part of the respondent." The Court interpreted this proviso as applicable to all divorce petitions under the Act, including mutual consent divorces under Section 13-B.

4. Crimes Against Women

4.1 Cruelty

Section 498A of the I.P.C. (Section 85 B.N.S., 2023) is largely viewed with great scepticism amidst narratives surrounding its misuse. However, the judiciary had adopted a balanced approach indicating the strong reaffirmation of its validity and the requirement of heightened scrutiny on its misuse. Recently, while dismissing a writ petition challenging the constitutionality of Section 498A of the I.P.C. the supreme court emphasised that the possibility of misuse alone doesn't render a provision invalid.[52] However, the law must be applied cautiously to avoid its weaponization for personal vendettas. Frequent remarks by the SC highlight concern over misuse of Section 498A for settling matrimonial score rather than addressing genuine cruelty.

In *Sanjay D. Jain* v. *State of Maharashtra*, the SC quashed proceedings against in-laws in a 498A case because the allegations were vague, omnibus and without specific acts of cruelty attributable to them.[53] Commenting on the trend of naming all and sundry in F.I.R.'s registered under Section 498A, a Nagpur bench of the Bombay High Court clarifies that the word 'relative' used under this section implies a status conferred by blood, marriage or adoption. A husband's *friend* cannot be treated as his “relative” under Section 498A merely

[52] *Janshruti (People's Voice)* v. *UOI and others*, 2025 INSC 536.
[53] 2025 INSC 1168.

because he visited and gave advice. It was alleged that the petitioner (Friend of husband) would frequently visit the house and encourage the husband to demand car and plot of land from the wife's family and send her back to her parents' home unless the demands were fulfilled.[54] In another case the Supreme court had held that even a woman or girlfriend in a romantic relationship with a man is not his relative and cannot be prosecuted as his relative under Section 498-A.[55]

4.2 Husbands Extramarital Affair Constitutes Cruelty and Abetment of Suicide

In the case of *Rishi Kumar Verma* v. *State of UP and another*[56] the accused Rishi Kumar Verma challenged the dismissal of his discharge application under Section 227 Cr.P.C. in a case where he was charged under Sections 498A, 306 I.P.C. for allegedly abetting his wife Priti Singh's suicide. The marriage took place on 25.06.2014, and informant Smt. Malti Singh (mother-in-law) alleged that Rishi Verma was a vagrant and drunkard who used to beat and torture her daughter. She alleged that for the last five months before the incident, the accused was having an extramarital affair with Diksha Sharma, who would visit their home in the wife's (deceased) absence. When the deceased objected, her husband threatened to divorce her and marry Diksha Sharma. On 19.06.2023, the mother found her daughter hanging from the ceiling fan by a towel noose. The investigation revealed extensive WhatsApp communications, CCTV footage, and CDR evidence showing frequent contact between the husband and Diksha Sharma from 08.02.2022 to 19.06.2023. The issue herein was whether sufficient grounds existed for framing charges under Section 306 I.P.C. (abetment of suicide) based on allegations of extramarital relationship, domestic violence, and dowry harassment, particularly when supported by digital evidence including WhatsApp chats, CCTV footage, and call detail records showing the husband's relationship with the co-accused.

The accused argued that there was no injury report supporting allegations of assault, no prior complaints were filed regarding dowry demand or matrimonial cruelty, the deceased was short-tempered and committed suicide under heat of passion, no evidence of abetment existed, he was falsely implicated by persons inimical to him as a forest department official, no ante-mortem injuries were found except ligature marks, and the magistrate dismissed his discharge application without proper consideration of grounds taken. On the other hand the prosecution contended that a prima facie case of abetment to suicide was established through the FIR version and investigation evidence. The extramarital relationship with Diksha Sharma was corroborated by CDR data showing frequent communication, CCTV footage

[54] Bom HC order dated 29th July, 2025.
[55] *Dechamma IM* v. *State of Karnataka* SC 2024.
[56] 2025 AHC 10847.

from the deceased's flat, hotel bills showing the accused and Diksha Sharma staying together, and the deceased's WhatsApp communications. The deceased was subjected to harassment and cruelty, and the husband's conduct created a situation compelling her to commit suicide in utter frustration.

