Chapter XIII

Accusatorial and Inquisitorial Legal system vis-a-vis recommendations of Justice Malimath Committee and National Commission for women.

Meaning of Adversarial / Accusatorial and Inquisitorial System:

According to accusatorial system the "accused is presumed to be innocent until he is proved guilty" which is derived from British legal system. It is otherwise stated by saying that an accused is entitled to the benefit of reasonable doubt. This system is basically based on a maxim of English law that ten guilty men should escape rather than one innocent man should suffer which was finally declared by Halroyd J. in R.V. Hopson case in 1823.

Contrary to the above system, in France and in some continental countries, the "inquisitorial system" is being followed which provides that "an accused is presumed to be guilty until he is proved to be innocent". In this system, the Magistrate makes the initial inquiry through investigating machinery for ascertaining the facts.

Adversarial/accusatorial system and the recommendation/views of Justice Malimath Committee:

1. On-quest for truth: The committee is not in favour of changing over to 'Inquisitorial System' but has suggested some measures which amounts to little deviation from present 'Adversarial System' for improving the present system by adopting some useful features of inquisitorial system, such as the Court's duty to search for 'truth'. The Committee has opined that "quest for truth" shall be guiding star of the Criminal Justice System. The Committee has further recommended the conferment of inherent powers on every Criminal Court, which are not with lower judiciary but only with High Court. The committee has recommended that the Court shall be empowered to summon and examine any person as a witness as per requirement and issue suitable instructions to investigating officers to assist the Court in finding truth.
The Committee has further suggested to empower the Court to question the accused during trial with the object of ascertaining the truth and draw the proper inferences including adverse inferences against the accused, if the accused refused to answer the questions, put to him by the Court.

ii) On-Standard of Proof: As per fundamental principle of adversarial system, the accused is presumed to be innocent and the guilt of the accused should be proved beyond reasonable doubt. The Committee has come to the conclusion that this standard of proof places very unreasonable burden on the prosecution. In continental countries, the standard of proof is much lower namely “Preponderance of Probabilities”. The committee has recommended that the standard of ‘proof beyond reasonable doubt’ should be done away with and it be replaced by standard higher than ‘preponderance of probabilities’ and lower than ‘proof beyond reasonable doubt’ namely “clear and convicting” standard of proof should be prescribed legally by proper amendment. The researcher feels that the conviction rate in custodial & gang rape cases and in “dowry death” inspite of mandatory presumption u/s 114 (A) & 113 (B) Evidence Act is very low, to achieve the punitive and deterrent objects of these amended provisions. It is pertinent to mention here that the substantial majority from respondents to questionnaires have supported the inquisitorial system in cases of ‘dowry death’ and custodial and gang rape cases. The researcher strongly feels that though the complete inquisitorial system is not advisable, but standard of proof should be that of “preponderance of probabilities” and should be much more less than present standard of “proof beyond reasonable doubt” which will certainly enhance the conviction rate and then only the punitive and deterrent object of Dowry death u/s 304 B IPC and Gang rape / custodial rape u/s 376 (2) IPC will be achieved as the chances of direct evidence and eye witnesses to support the prosecution case are remote which are the main reasons for poor conviction rate in such cases.

In case of dowry death u/s 304 B IPC, the researcher further feels that considering the facts, that dowry death does occur at in-laws / husband’s place, there are hardly any chances of getting direct evidence including eye witnesses, hence it should cast the burden on the accused to explain the circumstances of the death and that should be in his statement, being recorded by Police Officer and such statement should be made admissible in
Court by amending Evidence Act and if the facts, mentioned in the initial statement are transpired subsequently to be false or contradictory or suspicious, the adverse inference should be drawn by the judge against the accused. If the above suggestion is accepted and necessary amendment is made in Evidence Act, coupled with mandatory presumption u/s 113 B in Evidence Act, the conviction rate will certainly be much more improved and will help to achieve the punitive and deterrent objects of Law on dowry death.

iii) On compensation to victim: The Committee has recommended that a law should be enacted to provide reasonable compensation to the victim. The Committee has further recommended that the victim should be permitted to participate in the trial in Criminal cases involving serious offences punishable with imprisonment for 7 years and above. The researcher strongly feels that the above recommendation should be immediately accepted in cases of atrocities against women by proper amendment in the law which is supported by Apex Court in many verdicts to award compensation to the victim of rape.

iv) On more cases for summary trial: Considering the long pending period for trial of less serious cases, it is recommended that all cases, punishable with imprisonment of 3 years and below should be summarily tried with power to magistrate to award punishment upto 3 years. The Committee has further recommended that every magistrate should have the power to try summarily. The researcher feels that the above recommendation should be followed in cases of ill-treatment to women u/s 498(A) IPC as such cases are pending in Court for years together.

vi) On witnesses’ Rights and obligation: The Committee has recommended to provide normal courtesy and dignity to the witnesses by providing seating / resting arrangement, toilet and drinking water facilities etc. to them including the revised reasonable travelling expenses and their prompt payment to the witnesses.

On obligation – The Committee has recommended a summary procedure for trial and enhancement of punishment for giving false evidence in Court. It is further recommended that before the evidence of witnesses is recorded, the judge should caution the witnesses that it is the duty of the witnesses to tell the truth and if the Court finds that he is telling lie, then the
Court has power to punish him. **Researcher feels** that above recommendation should be accepted in all the cases of atrocities against women. During study it is transpired that many cases including Dowry Death and rape are acquitted due to hostile witnesses. Presently section 191 IPC provides for punishment for false evidence. Recently one star witness Zahira was punished for giving false evidence in infamous case of Gujrat Godhra Riots. As per section 344 Cr.P.C., summary trial is provided in such cases. The cases of giving false evidence u/s 191 IPC and fabricating false evidence u/s 192 IPC are non-cognizable, bailable though non-compoundable. **The researcher feels** that these cases should be made cognizable which will certainly prevent the witnesses turning hostile, particularly in all cases of atrocities against women as the conviction rate is very less in such cases due to hostile witnesses.

**vii) On offences against women:** In cases of cruelty to women u/s 498 (A) IPC, the committee has recommended that the cases u/s 498 (A) IPC should be made bailable and compoundable as the offence u/s 498 is non-bailable and non-compoundable due to which amicable settlement is not possible. **The researcher feels** along with many respondents to questionnaires that the offence should be made compoundable and also should be brought under the perview of 'Lok-Adalat' for settlement. Researcher further strongly feels that offence u/s 498 (A) IPC should not be made 'bailable' as the effect of offence of cruelty to women will be substantially reduced which will not achieve its deterrent object of law.

**viii) On- 'no death penalty for rape':** The Committee is not in favour of imposing death penalty in rape cases for its opinion that the rapists may kill the victim. Instead of death penalty, the Committee has recommended sentence for imprisonment for life without commutation or remission which will be higher than the punishment of imprisonment for life, presently prescribed under the Law. **The researcher feels** that the above recommendation should be accepted in rape cases u/s 376 (1) IPC but not in cases of custodial and gang rape u/s 376 (2) IPC. The researcher besides many respondents' suggestions feels that the 'death penalty' shall be prescribed in custodial and gang rape cases u/s 376 (2) IPC and in rape on girl child below 10 years of age. This has been suggested by substantial
majority of respondents to questionnaires which has been mentioned earlier while discussing crime under above legal provisions.

The recommendation of National Commission for women (NCW):

The NCW has recommended many suggestions on various topics, pertain to women. However, only the relevant recommendations, pertaining to crimes against women covered under the scope of study are mentioned as under:

i) On Rape: The NCW has suggested to add new section 114 B in Evidence Act providing for mandatory presumption as to commission of sexual intercourse where the question is whether sexual intercourse had been committed and the victim-woman of alleged rape describes the act of sexual intercourse, committed, the Court shall presume that the sexual intercourse has been committed.

The researcher feels that the above recommendation should be accepted which will certainly enhance the conviction rate and give justice to the victim of rape.

ii) On Dowry Prohibition Act 1961: (i) The N.C.W. has suggested that the persons giving dowry are the victims and it is not fair to punish them. The researcher alongwith some respondents are of the same view, hence it is suggested that the person who gives dowry shall not be made as accused.

(ii) The N.C.W. has further suggested that the persons participating in dowry negotiations should be made as accused alongwith persons giving or demanding dowry. The researcher strongly feels that above recommendation shall be accepted by proper modification in the Act.

(iii) The N.C.W. has suggested to enhance the punishment from 3 to 7 years imprisonment u/s 498 (A) IPC.

The researcher alongwith majority of respondents i.e. 74% are of the view that present provision u/s 498 (A) IPC is sufficiently strong enough to prevent the atrocities against women, so far as maximum limit of 3 years punishment is concerned. However the researcher suggests to provide for minimum mandatory punishment of one year, considering the quantum of less punishment, awarded in many cases of cruelty to women u/s 498(A) IPC.

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Chapter- XIV

Summary with major findings and conclusion.

Woman plays a major and influential role in the family. Right from the ancient society, the women played a major role in the construction, constitution and progress of the society. In spite of her universally recognized indispensable importance in the family and society at large, the woman is subjected to so much hardship and given subservient or secondary status as compared to man.

Constitutional Provisions on Women’s Rights.

The Constitution of India has provided number of protection by various Fundamental Rights and the status of women has been brought at par with men. Art. 14 guarantees the equal status to women with men whereas Art. 15 prohibits discrimination on the ground of religion, race, caste, sex or place of birth. The protection given to women under Art. 14 and 15 have been upheld by the Apex Court in various judgement. Particularly in “Air India v. Nargesh Merza,” the Apex Court has struck down the Air India & Indian Airlines Regulations on the retirement and pregnancy bar on the services of Air Hostages being unconstitutional on the ground of unreasonable and arbitrary to women.