The court dismissed the criminal revision filed by the accused and the discharge application rejection was upheld. The Court held that sufficient grounds existed to proceed with trial against the accused for charges under Section 306 I.P.C. The Court extensively analysed the law of discharge under Section 227 Cr.P.C., citing the landmark *Amit Kapoor* v. *Ramesh Chander case*[57] and establishing that at the discharge stage, the court must only determine whether there is ground for presuming that the accused has committed an offense, not whether the trial will end in conviction. The Court conducted detailed analysis of abetment of suicide jurisprudence, particularly citing Supreme Court cases including *M. Arjunan* v. *State*,[58] *Ude Singh* v. *State of Haryana*,[59] and *Nipun Aneja* v. *State of Uttar Pradesh*.[60] The Court noted that for Section 306 I.P.C., there must be proof of direct or indirect acts of incitement to suicide, and the accused's conduct must create a situation where the deceased perceives no other option except suicide. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide.[61]

4.3 Dowry Deaths and Bride Burning

In *Sunil Kumar* v. *State*[62] several connected criminal appeals arose from a dowry death case where Smt. Gayatri Devi (deceased) was allegedly set ablaze by her husband Sunil Kumar and in-laws on 13.05.1988. The deceased's marriage was arranged on 04.06.1987 through mediator Manohar Lal. The accused persons demanded additional dowry in the form of a big television, and when the deceased's father expressed inability to fulfil the demand, she was subjected to cruelty and torture. On the night of 13-14.05.1988, the informant received information that his daughter was set ablaze and admitted to Government Hospital Jaunpur in serious condition. She died on 14.05.1988 at 6:30 AM. The prosecution relied heavily on the deceased's dying declaration recorded by Executive Magistrate and evidence from family members. The trial court convicted Sunil Kumar under Section 302/149 and Section 498A I.P.C., while Bal Kishun and Smt. Paro Devi were convicted under Section 304B I.P.C.

[57] (2012) 9 SCC 460.
[58] (2019) 3 SCC 315.
[59] (2019) 17 SCC 301.
[60] Cr. Appeal No. 654 of 2017.
[61] *Ude Singh* v. *State of Haryana* (2019) 17 SCC 301 at para. 16.1.
[62] 2024 AHC 36087.

The main issue herein was whether the conviction under Section 302 I.P.C. was sustainable based on a dying declaration that contained certain inconsistencies and contradictions regarding who admitted the deceased to the hospital, and whether the case established ingredients for dowry death under Section 304B I.P.C. with the statutory presumption under Section 113B of the Evidence Act.

The appellants argued that the dying declaration was shrouded with suspicious circumstances as it lacked the deceased's signature or thumb impression and the certifying doctor was not produced in court. They contended that prosecution witnesses wrongly stated the deceased was admitted by locality people when hospital records showed she was admitted by her husband. The allegations of dowry demand were unnatural and concocted with no prior complaints. The postmortem doctor admitted that injuries could occur if a person's saree catches fire while igniting a hearth. The victim might have been in a hypnotic condition due to extensive burns affecting her mental state. The prosecution maintained that the case was proved beyond reasonable doubt based on witnesses' evidence and the dying declaration recorded by Executive Magistrate. The dying declaration specifically attributed the role of sprinkling kerosene oil and igniting match stick to accused Sunil Kumar. All ingredients of Section 304B I.P.C. were present, and the statutory presumption under Section 113B Evidence Act applied since the deceased died within one year of marriage after being subjected to dowry-related cruelty.

Allowing the appeals partially, the court set aside Sunil Kumar's conviction under Section 302 I.P.C. and modified it to Section 304B I.P.C. with 10 years rigorous imprisonment. The conviction under Section 304B I.P.C. for Bal Kishun and Smt. Paro Devi was affirmed but sentence was reduced from 10 years to 7 years considering their age (over 70 years) and the passage of time since the 1988 incident. The Court conducted extensive analysis of dying declaration jurisprudence, particularly relying on Supreme Court cases *Irfan @ Naka* v. *State of U.P.*,[63] *Laxman* v. *State of Maharashtra*,[64] and *State of Gujarat* v. *Jayrajbhai Puniabhai Varu*[65] The Court established that dying declarations must be wholly reliable and inspire confidence, and where suspicions arise regarding veracity, additional corroborative evidence may be required. The Court found a significant contradiction between the prosecution's claim that the deceased was admitted to hospital by locality people (as stated in the FIR and dying declaration) versus hospital records showing she was admitted by her husband. This false statement in both the informant's evidence and the dying declaration created doubt about the reliability of the prosecution's case.

[63] 2023 LiveLaw (SC) 698.
[64] (2002) 6 SCC 710.
[65] AIR 2016 SC 3218.

4.4 Safeguarding Women in Live-in-relationships Against Crimes of Cruelty and Dowry Death

In the case of *Adarsh Yadav @ Aditya Yadav & 3 Others* v. *State of U.P. & 3 Others* the deceased woman was living with the applicant (Adarsh Yadav) in a live-in relationship. The applicant argued that since there was no legally wedded wife relationship, the offences under Section 304-B (dowry death) and Section 498A (cruelty) of the Indian Penal Code (I.P.C.) were not attracted. The trial court had refused to discharge the applicant so the applicant approached the High Court under Section 482 Cr.P.C. for quashing/discharge. The High Court considered whether the legal relationship required for those offences existed and held that held that even assuming a live-in relationship rather than formal marriage, the records reflected that the two were residing together as husband and wife at the material time, which is sufficient to invoke Sections 498A and 304-B in the facts. Thus the High court refused to quash the charges while reinforcing the objective behind enactment of women specific provisions such as S. 498A and S. 304-B of the I.P.C. Protection meant for wives will not be denied to women in spouse-like relationships where the circumstances indicate a cohabitation similar to marital relationships.

4.5 Mediation Whether Permissible in Criminal Proceedings Involving Matrimonial Disputes?

In matrimonial matters, courts have leaned in favour of mediation. Courts have encouraged settlement/mediation, or quashing proceedings when the parties have reconciled and continuing prosecution would serve no purpose.

In *Dinesh Singh and others* v. *State of UP and another*[66] an application was filed under Section 482 Cr.P.C. seeking to quash charge-sheet no. 01 dated 20.04.2024 and summoning order dated 15.06.2024 in Case Crime No. 69 of 2024 under Sections 498-A, 323, 504, 506, 376 I.P.C. and Section 3 and 4 of Dowry Prohibition Act at Police Station Cholapur, District Varanasi. The applicants contended that since the matter was matrimonial in nature, it should be referred to mediation. The main issue in this case was whether criminal proceedings in matrimonial disputes under Section 498-A I.P.C. and Dowry Prohibition Act can be referred to mediation, and if so, under what conditions. The petitioner vehemently argued that proceedings arising out of matrimonial disputes are suitable for mediation and amicable settlement. Applying well-established principles regarding client-counsel relationship the court directed the applicants to deposit Rs. 25,000/- within two weeks - Rs. 20,000/- to opposite party no. 2 and Rs. 5,000/- for mediation centre expenses. Memo of

[66] 2024 AHC198691.

parties with contact details was directed to be provided. The court also instructed that there would be no coercive action if deposit receipt is produced before trial court. Directions were given to file amendment application to convert the application under Section 528 of B.N.S.S.

4.6 Filing False Cases of Cruelty by Wives Amount to Mental Cruelty

In the case of *Smt. Shikha Trivedi* v. *Saurabh Shukla*,[67] the appellant Shikha Trivedi (wife) married Saurabh Shukla (respondent-husband) on 09.12.2012. The husband filed a divorce petition on grounds of cruelty and desertion under Section 13 of the Hindu Marriage Act, 1955. The husband alleged that the wife had an illicit relationship with her colleague Raj Bahadur, lived separately from July 2013 to March 2014, and again from 25.05.2016 onwards. Cross FIRs were filed - the mother-in-law lodged FIR No. 459/2016 against the wife for theft and misbehaviour, while the wife lodged FIR No. 460/2016 against the husband's family for domestic violence under Sections 307, 354, 323, 504, 506 I.P.C. The wife's allegations included sexual harassment by her brother-in-law and domestic violence. The Family Court granted a divorce on 14.10.2022 on the grounds of cruelty and desertion. The main issue for consideration before the court was whether divorce should be granted on grounds of cruelty and desertion when there are conflicting allegations of domestic violence and extramarital relationships, and whether the doctrine of res judicata applies to successive divorce petitions.