Art. 16 provides for equality of opportunity in matters of public employment to all citizen including women whereas Art. 19 has provided rights to freedom and personal liberties to all citizen including women. Art. 23 has provided right against exploitation. It provides prohibition of traffic in human being and particularly of women. The Apex Court in Vishaka v. State of Rajasthan,” has held that the sexual harassment of working women amounts to violation of Fundamental Rights Under Art. 14, 15 and 23 of the Constitution.

The mechanism for enforcement of fundamental Rights have also been provided by incorporating Art. 32 in Part III itself and providing writ

1. AIR 1988 SC 1829.
2. AIR 1997 SC 3011.
jurisdiction to High Court Under Art. 226 of the Constitution for issuing directions, orders or writs including the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them for enforcement of fundamental rights and for any other purposes.

The Directive Principles of State Policy and the protection for women:

The Directive Principles have recognised the rights of women and specifically by Art. 39 under clause (a) has provided the directives to the State to ensure its Policy for securing of equal right of women with men for adequate means of livelihood whereas clause (d) provides for equal pay for equal work for women at par with men. The Apex Court in Randhir Singh v. Union of India,¹ and in another case Griha Kalyan Kendra workers Union v. Union of India,² has given the status of Fundamental Right to Directive Principles under Art. 39 (d) of the Constitution and upheld the equal pay for equal work for women at par with men.

The provisions in IPC for dealing with atrocities against women, with amendment in 1983 & 1986.

A) Marriage related crimes against women.

1. Cruelty to women by husband or relative of husband u/s new section 498 (A) IPC:

An increasing atrocities on women were realised by the Law Makers and they have finally added new section 498 (A) to IPC by Amendment in 1983, for dealing with cruelty to women, both physical and mental due to various reasons including non-fulfillment of dowry demand.

Object and Reasons – Section 498 A IPC has been enacted with a view to punish a husband and his relatives who harass or torture the women, physically or mentally. It has punitive as well as deterrent objects.

¹ AIR 1982 SC 879.
² AIR 1991 SC 1173.
2. Abetment to commit suicide due to cruelty to women u/s 306 & 498 (A) IPC:

In respect of crimes against women, the crime of abetments to commit suicide due to cruelty to woman constitute considerably large number of crimes against women and hence the maximum lives of women are being sacrificed through suicidal death. Here, two distinct offences are involved viz. i) Abetment to commit suicide u/s 306 IPC and ii) Cruelty to woman u/s 498 A IPC.

Since the inception of IPC, the provision for abetment to commit suicide u/s 306 was there in IPC but was not in much use to protect the women in absence of any provisions dealing with cruelty to women, prior to new section 498(A), added to IPC in 1983. But as the women were subjected to cruelty for various reasons including non-fulfillment of dowry demands, leaving them with no alternatives except committing suicide, the provision u/s 306 IPC was resorted to alongwith new provision of section 498(A) IPC for dealing with the crime of abetment to commit suicide due to ill-treatment to women.

To give more discretion to the judiciary, new provision for providing discretionary presumption u/s 113 (A) has also been added to Indian Evidence Act, by amendment in 1983 in cases of abetment to commit suicide if the victim has committed suicide within seven years from the date of her marriage

3. Dowry death u/s 304 (B) IPC:

The phrase dowry death indicates the death, occurred as the outcome of non-fulfillment of dowry demands. In spite of stringent provisions in Dowry Prohibition Act in 1961 the sacrifice of number of lives of women due to non-fulfillment of dowry demand were continued which was well recognised by the Legislators and new provisions dealing with 'dowry death' was added to IPC by the Dowry Prohibition (Amendment) Act of 1986 with corresponding provisions in Indian Evidence Act, providing for mandatory presumption under section 113 (B) in dowry death cases so as to give more discretion to the judiciary for punishing the culprits of dowry death crimes. The provisions u/s 304 (B) IPC, dealing with 'dowry death' has both 'punitive' as well as 'deterrent' objects behind the new amendment in 1986.
4. Crimes related with dowry u/s 3 & 4 of Dowry Prohibition Act:

The evil effects of dowry system have been well recognized by the Law-Makers and hence they have enacted the Dowry Prohibition Act in the year 1961 with the object of prohibiting the evil practice of giving and taking of dowry. However, it excludes the presents in the form of clothes, ornaments etc. which are customary at marriage, provided the value of such presents is not excessive having regard to the financial status of the person by whom or on whose behalf such presents are given.

However, whether both ‘punitive’ and ‘deterrent’ objects of newly added provisions u/s 498(A) IPC in 1983 for dealing with cruelties to women and dowry deaths of young married women u/s 304(B) IPC added in 1986, armed with slight favourable rule of evidence in favour of prosecution u/s 113 (A) and 113(B) in Indian Evidence Act and the objects of Dowry Prohibition Act, 1961 have been fulfilled or not are being tested during present study through secondary date i.e. crime statistics from 1983 onwards and primary data i.e. informations / views through questionnaires.

B) Sex related crimes against women.

Another kind of heinous and most serious crime against woman is sexual assault by a man with her against her will or without her consent is that of rape. Considering the most seriousness of the crime against woman, the legal trend shows the offence being made more and more serious so as to protect the woman from the clutches of man’s unwarranted sexual lust.

1. The offence of Rape u/s 375 & 376 IPC.

Rape Under Section 375: A man is said to commit rape who, except in the case excepted in the section, has sexual intercourse with a woman under circumstances falling under any of the six descriptions, mentioned in section 375 IPC:

Section 376 was extensively amended by Act of 1983 which came into force w.e.f. 25/12/1983. Now the offence of rape is punishable under section 376 but it is punishable either under sub-section (1) or sub-section (2) of section 376 IPC. These two offences of rape are different not only from gravity point of view but also because of special rule of evidence i.e. presumption which is applicable to one kind of offences but not to other. Secondly the minimum punishment prescribed under section 376 (1) is 7 years.
imprisonment whereas under section 376(2) is 10 years imprisonment unless special and adequate reasons to be recorded in judgement for imposing lesser punishment. Hence, the offence under section 376(2) is aggravated offence of rape which has been made so by Amendment of 1983.

The presumption under section 114-A of Evidence Act that if a woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent, is attracted to cases of rape under section 376(2), except when the case is under clause (f) thereof. This mandatory presumption under section 114-A of Evidence Act is not attracted to cases of rape under section 376(1).

**Different offences of sexual Intercourse other than Rape (as added by the Amendment Act of 1983)**

Section 375 and 376 were amended in the present form by the Criminal Law (Amendment) Act, 1983 and new section 376 A to 376 D were added by the same amendment for dealing with special situations which came into force w.e.f. 25th Dec., 1983. These new sections were introduced with the object of dealing with sexual abuses of woman in custody, care and control by various categories of persons due to their official position which though not amounting to rape were nevertheless considered highly reprehensible.

2. Intercourse by a man with his wife during separation u/s 376-A IPC.

3. Sexual Intercourse by public servant with woman in his custody u/s 376 B IPC.

4. Intercourse by Superintendent of Jail, remand home etc.u/s 376-C IPC.

5. Intercourse by any member of the management or staff of a hospital with any woman in that hospital u/s 376 D IPC.

**Basic difference between the provisions of Section 376 (1) & (2) and Section 376B, 376 C and 376 D:** As per provision of Section 376 (1) & (2) there is no consent at all for sexual intercourse. Whereas in sexual intercourse, covered under sections 376 B, 376 C and 376 D the sexual intercourse takes place with the consent of a woman but such consent has been obtained by taking undue advantages of the position as public servant, Superintendent of Jail etc. or a member of a management of a hospital.

By virtue of the provisions under Section 376 B, 376 C and 376 D, the sexual intercourse though not amounting to offence of rape has been made
cognizable offence, punishable with imprisonment which may extend to five years and the accused shall also be liable to fine.

**Procedural legal provisions under Sections 376 B, 376 C & 376 D IPC.**

All these sections are cognizable but no arrest shall be made without a warrant or without an order of a magistrate. These offences are bailable and triable by Court of Session.

By Amendment Act of 1983 the crime of rape has been made more and more serious for punishing the culprits of rape, basically with punitive and deterrent objects. The researcher is going to examine whether these objects have been fulfilled or not through secondary data i.e. crime statistic from 1983 onwards and primary data i.e. informations / views through questionnaires.

**The Rationale of Research Study:**

Considering the increasing trend of atrocities against women, the Indian Penal Code has been drastically amended in the year 1983 for providing stringent provisions for dealing with atrocities / cruelties and sex related offences against women. By the same amendment in 1983, the presumptive provisions by way of sections 113 A and 113 B were added in Indian Evidence Act for giving more discretionary power to the Court in favour of prosecution i.e. to ensure justice to victim women. For dealing with sex offences, section 376 IPC has been amended and was bifurcated into two viz. 376 (1) and 376 (2), providing enhanced and also minimum mandatory punishment for rape and custodial/gang rape with corresponding provisions by way of section 114 A in Indian Evidence Act, providing mandatory presumption as to absence of consent of prosecutrix in certain prosecutions for rape.

Again in the year 1986, the Legislators felt it necessary to come out with stringent provision for the prevention of many lives of young married woman due to non-fulfillment of dowry demands by the victims' parents. Accordingly, new section 304 B was added to IPC for dealing with “dowry death” of young married women with corresponding mandatory presumption u/s 114 A in Indian Evidence Act for giving more discretion to Court to decide the fate of the case in favour of prosecution, though it amounts to slight deviation from the traditional Rule of Evidence, based on “Accusatorial
System" i.e. ‘the accused is presumed to be innocent unless he is proved guilty.’

Considering all the progressive and positive legal developments basically for the prevention of atrocities, marriage and sex related crimes against women, the researcher felt it necessary to critically analyse and examine as to whether the ‘punitive’ and ‘deterrent’ objects of these legal provisions for the prevention of atrocities against women have been achieved or not through available crime statistics and the public view i.e. secondary data through questionnaires. That is the reasons as to why the “Scope of Study” has been confined to marriage and sex related crimes against women from the period of major and drastic amendments in the year 1983.

Methodology of Study:

The researcher has adopted both the methodologies viz :

1) The Doctrinaire Methodology, 2) Imperial Research Methodology.

The researcher has collected both kinds of data i.e. secondary and primary:

1) Collection of secondary data i.e. crime statistics for the relevant period from five Districts of North-Maharashtra.

II) Collection of Primary data through questionnaires.

The researcher also intends to do the field work of collecting primary data through questionnaires from the different target groups of public to critically examine the impact of laws on the society, particularly in respect of protection to women.

Finally on the basis of major findings, the researcher wants to arrive at the conclusion regarding the impact of legal provisions for the protection of women on the preventive aspect of various kinds of atrocities/cruelties against them.

Scope of Study:

(i) Regarding atrocities/crimes: confined to marriage including dowry and sex related crimes:

If we consider the various amendments to IPC, it is obviously noticed that maximum amendments have been made to offences either related with
marriage or sexual offences. Secondly, these offences have been made more stringent and deterrent so as to have effective prevention of atrocities on women in future, subsequent to such amendments, made in the year 1983 and 1986. Hence the researcher wants to confine his study in respect of marriage related including dowry crimes and sexual offences which are mentioned as follows:

A) Marriage including dowry related crimes:

1. Cruelty to woman by husband or relative of husband u/s 498 A IPC. (added in 1983)

2. Abetment to commit suicide due to cruelty to woman u/s 306 IPC r/w 498 IPC

3. Dowry Death u/s 304 B IPC. (added in 1983)


B) Sex related crimes:

1. Rape including custodial & gang rape and rape under special circumstances u/s 375&376 IPC.

2. 376 A: Intercourse by a man with his wife during separation  
   (added in 1983)

3. 376 B: Intercourse by Public Servant with woman in his custody (added in 1983)

4. 376 C: Intercourse by Superintendent of a jail, remand home etc. (added in 1983)

5. 376 D: Intercourse by any member of the management or staff of a hospital with any woman in that hospital (added in 1983)

(ii) Scope of study regarding Period of study (1983 to 2004):

As most of the amendments for the protection of women have been made in 1983 and 1986, the researcher intends to critically examine the impact of above provisions on the deterrent aspect on the of prevention of crimes, related with marriage and sexual offences from the year 1983 to 2004.
(iii) Scope of study regarding Geographical area:

The researcher intends to collect the secondary data related with crimes (registered, convicted & acquitted) under above legal provisions from five districts namely Nashik, Jalgaon, Ahmednagar, Dhule & Nandurbar of North Maharashtra for the period from 1983 to 2004.

Head-wise total crimes against woman from all five Districts from 1983 to 2004 with researcher's analysis on the basis of secondary and primary statistics:

The head-wise crimes in every district have been separately discussed earlier followed by total head-wise crimes of all five districts. However, for conclusions, the head-wise total crimes of all five Districts are considered.
I. Marriage related crimes against women:

2. (A) Crimes of Cruelty to women u/s 498-A IPC :-

<table>
<thead>
<tr>
<th>Year from 1983 to 2004</th>
<th>Total</th>
<th>% of Conviction on tried cases</th>
<th>% of Conviction on total registered cases</th>
<th>% of conviction in Maharashtra on tried cases</th>
<th>% of conviction in India on tried cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reg.Conv.Acq.</td>
<td>18702</td>
<td>727</td>
<td>8286</td>
<td>8.07</td>
<td>3.89</td>
</tr>
</tbody>
</table>

N.B.: Year-wise crimes for 22 yrs. have been collected and mentioned earlier but here only last total col. is mentioned as above.

Researcher’s Comments/Analysis: The offence of cruelty to woman by her husband and his relative u/s 498-A IPC has been made substantive offence and added to IPC by amendment in the year 1983. In the earlier years i.e. upto 1985, it indicates very less crime reported under this legal provision. (1983-65, 1984-77, 1985-118). However it shows the gradual increase in the crimes which are indicative of the facts that more and more people were becoming aware of this legal provisions and started lodging complaints for cruelty to woman. For the first 13 years from 1983 to 1995 after amendment, the crime indicates a constant and gradual upward trend. However after the year 1995, it does not indicate any specific trend as such i.e. upward or downwards but it indicates the crime variation by way of increase or decrease in that particular year.

The total crimes reported during the period of 22 yrs. are 18702 cases with conviction in 727 and acquittal in 8286 cases. The conviction rate on total cases disposed of/trying by the Court does not exceed more than 7/8% in many years except the years 1990 to 1994 where the conviction rate was around 11/12%. The average conviction rate during the period of 22 years on total, tried cases by Court is only 8.07%, which is quite negligible. To examine the effect of this new legal provision of cruelty to woman by husband and his relatives, it is felt absolutely necessary to see the conviction rate on the total crime of cruelty, registered as the real effect on society is seen from the general perception of the public in society through the punishment to culprits who are involved in the crime of cruelty to women. The conviction rate on the total registered cases in most of the years does not exceed more than 5/6% except the year 1990 to 1994 where the conviction rate on total registered cases was around 7/8%. The average conviction rate on total registered cases is 3.89%, which is indicative of the fact that 96% culprits are absolved from
their criminal liabilities, which could be the reason of less-effectiveness of this legal provision on the society to prevent the crime of cruelty to women. Hence the object of this legal provision seems to be defected to a large extent.

**Conviction rate in Maharashtra:** The statistics of conviction rate under various crime heads against women in Maharashtra have also been collected from the Publication—“Crime in Maharashtra” published by Criminal Investigation Department of Maharashtra Police (CID-Crime) from the year 1997 to 2004 which are mentioned in above table. The conviction rate on total tried/disposed of cases by the Court is around 3 to 4% in a year during the period of 8 years from 1997 to 2004.

The average conviction rate on total tried cases by Court in Maharashtra based on yearly conviction rates during 8 years is 3.3% which is much more less than conviction rate i.e. 8.07% on total tried cases in five Districts of North Maharashtra. The average conviction rate on total tried cases in Maharashtra i.e. 3.3% corroborates the findings from five districts of North Maharashtra of having less conviction rate.

**Conviction rate in India:** The crime statistics are published by Ministry of Home Affairs (MHA), Government of India through Police Organisation viz. Bureau of Police Research and Development (B.P.R.D.), New Delhi. Hence the concerned publications i.e. “Crime in India” were obtained for the last ten years. However, the conviction rate of crime u/s 498 A IPC has been given for the year 1995, 1996, 1997 and 1998. The average conviction rate based on these four years is 2.63% which is much more less than the conviction rate in five districts of North-Maharashtra.

The conviction rate of 3.89% on total registered cases in North Maharashtra and 3.3% in Maharashtra on total tried cases, by the Court is just negligible which cannot be effective for the prevention of crime of cruelty to women. Hence the basic object of this new provision by way of Amendment in 1983 seems to be defected to a large extent which demands the “Lawmakers” to think for its revision either by way of some amendment to section 498-A IPC or with some new provision in Evidence Act, providing for discretionary or mandatory presumption in favour of prosecution so as to punish more culprits of this crime of cruelty.
B) The crimes of cruelty to woman u/s 498-A IPC shown on Bar-diagram:

![Bar diagram showing trends over years]

**Comments:** The above diagram indicates the gradual upward trend from the year from 1983 to 1995 (first 13 years) during the period of 22 years from 1983 to 2004. However from 13th year onwards, the crime seems to be somewhat steady with some variation by increase or decrease in a particular year form 1995 to 2004. The bars indicating conviction on the above diagram seem to be just negligible as compared to acquittal.
The disposal of cases of cruelty to women u/s 498-A IPC with conviction rate shown on Pie-diagram.

It indicates:

i) Disposal of cases by the Court - 48%

ii) Pending cases - 52%

iii) Conviction rate on total tried cases by the Court - 8%

ix) Acquittal rate - 92%

v) Conviction Rate on total registered cases - 4%
D) Analysis of some cases of conviction and Acquittal u/s 498 A IPC:

On conviction: Total 23 cases have been collected from all five districts and their details with quantum of punishment have been mentioned earlier. On the basis of these cases, the researcher's analysis are as follows:

Researcher's Comments/Analysis: In the above cases of conviction, if we look at the quantum of punishment/imprisonment, it varies from only fine to the imprisonment upto 1 to 2 years, which might be due to degree of seriousness of cruelty to the victim woman. But in many cases, the quantum of punishment is “Only fine” which certainly seems to be contrary to legal interpretation of section 498-A IPC as the punishment of fine has to be given in addition to punishment of imprisonment and not exclusively ‘fine’ only.

In one case of Azadnagar Police station, Dhule District, the accused was released on execution of bond of Rs. 1000/- of good conduct for three years as the victim woman and complainant have started living together soon after the registration of the offence. In this cases, the Judicial Magistrate seems to have taken absolutely positive view in the interest of the victim.

Considering the above facts, it is the time for Law-makers to give serious thought to amend section 498-A IPC for providing “minimum mandatory punishment” on the similar lines of mandatory punishment for dowry death u/s 304 B and rape u/s 376(1) & (2) IPC. The minimum mandatory punishment can be around six months to one year imprisonment, as the Law-makers think proper after proper deliberation.