The petitioner argued that the husband had illicit relationships with different women. She faced harassment and sexual advances from her brother-in-law and she was subjected to domestic violence at the hands of her husband and the mother-in-law. Earlier divorce suits in 2017 and 2018 were dismissed, so the present suit was barred by *res judicata*. It was also alleged that the Family Court had failed to consider the entire evidence properly. The husband levelled counter allegations and argued that the wife had a pre-marital and post-marital relationship with Raj Bahadur, as admitted in his police statement. Wife deserted the matrimonial home and lived separately for prolonged periods. Wife filed false criminal cases, causing mental cruelty. Earlier suits were dismissed on procedural grounds, not on the merits, so *res judicata* doesn't apply.

The Court held that res judicata doesn't apply when previous suits were dismissed on procedural grounds rather than on merits, citing *Prem Kishore* v. *Brahm Prakash*[68] and *Satyadhyan Ghosal* v. *Deorajin Debi*.[69]

But, the Court found cruelty proven on account of filing of false FIR No. 460/2016

[67] 2025 AHC-LKO 13910-DB.
[68] 2023 INSC 316.
[69] AIR 1960 SC 941.

which was subsequently quashed by the High Court in 2023. The quashing order had specifically found material contradictions and absence of evidence for dowry demand and domestic violence allegations. Quoting the Supreme Court precedents in *K. Srinivas Rao* v. *D.A. Deepa*[70] and *Narasimha Sastry* v. *Suneela Rani*[71] the court ruled that that filing of false criminal cases constitutes mental cruelty. The Court applied the *Lachman Utamchand Kirpalani* v. *Meena*[72] test requiring *factum* of separation which was admitted as they were living separately since 25.05.2016.

The *Animus deserendi* (intention to desert) was established through a pre-marital relationship with Raj Bahadur that continuing post-marriage as evidenced by his police statement. Citing Samar Ghosh v. Jaya Ghosh, the Court noted a prolonged separation of over 8 years, with cross-criminal cases indicates a complete matrimonial breakdown

The alleged misuse of 498A of the I.P.C. (Section 85 of B.N.S.) concerning the protection of married women from violence and harassment at the hands of her husband and his relatives, especially in connection with dowry demands is a thorny issue. To prove charges under this provision it is crucial to establish a prima facie case against the accused. This is essential too in order to prevent the misuse of law and the legal process. The implications of levelling frivolous, omnibus and general allegations may even be counter-productive for the complainant." In *Arnesh Kumar* v. *the State of Bihar*[73] the Supreme Court had established stringent guidelines so that arrests are the exception, not the norm, in cases relating to Section 498A of the I.P.C., 1860. Still, certain sections of society have called for the repeal of 498A so that false accusations do not occur. False accusations, as per NCRB data 2022, show that the number of cases found to be false is sufficient to repeal the law. We have precedents where women were fined and even jailed for false accusations of crime. There are numerous false cases in other criminal proceedings as well. What is intriguing is however, the absence of calls to repeal laws relating to assault or murder despite proven record of false accusations.

5. Sexual Offences

5.1 Whether Compromise is Permissible in P.O.C.S.O. Cases?

In 2023, the Allahabad High Court decision in the case of *Ajay Diwakar* v. *State of UP*[74] of granting bail to a man accused under P.O.C.S.O. on condition of his marrying the victim was criticised as equating marriage with justice by using it as a means to legitimise the

[70] (2013) 5 SCC 226.
[71] 2017 SCC OnLine Hyd 714.
[72] 1964 AIR 40.
[73] AIR 2014 SC 2756.
[74] Cr. Misc Bail Application No. 1777 of 2023. Order dated 3/5/23.

crime thereby obscuring the purpose and objective of P.O.C.S.O. The court relied on victim's statements recorded under Sections 161 and 164 of Cr.P.C. that not only they have solemnised marriage but stayed together as husband and wife. The court noted that there is presumption that they had physical relationship also. So, considering that age of victim according to ossification report being about 19 years and there being no objection from the victim's father to the marriage, the court granted bail.[75] In 2024, the court cautioned against mechanical application of P.O.C.S.O. and advocated a nuanced approach in *Satish Alias Chand* v. *State of UP*[76] while discussing potential misuse of P.O.C.S.O. in consensual romantic cases involving teenagers. However at the same time the court affirmed that in child sexual abuse / P.O.C.S.O. cases, compromise between parties is not by itself sufficient to extinguish prosecution, especially where the offence is severe and protected interest is high. While deciding the quashing of a case under P.O.C.S.O. for sodomising a child, the court in *Ram Bihari* v. *State of UP and another*[77] refused to quash the case despite a compromise, on the ground of the severity of the crime, the accused's prior bad record, the victim's age and compelling societal interest to safeguard children against sexual abuse.