In most of the above mentioned cases, the harassment was done to woman for brining the money from parents but in non of the above cases, the accused had been punishment under the provision of Dowry Prohibition Act. The Police seemed to have miserably failed to apply the relevant sections of Dowry Prohibition Act at the time of registration of the offences of cruelty to women as in non-of the above cases, the sections of Dowry Prohibition Act were applied.

On acquittal: Total 30 cases have been collected from all five districts and their details including the brief grounds of acquittal have been mentioned in the statement of the concerned district.
Researcher's Comments / Analysis: In many cases of acquittal, it is seen that the star witnesses including complainants had turned hostile and had not supported the theory of prosecution. It is also seen in many cases that they had the compromise outside the court and have started living together.

Out of 30, in 17 cases i.e. 57%, the complainants had turned hostile and out of 17 cases of acquittal due to complainant's turning hostile, in six cases i.e. 35%, the complainants started living together. However, in spite of complainants turning hostile, in 7 cases i.e. 41%, the complainants are still living separately.

In one case of Nardana Police Station of Dhule District, the complainant filed an application for compounding of the offence. But as the section 498-A IPC is non-compoundable, the complainant denied the charges of ill-treatment and hence she was declared hostile and the accused was acquitted. This was the alternative solution, find out by the complainant and the Court has taken the positive view which was absolutely necessary in the interest of the complainant.

During the research study, the researcher through concerned Police Station officers has tried to verify whether complainant and her husband have started living together after the case was comprised either outside the Court or by turning hostile in the Court during trial for the purpose of acquittal so that the victim and her husband could live together even after the registration of case of cruelty against the husband and it was transpired through such verification that in 6 cases out of 17 i.e. 35% comprised/acquittal due to complainant turning hostile, the victim and her husband have started living together.

On compounding of offence u/s 498 A IPC: An offence under Section 498-A IPC is not compoundable with the permission of the Court, but the Court may in the interest of the married life of the parties, grant permission to compound the offence as per ruling by Bombay High Court in Suresh Natrmal Rathi v. State of Maharashtra.¹

¹ 1992 Cr. LJ 2106(Bom).
Collection of primary data i.e. through questionnaires:

Total 1000 questionnaires were distributed and 742 questionnaires were obtained from the respondents and tabulated as per following details:

<table>
<thead>
<tr>
<th>Question</th>
<th>Police Officers</th>
<th>Legal Experts</th>
<th>Women Activists/N.G.Os.</th>
<th>Remarks/Combined views</th>
</tr>
</thead>
<tbody>
<tr>
<td>Field officer (PSI/API/PI)</td>
<td>Supervisory P. Officer (Addl.DGP/IGP./DGP./S.P&amp;Dy.S.P.)</td>
<td>Judges</td>
<td>Public Prosecutor</td>
<td>Lawyers</td>
</tr>
<tr>
<td>193</td>
<td>40</td>
<td>29</td>
<td>80</td>
<td>142</td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

'Yes' indicate positive & 'No' indicate negative replies.

E) Researcher's Analysis: major findings through Primary data i.e. questionnaires on 498 A:

By Amendment Act of 1983, new section 498A IPC has been added to IPC for dealing with ill-treatment to women due to various reasons including non-fulfillment of dowry demand. To examine the effectiveness of this provision in its punitive and preventive aspect, the researcher has devised the questionnaire, for soliciting information/views, connected with various aspects of legal provisions u/s 498 A IPC. Considering the suggestions and views received from 742 out of 1000 respondents from all three different groups viz. Police officers, Legal Experts (Judges, Public Prosecutions and Practicing Advocate) and women activities including N.G.Os., following are the main findings:

i) The present provisions of 498 A IPC for dealing with cruelty to women are sufficiently strong enough to deal with such type of cruelty, as this view has been supported by substantial majority i.e. 74%(551 out of 742 respondents). The maximum punishment of 3 years is also sufficient, however, the researcher feels that it requires amendment to provide minimum mandatory punishment of at least one year to make it more deterrent for prevention of atrocities on women.

ii) On its misuse by relatives of the victim for involving most of the members of husband's family as accused:

It is transpired through substantial majority of positive replies i.e. 97% (720 respondents out of 742) that these provisions are being misused to a large extent by close relatives of the victims for involving most of the relatives including unmarried sisters of the husband. It is also
transpired that it is being misused by Police but to a little extent i.e. 3%.

iii) **On awareness of general public about the provisions of 498 (A) IPC:** It is further transpired through questionnaires that fairly large section of general Public are unaware of these provision. About 38% replies are supporting to this findings.

    Hence it was suggested by many persons that the general public should be made aware of these provisions through legal literacy camps, print and electronic media, seminars and conferences, to be organised by Govt. agencies, Police or women N.G.Os.

iv) **On disposal through Lok-Adalat:** Presently it is not under the perview of Lok-Adalat for amicable settlement being it is non-compoundable. It is opined by substantial majority i.e. 91% (674 out of 742 respondents) that these cases should be brought under the perview of Lok-Adalat for speedy disposal with the consent of both parties particularly with the object of compromise/uniting husband and wife together. There are also some negative views but to a little extent i.e.9% which can be ignored.

v) **Reconciliation through social security cell or women N.G.Os. prior to registration of F.I.R.**

   (i) Presently, there is no legal provision which permits such efforts for reconciliation before registration of an offence though it is a practice, being followed in Maharashtra. Substantial majority of replies i.e. 85% (634 out of 742) have supported such reconciliation through social security cell or women N.G.Os. prior to registration of an offence. However, about 15% replies have not supported such reconciliation before registration of an offence.

   (ii) In absence of specific legal provisions, such reconciliation prior to registration of an offence cannot be recognised by the judiciary. However the majority views i.e. 71% (531 out of 742) have supported that the judiciary should recognise such reconciliation before registration of an offence as it can settle down the conflict between both the parties.

   (iii) The majority of persons i.e. 65% (483 out of 742) have suggested that there should be amendment in law to recognise such
reconciliation as pre-condition before registration of F.I.R. u/s 498 A IPC.

vi) Besides above main findings, based on majority of opinions, there are number of suggestions from all three different groups which are question-wise mentioned in the thesis.

2. (A) Crimes of abetment to commit suicide due to cruelty to women u/s 306 IPC r/w 498-A IPC.

<table>
<thead>
<tr>
<th>22 Year from 1983 to 2004</th>
<th>Total</th>
<th>% of Conviction on tried cases</th>
<th>% of conviction on total registered cases</th>
<th>% of conviction in Maharashtra on tried cases.</th>
<th>% of conviction in India on tried cases.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Reg</td>
<td>Conv</td>
<td>Acq</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>3971</td>
<td>185</td>
<td>1886</td>
<td>Aver. 8.93</td>
<td>4.66</td>
</tr>
</tbody>
</table>

N.B.: Year-wise crimes for 22 yrs. have been collected and mentioned earlier but here only last total col. is mentioned as above.

Researcher's Comments/Analysis:- There are 3971 cases registered during the period of 22 years with conviction in 185 cases and acquittal in 1886 cases. From the year 1983 to 1991, the crimes indicate the gradual upward trend. However from the year 1991, the crime seems to be somewhat steady with some decrease or increase in a particular year.

The conviction rate on total tried/disposed of cases by the Court is 8.93% whereas on total registered cases, it is only 4.66% which indicates that 95% culprits who are responsible for the death of young married women are absolved from their criminal liabilities.

It is pertinent to mention here that the offences of abetment to commit suicidal by young married women due to cruelty are visitable by Dy. Superintendent of Police (Sub-Divisional Police officer-SDPO) for supervision of investigation by the administrative orders of the Police Department.

In spite of discretionary presumption u/s 113-A in Evidence Act and supervision of investigation by the Police officer of the rank of Dy. Supdt. of Police, the conviction rate of 8.93% on total tried cases by the Court and 4.66% on total registered cases is just negligible. The conviction rate of 4.66% on total registered cases indicates that 95% culprits who are involved in such
offence are absolved from their criminal liabilities. The above conviction rate also indicates that the basic object of Amendments in 1983 by way of new section 498-A IPC and section 113-A in Indian Act was defeated to a large extent.

**Conviction rate in Maharashtra:** Only for 3 years i.e. 2002, 2003 and 2004, the conviction rate in Maharashtra is available in "Crime in Maharashtra" the publication by CID-Crime Dept. which is mentioned as above in the table. The average conviction rate, based on 3 years conviction rate is only 8.76% which is supportive to low conviction rate i.e. 8.93% in five districts of North-Maharashtra. However, the conviction rate under this specific head of crime is not available in "Crime in India", hence conviction rate in North-Maharashtra cannot be compared with that of in India.
(B) The crime of abetment to commit suicide due to cruelty to woman u/s 306 IPC r/w 498-A IPC with conviction rate shown on Bar-Diagram.

Comments/Analysis: The diagram indicates the gradual increase from the year 1983 till 1999 (the first 9 years from Amendment in 1983) and thereafter it seems to be stabilised around 280 yearly crime with some various by way of decrease or increase in a particular year. From 1991 to 2004, it does not indicate substantive increase or decrease in the crimes under above head.

The diagram indicate just negligible conviction cases but at the same time it indicates substantive and considerable acquittal cases.
The disposal of cases of abetment to commit Suicide due to cruelty to woman u/s 306 IPC r/w 498-A IPC with conviction rate shown on Pie-diagram.

The Pie-diagram indicates a negligible portion of conviction rate but substantial portion of acquittal rate. It indicates 48 % of disposal of cases by the Court.

It indicates:

i) Disposal of cases by the Court - 52 %
ii) Pending cases - 48 %
iii) Conviction rate on total tried cases by the Court - 9 %
iv) Acquittal rate - 91 %
D) Analysis of some cases of conviction and Acquittal u/s 306 & 498 A IPC:

On conviction: Total 25 cases on conviction from all the five districts have been collected and relevant details including the quantum of punishment have been mentioned against each and every case in the statement of the concerned district earlier. On these cases, researcher’s comments / analysis are mentioned as follows:

Researcher’s Comments / Analysis: The maximum quantum of punishment u/s 306 IPC is 10 years of imprisonment whereas 3 years imprisonment u/s 498 A IPC. In 16 cases out of 24 (i.e. in 67% cases), the imprisonment of five years and above have been awarded to the accused. However in 8 cases out of 24 (i.e. in 33% cases), the quantum of punishment was below five years which mostly varies from 1 to 3 years imprisonment except in one case, it is 4 years imprisonment which seems to be on lower side, considering the gravity of crime of loosing the lives of women. As no minimum mandatory punishment of imprisonment is prescribed u/s 306 IPC, the quantum of punishment varies from 1 year to 10 years of imprisonment.

In case of Karjat Police Station u/s 498(A), 302 IPC, the homicidal death seemed to have occurred at in-law’s place. The main ground for conviction seemed to be based on consistent and reliable dying declaration besides other circumstantial evidence. In all the cases of Ahmednagar District, the disposal of cases seemed to be speedy as these cases were disposed of within a period of almost one year which is quite positive and noticeable aspect of looking at the criminal cases of suicidal/homicidal death of married women due to cruelty. By and large, the quantum of punishment varies from 1 years to 7 years imprisonment depending upon the facts of a particular case. Generally, the suicidal cases due to cruelty to women do occur at in-law’s places and hence the dying declaration and circumstantial evidence in addition to establish the demand of dowry by the parents are very important for attracting the presumption u/s 113 A in Evidence Act.

In above cases of conviction, the newly added provisions u/s 113 A Evidence Act by the Amendment in 1983 might have helped the trial Judges to decide the cases in favour of prosecution.

In most of the above cases of conviction, the main cause of cruelty to women to drive them to commit suicide was the non-fulfillment of unlawful
demand of dowry from the parents of the deceased whereas in some cases the
cause seemed to be of trivial nature like the deceased was not knowing
cooking/doing household duties, mere suspicion of character etc.

In none of the above cases, the imprisonment has been given under the
provision of Dowry Prohibition Act, though in almost all the above cases, the
cruelty for the non-fulfilment of demand of dowry was the main cause. The
Police seemed to have miserly failed to apply the proper section of Dowry
Prohibition Act which appears from the sections, applied to above cases as in
the above cases, the relevant sections of Prohibition of Dowry Act were not
applied by the Police. That could be the reasons as to why the charges would
not have been framed under Dowry Prohibition Act and hence no separate
punishment under Dowry Prohibition Act was awarded.

On acquittal: In all 27 cases on acquittal have been collected from five
districts and their details including grounds of acquittal have been mentioned
in the statement of concerned Dist. However, only the researcher's comments
/ analysis are mentioned as follows:

Analysis: Out of 27 cases of acquittal, in 12 cases, the witnesses turned
hostile. In the cases of abetment to commit suicide, as the lives of the victims
have been lost, the relatives of the victim i.e. star witnesses should not have
turned hostile but in 12 cases i.e. 45%, the witnesses turned hostile
resulting the cases in acquittal which is really surprising. In many cases, the
guilt of the accused was not proved either due to contradiction or not
supporting the prosecution case by the witnesses.

E) Researcher’s Analysis: major findings through Primary
data i.e. questionnaires u/s 306 & 498 A IPC:

The maximum lives of young married women are being scarified by
abetment to commit suicide due to cruelty to women. The researcher has
devised the questionnaire, covering various related aspects of this type of
crime against women and through 742 questionnaires, received out of 1000
respondents from three different groups, following are the main findings:

(i) The present legal provisions u/s 306 IPC for dealing with abetment to
commit suicide which provides the maximum punishment of ten years
of imprisonment, coupled with section 498 (A) IPC are sufficiently
strong enough to prevent such type of crime against women and hence
it does not require any amendment so far as enhancement of punishment is concerned. This finding is based on majority of positive replies i.e. 73% (544 out of 742 respondents).

ii) **On its misuse by relatives of the victim for involving most of the members of husband’s family as accused:**

It is transpired through questionnaires that these provisions are being misused for involving every member including un-married sisters of victim’s husband which is indicated by substantial majority i.e. 90% (666 out of 742) of replies. It is also transpired that it is being misused by Police but to a little extent i.e. 3% but largely misused by close relatives of the victim which is indicated by large majority i.e. 97% of replies.

(iii) **On awareness of general public about these provisions:** It is transpired that large section of general public are still not aware of these provisions which is indicated by 38% (457 out of 742 respondents) of replies received.

Hence they have suggested to make the general public aware of these provisions by organising legal literacy camps, seminars, publication through print and electronic media and also by including these legal provisions in syllabus of college education under the caption of ‘General Laws’. The women N.G.Os, Police and Govt. agencies like District Free Legal-Aid Cell can take initiative for making the general public aware of these provisions.

(iv) **Suggestions:** There are 27% (198 out of 742) replies which suggested that the present legal provisions are not sufficiently strong enough to prevent this type of crime against women. Considering the above sizable negative replies i.e. 27%, the suggestions from many persons and other findings during present study, the researcher suggests the following amendment in present Law to make these provision more effective for achieving its punitive and deterrent object of law:

(v) **Suggestion for mandatory presumption:** - There are some suggestions even from judges for shifting burden to the accused to prove their innocence. The present legal provisions u/s 113-A of Indian Evidence Act provides for discretionary presumption in favour of prosecution case, hence no proper weightage is given to the presumptive provisions of section 113-A of Indian Evidence Act. In
most of the cases, the dying declaration is influenced either by the husband or his relative who are generally present in hospital initially at the time of her critical health condition, considering the future of the children. These are practical difficulties in getting the convictions and hence, the husband and other accused are unpunished and be ready to arrange marriage with the new bride. The conviction rate is very low i.e. 8.93% on tried cases and 4.66% on total registered cases. Hence the researcher suggests the amendment in Indian Evidence Act to provide for mandatory presumption in place of discretionary presumption u/s 113-A of Indian Evidence Act.

(vi) **Suggestion for minimum mandatory punishment u/s 306 IPC:** The present legal provisions u/s 306 IPC does not provide for any minimum mandatory provision, giving lot of discretion to the judiciary for awarding quantum of punishment in convicted cases which is generally not on the higher side, as noticed during this study, though the maximum punishment is upto 10 years of imprisonment. The provision of 306 IPC has been there in IPC since its inception without any amendment. Though section 498 (A) IPC has been added to IPC with corresponding provision by new section 113 (A) in Indian Evidence Act in the year 1983, no amendment was made in section 306 IPC. There is no minimum mandatory punishment under section 306 IPC which results into awarding less quantum of punishment to the accused in convicted cases. First the conviction rate is very less, as pointed out above and secondly, the quantum of punishment is also very less i.e. even of one or two years imprisonment though the maximum punishment is upto 10 years of imprisonment. In only a few cases, the punishment is awarded of 7 years imprisonment and very rarely 10 years of imprisonment, as noticed during this study. Hence the researcher suggests to amend section 306 IPC for providing minimum mandatory punishment of 5 years of imprisonment by way of amendment to section 306 IPC.

(vii) **Trial by Fast-Track Session Court:** Considering the long pending period of such cases in Court and also large pendency of cases i.e. 48% transpired during study, the researcher suggests the disposal of such
cases by fast-track Court which will make these provisions more effective in prevention of such offences.

3. (A) The Crimes of Dowry death u/s 304 B IPC

<table>
<thead>
<tr>
<th>18 yrs. from 1987 to 2004</th>
<th>Total</th>
<th>% of Conviction on tried cases</th>
<th>% of Conviction on total registered cases</th>
<th>% of conviction in Maharashtra on tried cases</th>
<th>% of conviction in India on tried cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Reg</td>
<td>Conv</td>
<td>Accq</td>
<td>Aver. 15.85</td>
<td>8.11</td>
</tr>
<tr>
<td>Total</td>
<td>518</td>
<td>42</td>
<td>223</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

N.B.: Year-wise crimes for 18 yrs. have been collected and mentioned earlier but here only last total col. is mentioned as above.

Researcher's Analysis:- The new section of 304-B IPC was added to IPC by the Dowry Prohibition (Amendment) Act, 1986 (w.e.f. 19th Nov., 1986) with a view to curb and combating the increasing menace of dowry death with a firm hand with corresponding legal provisions for mandatory provisions in Indian Evidence Act by section 113-B.

The comments by the Apex Court in Ashok Kumar’s case, speak about the reality in society which is mentioned as follows:

“Bride burning is a shame of our society. Poor never resort to it. Rich do not need it. Obviously because it is basically an economic problem of class which suffers both from ego and complex. Unfortunately, the high price rise and ever increasing cost of living coupled with enormous growth of consumer goods effacing difference between luxury and essential goods appear to be luring menace as their parents and the resultant events flowing out of it. How to curb and control this evil? Dowry killing is a crime of its own kind where elimination of daughter-in-law becomes immediate necessity if she or her parents are no more able to satiate the greed and avarice of her husband and their family members, to make the boy available, once again in the marriage market. Eliminate it and much may stand resolved automatically.”