5.2 Denial of Bail in P.O.C.S.O. Cases

Ruling that, in P.O.C.S.O. cases, long detention alone is not a sufficient ground for bail the court emphasised that in the specific case, the presence of incriminating medical evidence along with the statement of victim under Section 164 Cr.P.C. and statutory presumptions under P.O.C.S.O. tilt the balance against bail.[78] The judgment demonstrates the threshold interplay. Thus, while the trial serves to determine guilt, bail decisions cannot ignore gravity of offences and statutory safeguards for minors. In cases under P.O.C.S.O., even if detention has been prolonged, the Court will scrutinize the available material and may lean against bail unless strong mitigating factors exist.

5.3 Consent Given Under Fear or Misconception is No Defence to Charge of Rape

In *Raghav Kumar* v. *State of UP*[79] the court ruled that if consent to physical intimacy was given by the woman under fear or misconception then such sexual activity with tainted consent would amount to rape. The court quoted the Supreme Court judgment in *Kaini Rajan* v. *State of Kerala*,[80] that "Consent requires voluntary participation not only after the exercise of intelligence based on knowledge of the significance of the morality, quality of the act but

[75] *Id.* at paras. 26 (ix) and (x).
[76] 2024 AHC 108011.
[77] 2024 AHC 117945.
[78] *Pradum Singh* v. *State of U.P. & Ors*. 2024:AHC-LKO:41454.
[79] 2024 AHC 146503.
[80] (2013) 9 SCC 113.

only after fully exercising the choice between resistance and assent whether there was consent or not is to be ascertained only after a careful study of the relevant circumstances".

5.4 Permissibility of Preliminary Enquiry in Sexual Offences

In the case of *X* v. *State of U.P.*[81] the victim alleged that the respondent abused her in filthy language, attempted to molest her and threatened her husband when he came to help. The Magistrate directed a preliminary police inquiry and relied on a police report favouring the accused to dismiss the application. Setting aside the order of the magistrate the High Court held that "In cases like the present one, directing preliminary investigation to police into allegations made by the victim in application under Section 156(3) Cr.P.C. and placing reliance on police report submitted in favour of the proposed accused is neither desirable nor lawful." By clarifying that in cases related to sexual offences a Magistrate should not routinely direct a preliminary police inquiry this decision reinforces the principle from *Lalita Kumari* v. *Government of U.P. & others* that the Magistrate must apply mind and decide on merits, not treat the police report as determinant. Sounding a caution in discrimination between different types of cases, the Court observed that preliminary inquiries may be justifiable in certain categories like family disputes; commercial offences or in cases where there is excessive delay in registration of FIR, but it should not be allowed as a routine for serious offences like sexual assault.

5.5 Husband Can Be Held Guilty Under S. 377 Of I.P.C. Despite 2013 Amendments

In the case of *Imran Khan alias Ashok Ratna* v. *State of UP and anr*.,[82] the petitioner sought to quash criminal proceedings arising from Case Crime No. 41 of 2023 under Sections 498-A, 323, 504, 506, 377 I.P.C. and 3/4 Dowry Prohibition Act, Police Station Shivkuti, District Prayagraj. The complainant-wife had lodged an FIR on 23.02.2023, though the alleged incidents dated back to 2019, representing a delay of approximately four years. The police submitted a charge-sheet on 28.06.2023, and the Magistrate took cognizance on 10.08.2023. The case involved allegations of domestic violence, dowry harassment, and most significantly, unnatural sexual intercourse under Section 377 I.P.C. between the husband and wife. The principal legal issue was whether carnal intercourse by a husband with his wife against her wishes constitutes an offense under Section 377 I.P.C., particularly in light of the 2013 amendments to Section 375 I.P.C. (rape) and the Supreme Court's decision in *Navtej Singh Johar*[83] case regarding consensual sexual acts. The case also addressed questions of delay in FIR filing, medical examination refusal, and witness support.