To ensure better supervision of Police investigation, it was made visitable by Police officer of the rank of Dy. Supdt. of Police by the administrative orders of the Police Department.

During the period of 19 years from 1986 onwards, total 518 cases have been reported in all five districts of North-Maharashtra with conviction in 42 cases and acquittal in 223 cases. If we look at the year-wise figures of conviction cases, it does not exceed even 4/5 cases in all from all five districts in a year.

The conviction rate on total tried/disposed of cases by the Court is 15.85% and 8.11% on the total registered cases. Though the conviction rate is comparatively higher than the conviction rates in offences of cruelty to woman u/s 498-A IPC, and abetment to commit suicide due to cruelty to woman u/s 306 IPC r/w 498-A IPC, it does not seem to be effective in the prevention of dowry death of young married woman as contemplated by the objects of the Dowry Prohibition (Amendment) Act of 1986. The conviction rate on total registered cases indicate that 92% culprits of dowry death are absolved from their criminal liabilities. On the contrary, these 92% culprits are set free and allowed to go ahead with new marriage again for earning the wealth through dowry and make the other brides susceptible to dowry death.

As mentioned above, the Law-makers have made the provision of “dowry death” more stringent and serious, with corresponding provision in Indian Evidence Act, providing for mandatory presumption under section 113-B in favour of prosecution with the ultimate object of punishing more accused of dowry death crime. Proper provision for of supervision of Police investigation by senior-level officer i.e. Dy.s.P. has also been made as these offenses are made visitable by SDPO. Inspite of all these provisions, the conviction rate is not compatible with the object of this new provisions of dowry death. Hence the punitive and deterrent objects of Legal Theory have been defeated to a large extent.

Conviction Rate in Maharashtra: During the study, the yearly publication “Crime in Maharashtra”, published by C.I.D. Crime Dept. have been collected for the last ten years and the conviction rate in dowry death cases from the year 1997 to 2004 have been taken from these yearly publications
which are mentioned in above table. The average conviction rate, based on
the conviction rates from the year 1997 to 2004 comes to 3.02% which is
much more less than the conviction rate i.e. 15.85% in five districts of North
Maharashtra.

**Conviction Rate in India:** The Govt. Publication "Crime in India",
published by National Crime Records Bureau, Ministry of Home Affairs have
also been collected for the last 22 years during the research study. However
the conviction rate on dowry death cases have been given for the year
1995, 1996, 1997 and 1998 which are mentioned in above table. The average
conviction rate, based on these four years conviction rates comes to 4.8%
which is again much more less than the conviction rate in Maharashtra and
in five districts of North Maharashtra.

From the comparative study of conviction rates in India and
Maharashtra, and in five districts of North Maharashtra, the finding is clear
that the conviction rate in India and Maharashtra are corroborative to the low
conviction rate in five districts of North Maharashtra which is negligible and
certainly not sufficient to fulfill the objects of the new provisions of Dowry
death u/s 304-B IPC though the corresponding provision for raising
mandatory presumption in favour of prosecution u/s 113 B has been
provided in Indian Evidence Act. Hence it is the time again for the Legislators
to give serious thought for its revision for making it more stringent and
serious in both punitive and deterrent aspects as objects of this legal
provisions has been defecated to a large extent which can be inferred from the
above poor conviction rate.
(B) The crime of dowry death u/s 304 B IPC shown on Bar digarm:

Comments:- During the last 19 years from 1986 to 2004, the crime does not indicate any continuous upward or downward trend as it was seen in cases of crime of cruelty to woman u/s 498-A IPC and suicidal death due to cruelty u/s 306 IPC r/w 498-A IPC. The bars indicate that the crime of dowry death is within the range of yearly crime of 20 to 40 in a particular year with variations by way of increase or decrease. The bars indicating conviction are not prominent and noticeable but just at the bottom level, as against conviction, the bars indicating acquittal are quite prominent and noticeable which indicate the substantial cases of acquittal.
The disposal of dowry death cases by the Court with conviction rate shown on Pie-diagram.

- Disposal: 51%
- Pendency: 49%

Conviction Rate on total tried/disposed of cases by the Court:
- Acquittal: 84%
- Conviction: 16%

Conviction Rate on Total registered cases:
- Pendency & Acquittal: 96%
- Conviction: 4%

It indicates:

i) Disposal of Court - 51%
ii) Pending cases - 49%
iii) Conviction Rate on total tried cases by the Court - 16%
iv) Acquittal - 84%
v) Conviction Rate on total registered cases - 4%
D) Analysis of some cases of conviction and Acquittal u/s 304 B IPC:

On conviction: Total 23 cases on conviction have been collected from all five districts and their details including the quantum of punishment have been mentioned in the statement of the concerned district. However, the researcher’s comments/analysis are mentioned as follows:

Researcher’s Comments/Analysis: Out of 23, in 3 cases of murder for dowry, the accused were convicted for life imprisonment u/s 302 IPC. Out of remaining 20 cases, registered under section 498-A and 304-B IPC, only in 4 cases i.e. 20%, the accused had been convicted for imprisonment of 7 years or more. (In two cases-7 years imprisonment, in one case-8 years imprisonment and in one case-imprisonment for life). These facts indicate that in 4 convicted cases only, the accused have been punished for dowry death u/s 304-B IPC with minimum mandatory punishment of 7 years imprisonment and in remaining 16 cases, the accused have been punished for suicidal death due to cruelty to the deceased-victims and the punishment varies from 6 months to 5 years imprisonment, depending upon the degree of seriousness of the guilt of the accused though in all the cases, the lives of the victim-women were lost due to cruelty to them for dowry. The above facts also indicate that the proper evidence on the required ingredients of dowry death either have not been collected by Investigating Officers or the cases have not been properly put up in Courts by the Prosecution wing. That could be the reasons as to why the minimum mandatory punishment of 7 years imprisonment for dowry death could not be given in cases of conviction.

The further analysis of quantum of punishment in 16 cases of conviction of less than the minimum mandatory imprisonment of 7 years u/s 304 (B) of dowry death, indicates that only in 4 cases, the punishment was more than 3 years imprisonment (in one case 4 years and in 3 case 5 years imprisonment) and in remaining 12 cases out of 16 (i.e. in 75% cases), the punishment was 3 years or less.

The maxim quantum of punishment for abetment to commit suicide u/s 306 IPC is 10 years imprisonment and for cruelty to women u/s 498 A IPC is 3 years imprisonment. It means in above 12 cases out of 16, (i.e. in 75% cases), the punishment was given practically for the offence of cruelty
u/s 498 A IPC. If we further analyse, it indicates that in 6 cases of out of 12, the punishment was below 3 years imprisonment (2 years in 2 cases, 1 year in one case, 6 months in 1 case and only fine in one case). Apparently at least, the above 6 cases of imprisonment of less than 3 years could be the proper and fit cases for appeal for enhancement of punishment.

In one case of Shevgaon Police Stations of Ahmednagar Dist. wherein the deceased was tortured for the dowry of Rs. 20,000/- and her death was caused by burn injuries and even the body of the deceased was disposed of by performing funeral by the accused and thereafter the matter was reported to Police, the accused were punished by 2 years R.I. for causing disappearance of evidence. u/s 201 IPC and acquitted for dowry death. Apparently, this case seems to be proper and fit case for appeal but it was not done so.

First, the conviction rate in dowry death cases is not at desired level so as to be effective as deterrent for the prevention of dowry death of young married women and also the punishment to the accused of dowry death is much more less than the minimum mandatory punishment of 7 years imprisonment. Hence the objects of the Law-makers for enacting legal provisions of dowry death by way of Amendment in 1986 seems to be totally defeated and hence some corrective mechanism for dealing with dowry death cases is felt absolutely necessary in Criminal Justice System.

**On acquittal:** Total 24 cases of acquittal have been collected from five districts and their details including main grounds for acquittal have been mentioned the statements of the concerned district. Only the comments of researcher have been mentioned as follows:

**Analysis:** Out of 24, in 6 cases i.e. 25%, the witnesses turned hostile and have not supported the prosecution, whereas in many cases, the guilt could not be proved due to various reasons like insufficient evidence, non-examination of Investigating Officer, recording dying declaration of the victims more than once etc.
E) Researcher’s Analysis / findings through primary data i.e. questionnaires u/s 304 B IPC:

In respect of provision, dealing with dowry death, u/s 304(B) IPC, following are the major findings through 742 questionnaires, received from three different groups of respondents:

i) The majority views to the extent of 79% (583 out of 742) indicate that the present legal provisions, for dealing with dowry death u/s 304 (B) IPC coupled with mandatory presumption in favour of prosecution u/s 113 (B) of Indian Evidence Act are sufficiently strong enough to prevent the crimes of dowry death.

However, the negative replies of 29% (74 out of 258) from women activists; 27% from lawyers and 20% from public prosecutors indicate that the provisions of section 304 (B) IPC are not sufficiently strong enough to prevent dowry deaths which are corroborated by ground realities of having number of dowry deaths, as noticed during study.

ii) The researcher feels that the provisions u/s 304(B) IPC are strong enough to deal with dowry death, as it provides the maximum punishment of life imprisonment i.e. similar to that of murder except death with minimum mandatory punishment of seven years imprisonment, armed with mandatory presumption in favour of prosecution u/s 113 (B) of Indian Evidence Act. In spite of the strong provisions, as mentioned above, the dowry death of young married women have not been prevented / controlled, as aimed by the Amendment of 1986.