[81] 2024:AHC:164363.
[82] 2025 LiveLaw (AB) 164.
[83] AIR 2018 SC 4321.

The petitioner's counsel raised multiple contentions. First, there was considerable delay in filing the FIR (Incident occurred in 2019 but FIR was filed in 2023) without explanation, relying on Supreme Court precedent in *Shivendra Pratap Singh Thakur@ Banti* v. *State of Chhatisgarh and others*[84] Second, no offense under Section 377 I.P.C. was made out since the parties were husband and wife, citing Madhya Pradesh High Court decisions in *Manish Sahu*[85] and *Shashank Harsh*[86] cases which held that unnatural sex by husband with wife above 18 years doesn't constitute offense. Third, the wife refused medical examination, which was fatal to her case *per* decision in *State of Himachal Pradesh* v. *Rajesh Kumar.*[87] Fourth, independent witnesses didn't support the wife's version, and no specific dowry demand was established.

The wife's counsel opposed the application, arguing there was no proof of the applicant's legal divorce from his earlier wife at the time of their marriage. The affidavit given during police investigation was allegedly made under the applicant's pressure to save the marriage. From the bare perusal of FIR and statements under Sections 161 and 164 Cr.P.C., prima facie offenses were established sufficient for trial.

Rejecting the application under Section 528 B.N.S.S. the Court held that unnatural sexual intercourse by a husband with his wife without her consent, even if she is above 18 years, would be punishable under Section 377 I.P.C., though it may not constitute rape under Section 375 I.P.C. This judgment represents a significant departure from recent Madhya Pradesh High Court decisions and establishes important precedent regarding marital sexual autonomy. The Court conducted an exhaustive analysis of Section 377 I.P.C., tracing its evolution through the *Navtej Singh Johar*[88] case and the 2013 amendments to rape laws.

The Court grounded its decision in fundamental constitutional principles, particularly citing *K.S. Puttaswamy*[89] case regarding privacy rights and *Navtej Singh Johar*[90] case regarding dignity. The Court held that a wife, despite being married, retains individual rights to sexual orientation and dignity, and her fundamental right to refuse consent for unnatural sex cannot be taken away merely because of her marital status.

[84] Cr. Appeal No. 2588 of 2024 SC.
[85] Misc Cr. Case No. 8388 of 2023, MP HC.
[86] Misc Cr. Case No. 40044 of 2023, MP HC.
[87] 2025 INSC 331.
[88] AIR 2018 SC 4321.
[89] AIR 2017 SC 4161.
[90] AIR 2018 SC 4321.

6. Conclusion

The year 2024 will go down in the history of Indian women as one that brought about a major shift in the way law perceives crimes against women. The introduction of a special chapter in the Bharatiya Nyaya Sanhita, 2023 dedicated to women and children indicates the prioritisation of women's safety and security.

The Judiciary especially the Prayagraj and Lucknow benches of the Allahabad High Court have displayed a mixed approach towards women's rights. While supporting women's autonomy in certain domains e.g., bodily decision-making such as abortion; maintenance rights; recognising coercion in sexual consent, it gave way to social norms under personal law matters. It rendered monumental judgments emphasising protection of women's socio-economic rights such as maintenance and prompt disposal of such cases to prevent destitution of women. This indicates judicial sensitivity towards women's rights. However, the reasoning sometimes invokes personal law or moral or social commentary, which may lead to debates about the intersection of women's rights, secular law and cultural norms. While many decisions advance women's rights, some others raise concerns from a women's rights perspective by overlooking the social implications of divorce for a woman while disregarding her wishes and granting divorce on basis of breakdown theory. In P.O.C.S.O. cases, the courts remarks though seemingly controversial reflect genuine social implications.

High Court judgments do not have a binding effect on other high courts but they do have a persuasive value and may influence similar cases and judicial attitudes. Therefore it is pertinent that the court's remarks must be seen in context of fact patterns; each case involves specifics, so we need to safeguard against generalisation. The intersection of personal liberties and social moralities in a gendered world continues to raise complex socio-legal questions. In such a scenario, engendering judicial approaches is a continuous work in motion.