The researcher, based on his personal experience as supervisory senior officer and the facts, transpired during the present study, strongly feels that preventive and punitive objects of section 304 (B) IPC could not be achieved to a desired level due to following reasons-

a. The general public are not fully aware of the provisions of section 304 (B) IPC as supported by the finding during study (39% respondents have opined that general public are not aware of these provisions.)

b. In case of dowry deaths, the relatives of the victim generally insist to register the case of murder u/s 302 IPC and if the case of murder u/s 302 PC is registered, all the ingredients of murder have to be proved beyond doubt which is very difficult for prosecution due to the fact
that the death occurred at husband's (accused) place and hence there are no eye witnesses except circumstantial evidence which is also likely to be manipulated by the accused or his relatives.

c. If the case is not registered u/s 304 (B) IPC, then the prosecution is not entitled to mandatory presumption u/s 113 (B) of Indian Evidence Act.

d. Most of the Police officers even of the rank of Dy.S.P. and Police Inspectors are not well aware of the essential ingredients of section 304 (B) IPC and section 113 (B) of Indian Evidence Act with the ultimate results of acquittal due to lacunas in investigation. The Police officers even of the rank of Police Sub Inspector are well aware of the essential ingredients of section 302 IPC i.e. murder but are not well aware of the essentials of dowry death u/s 304 (B) IPC as it requires more depth of legal knowledge.

e. Less sensitivity on the part of Police officers, Public Prosecutors and the judiciary in this respect are contributory factors for making these provisions of section 304 (B) IPC and 113 (B) of Indian Evidence Act less effective in deterrence and prevention of dowry deaths of young married women.

iii) Suggests from Researcher:

In paragraph iii above, the reasons of not achieving the objectives of section 304 (B) IPC have been enumerated. To achieve the punitive and deterrent object of section 304 (B) IPC, the researcher suggests the following.

a. the general public should be made aware of the provisions of dowry death u/s 304 (B) IPC and also of section 113 (B) of Indian Evidence Act through electric and print media, seminars, legal literacy camps, street play etc.

b. During awareness campaign, the emphasis should be on the mandatory presumptions in favour of prosecution u/s 113 (B) of Indian Evidence Act, available in dowry death cases and not in cases of murder. Hence, the chances of conviction will be much more if the case is registered u/s 304 (B) IPC for dowry death, rather than insisting on registration of murder, as in murder cases the chances of
conviction are very remote due to lack of eye witnesses as the death occurred at accused peace.

c. These provisions should be included in syllabus of college and particularly of last year under the caption ‘General Laws’ for making the youngsters (both male and female) aware of these provisions.

d. During in-service training to Police officers, they should be properly trained about these provisions and collection of evidence in respect of all the essential ingredients of section 304 (B) IPC and also of section 113 (B) of Indian Evidence Act for attracting mandatory presumptions to prosecution case.

e. The workshop for Police officers, Public Prosecutors and Judges be organized to sensitise them on gravity of dowry deaths of young married woman due to non-fulfillment of dowry demands.

f. **Disposal by fast-track court:** Considering the long pending period of such cases in court and less conviction rate in these cases, the researcher suggests the disposal of these cases by fast-track court to make these provisions more effective in prevention of dowry deaths.

iv) It is transpired through majority of replies to the extent of 86% (635 out of 742) that these provisions are being misused by close relatives of the victim for involving most of the members of husband's family as accused.

It was further transpired through positive replies of 97% (720 out of 742 respondents) that the misuse of these provisions is mainly by close relatives of the victim whereas the misuse by Police is 3% only.

v) **The Researcher also feels** that these provisions of dowry death are being misused by the relatives of the victim for involving most of the members of the husband and in-law's family. But still, it is the fact that the young married women has lost their lives due to non-fulfillment of dowry demands in such cases, hence there is a tendency on the part of close relatives of the victim to rope in all the members of the husband’s family by mentioning their names either in FIR or in statements, recorded during investigation. The Police officers as I.O. has also the tendency to make the members of husband’s family as accused on the basis of the statements of relatives of the victim to avoid allegation against Police.
vi) The Researcher further feels that due to making most of the members of husband’s family as accused, the prosecution case becomes weak as the names of all members are included in FIr/Statements in a stereotype way. If the Supervisory Police Officers with the support of women activists or N.G.O.s. are judicious and selective in change-sheeting the case against the real culprits, based on evidence, then only the case can be strong enough from evidence point of view which will certainly increase the chances of conviction.

vii) On awareness of general Public about the provisions of dowry death:

It is transpired through majority views to the extent of 61% (450 out of 742) that the general Public are aware of these provisions u/s 304 (B) IPC.

However, it is further transpired through 39% (292 out of 742) of replies that many persons in society are not aware of the provision of dowry death. The replies of 45% from Judges and 39% from women activists indicate that the general Public to a large extent are not aware of the provisions of dowry death u/s 304 (B) IPC.

viii) The researcher also feels that the general public to a large extent are not aware of the provision of dowry death and particularly the public are totally unaware of the mandatory presumption under section 113 (B) of Indian Evidence Act which is quite helpful in bringing the conviction. The general public are also not aware of the fact that the maximum punishment of dowry death u/s 304 (B) IPC is up to life imprisonment i.e. similar to that of murder except death with mandatory minimum punishment of 7 years imprisonment. They are also unaware of the fact that the degree of proving the prosecution is certainly less due to mandatory presumption due to section 113 (B) of Indian Evidence Act.

That could be the reasons as to why the relatives of the victim insist for registration of murder u/s 302 IPC.

In view of above facts, the researcher feels that the general public should be made aware of the provisions of dowry death u/s 304 (B) IPC and also provision in section 113 (B) of Indian Evidence Act through on
going frequent programmes by electronic and print media besides other means of awareness campaign like seminars, workshop, conferences, guidance to college-going students, legal literacy camps by Legal Aid Committee etc.

5. The crimes of taking, giving or demanding dowry u/s 3 & 4 of Prohibition of Dowry Act, 1961.

A) Crimes statistics u/s 3 & 4 of Prohibition of Dowry Act., 1961:

<table>
<thead>
<tr>
<th>22 Year from 1983 to 2004</th>
<th>A'nagar</th>
<th>Jalgaon</th>
<th>Nashik (R.)</th>
<th>Nashik City</th>
<th>Dhule</th>
<th>Nandurbar</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>2 (Acq.)</td>
<td>1 (Acq.)</td>
<td>1 (P.T.)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

N.B.: Year-wise crimes for 22 yrs. have been collected and mentioned earlier but here only last total col. is mentioned as above.

Researcher's Comments/Analysis: The Prohibition of Dowry Act was enacted in 1961 which made the taking and giving of dowry punishable u/s 3 of the said Act. The demand of dowry was also made punishable u/s 4 of the Act.

As the period of study is confined from 1983 to 2004, the efforts were made to collect crime statistics of the crimes of taking, giving and demand of dowry u/s 3 & 4 of Dowry Prohibition Act from all five districts of North-Maharashtra for the above period. But surprisingly, scrutiny of crime records of all the districts reveals that there are only 4 cases registered, 2 in A'nagar & one each in Jalgaon & Nashik (R.) District throughout the period of 22 years. There is not even a single case, registered in remaining districts throughout the above period.

Out of 4 cases, three are acquitted. Hence the acquitted ratio is 100%.
One case of Nashik (R.) Dist. is pending in Court.

It is the known fact that the crime of taking, giving and demand of dowry takes place for materialising most of the marriages. Even due to non-fulfilment of dowry demand, the ill-treatment to young married women continues even after marriage which makes her life susceptible to either suicidal, homicidal or dowry death. But the above fact of negligible crime
statistics indicates that the people do not take recourse to the legal provisions of sections 3 & 4 of Dowry Prohibition Act, might be due to social recognition to this evil system of dowry. Hence the punitive and deterrent objects of the law are totally defeated.

There are hardly any cases either on conviction or acquittal for Analysis.

B) Researcher's Analysis / Major findings: through questionnaire

i) The majority views to the extent of 68% (504 out of 742 respondents) opined that the present provisions are sufficiently strong enough to deal with the menace of dowry. However, about 32% (238 out of 742) persons feel that these provisions are not strong enough to deal with problems of dowry which indicates that it requires some amendment or measures to make it more effective.

ii) On its misuse for involving every member of the husband's family as accused: The majority replies to the extent of 78% (576 out of 742) have indicated that these provisions are being misused for involving most of the members of in-law's family as accused. It is further transpired that the misuse is mainly by close relatives of the deceased i.e. to the extent of 97% and also by Police but to a negligible extent i.e. 3%.

viii) On awareness of general public about these provisions: The majority of 57% (420 out of 742) feel that these provisions are known to general public and 43% (322 out of 742 respondents) i.e. sizable negative replies indicated that the general public are not aware of these provisions.

iv) On disposal through Lok-Adalat: The majority views to the extent of 79% (585 out of 742) feel that the cases of Dowry Prohibition Act should be brought under the perview of Lok-Adalat for quick disposal but only with the consent of both parties for their compromise.

v) The researcher based on majority replies and many suggestions strongly feels that these cases be brought under the perview of Lok-Adalat with the consent of both parties, basically with the object of reconciliation / uniting them together due to following reasons:
i. The basic objects of disposal of cases through Lok-Adalat will be reconciliation and allowing them to live together by sinking their differences.

ii. The disposal will be quick and that too with the consent of both the parties.

iii. It also saves the money and time of both parties.

iv. The disposal being with the consent of both the parties and through judicial officer, presiding over the 'Lok-Adalat', it has morale as well as legal binding which is quite helpful to sort out the social issues like dowry.

v. If, it has not achieved their compromise, then such cases will be dealt with by regular judicial process but there is no harm in trying for reconciliation through Lok-Adalat.

vi) **On reconciliation through women Security Cell / Women N.G.Os. before registration of FIR:**

The majority of 76% (564 out of 742) have suggested that there should be sincere efforts for reconciliation through Women Cell / N.G.Os. before registration of an office. They have further opined to the extent of 69% (513 out of 742) that the judiciary should recognise such reconciliation efforts before registration of an offence. However only 50% replies have suggested that there should be amendment in law to recognise such reconciliation prior to registration of an offence through Women Cell / N.G.Os. as there is no such legal provision.

vii) **On Customary recognition to dowry in spite of Dowry Prohibition Act:**

It is transpired through substantial majority to the extent of 81% (599 out of 742) that taking and giving of dowry has customary recognition in spite of the Act. This is supported by the fact, transpired through this study that the registered crimes from 1983 onwards under this Act is totally negligible i.e. only 4 cases during 22 years from 1983 to 2004 from all five districts.

It is further transpired by 19% (143 out of 742 respondents) negative replies that the complaint is rarely lodged with Police for taking dowry which results into non-implementation of Dowry Prohibition Act. This finding is supported by absolutely negligible registered crimes as mentioned above.
C) Researcher’s comments / suggestion on the recommendations of National Commission for women (NCW)

I) The N.C.W. has suggested that the persons giving dowry are the victims and it is not fair to punish them. The researcher along with some respondents are of the same view, hence it is suggested that the person who gives dowry shall not be made as accused.

II) The N.C.W. has further suggested that the persons participating in dowry negotiations should be made as accused along with persons giving or demanding dowry. The researcher strongly feels that above recommendation shall be accepted by proper modification in the Act.

III) The N.C.W. has suggested to enhance the punishment from 3 to 7 years imprisonment u/s 498 (A) IPC.

The researcher along with majority of respondents i.e. 74% are of the view that present provision u/s 498 (A) IPC is sufficiently strong enough to prevent the atrocities against women, so far as maximum limit of 3 years punishment is concerned. However the researcher suggests to provide for minimum mandatory punishment of one year, considering the quantum of less punishment, awarded in many cases of cruelty to women u/s 498(A) IPC.

viii) Suggestion from Researcher: The researcher feels that the Dowry Prohibition Act, 1961 & its amendment in 1986 are still not effective in achieving the objectives of the legislature, rather it has failed in achieving the punitive and deterrent objects of Dowry Prohibition Act, due to the fact that many persons in society are not aware of the legal provisions of the Act besides social recognition to dowry.
II. Sex related crimes against women.

The crime of Rape u/s 376 (1) & 376 (2) IPC.

The relevant sections of rape 375 and 376 in IPC have been substituted by section 375 and 376(1) and 376 (2)IPC and new additional sections viz. 376A, 376B, 376C and 376D were added by Criminal law Amendment by Act 1983 (43 of 1983) which came in force w.e.f. 25.12.1983. After the Amendment in 1983, the penal section 376, provides different punishments under sub-section (1) and (2) of 376 IPC. Under Sub-section (1) 376 IPC, the minimum punishment shall not be less than 7 years of imprisonment whereas under Sub-section (2) to 376, the minimum punishment shall not be less than 10 years of rigorous imprisonment. The maximum punishment under both Sub-section will be for life. Secondly the rule of evidence in rape cases u/s 376(2) is different by virtue of mandatory presumption u/s 114 (A) in Evidence Act which is available to rape cases u/s 376 (2) and not in cases u/s 376 (1) IPC.

The presumption under section 114-A of Evidence Act that if a woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent, is attracted to cases of rape under section 376(2), except when the case is under clause (f) thereof. This mandatory presumption under section 114-A of Evidence Act is not attracted to cases of rape under section 376(1).

Hence the crimes of rape are separately discussed under two heades u/s 376 (1) & 376 (2) IPC.
1. (A) Crimes of Rape u/s 376(1) IPC:

<table>
<thead>
<tr>
<th>Year from 1983 to 2004</th>
<th>Reg</th>
<th>Conv</th>
<th>Acqu</th>
<th>% of Conviction on tried cases</th>
<th>% of Conviction on total registered cases</th>
<th>% of conviction in Maharashtra on tried cases</th>
<th>% of conviction in India on tried cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>1945</td>
<td>182</td>
<td>878</td>
<td>Aver. 17.17</td>
<td>9.36</td>
<td>11.23</td>
<td>4.7</td>
</tr>
</tbody>
</table>

N.B.: Year-wise crimes for 22 yrs. have been collected and mentioned earlier but here only last total col. is mentioned as above.

**Researcher’s Analysis:** During the last 22 years from 1983 to 2004, there are 1945 cases of rape registered under Sub-section (1) of 376 IPC with conviction in 182 cases and acquittal in 878 cases.

The conviction rate on total tried/disposed of cases by the Court is 17.17% where as it is 9.36% on the total registered cases. The conviction rate indicates that 90% of culprits in rape cases are absolved from their criminal liabilities in such serious and heinous crime of rape against woman.

**Conviction rate in Maharashtra:** The yearly conviction rates are available in “Crime in Maharashtra” from the year 1997 onwards which are mentioned in the table. However, there was no bifurcation under Sub-section (1) and (2) of section 376 IPC. Hence the conviction rates, mentioned in “Crime in Maharashtra” are the combined conviction rates under both Sub-section 376 (1) and (2) of 376 IPC. The average conviction rate based on yearly conviction rate of last eight years from 1997 to 2004 is 11.23% which is much more less than conviction rate i.e. 17.17% from five districts of North-Maharashtra but it is certainly corroborative to the low conviction rate in five districts of North-Maharashtra.

**Conviction rate in India:** The yearly conviction rates in India are available in “Crime in India” for the year 1995, 1996, 1997 and 1998 only which are mentioned in above table. The average conviction rate, bases on four years conviction rate is 4.70% which is much more less than conviction rate in Maharashtra but certainly supporting to low conviction rate in five districts of North Maharashtra.
(B) The crime of rape u/s 376 (1) IPC with conviction shown on Bar-diagaram:

Comments:— During the last 22 years, the crime of rape indicates gradual continuous upward trend from the 5th year (i.e. from 1988) till 12th year i.e. 1994. In the year 1994, it crossed 100 and then it seems to be stabilised around 100 with marginal decrease or increase in a particular year but the crime remained above 100. The bars indicating the conviction are just at the bottom which indicates negligible conviction cases.
(C) The disposal of cases of abetment to commit Suicide due to cruelty to woman u/s 376(1) IPC with conviction rate shown on Pie-diagram.

![Disposal of cases by the Court](image1)

![Conviction Rate on total tried/disposed of cases by the Court](image2)

![Conviction rate on total registered cases](image3)

**It indicates:**

i) Disposal of cases by the Court - 54%

ii) Pending cases - 48%

iii) Conviction Rate on total tried cases by the Court - 16%

ix) Acquittal - 84%

v) Conviction Rate on total registered cases - 9%
D) Analysis of some cases of conviction and acquittal u/s 376 (1) IPC:

On conviction: Total 22 cases on conviction have been collected from all five districts and their details including the quantum of punishment have been mentioned in the statement of the concerned district. However, only the researcher’s comments / analysis are mentioned as follows:

Researcher’s Comments / Analysis: The scrutiny of above cases indicates that out of 22, in 16 cases (i.e. in 73% cases) the accused had been punished by 7 years imprisonment or more which is the minimum mandatory requirement of section 376 (1) IPC, by amendment in 1986.

The minimum mandatory punishment of 7 years imprisonment in 12 cases, in 3 cases, the punishment was of upto 10 years imprisonment whereas in 1 case, the accused had been punished for life imprisonment which is the maximum punishment of rape which indicates absolutely the positive attitude of the Judiciary coupled with all out efforts of investigation and prosecution machinery of the criminal Judicial system towards the fulfillment of objects of the Amendment of 1986.

The researcher felt that the publicity of such good cases by the State Govt. machinery should be given on large-scale in local as well as State level print and electronic media so that it will act as deterrent to others in society to involve in the crime of rape but in practice, it is not done so except the coverage in localised news-papers.

In remaining cases, the accused had been punished for other crime i.e. in one case, 3 years imprisonment for attempt of rape u/s 376(1) r/w 511 IPC, and in another case, 6 months simple imprisonment for cheating u/s 417 IPC by false promise to marry with victim for continued frequent sexual intercourse with her.

On acquittal: In all 25 cases have been collected and their details including main grounds of acquittal have been mentioned in the statement of concerned Dist. However, only the researcher’s comments / analysis are mentioned as follows:
Researcher's Comments / Analysis: In the cases of rape of Nandurbar, a triable District, it is noticed that most of the rape cases are registered on the failure of accused's promise to marry with victim. Hence, the victim and accused had sexual intercourse many times prior to the registration of cases of rape. That could be one of the reasons as to why the victim generally turned hostile. This is the specific and very unusual trend, noticed in rape cases of Nandurbar District.

In 9 cases out of 25, i.e. in 36% cases, important witnesses including the complainants had turned hostile resulting the cases in acquittal.

In 7 cases out of 25, i.e. 28%, the medical evidence was not supportive to prosecution case.

In one case of Erondol Police Station of Jalgaon District, the prosecution has failed to examine the victim whereas in another case of Shahada Police Station of Nandurbar Dist., the evidence of prosecutrix was not recorded which is quite surprising and indicates the total lack of commitment of the concerned investigation officer and the Public Persecutor.

2. (A) The Crime of Custodial & Gang Rape etc. u/s 376(2) IPC:

<table>
<thead>
<tr>
<th>22 years from 1983 to 2004</th>
<th>Total</th>
<th>% of conviction on tried cases</th>
<th>% on conviction on total registered cases</th>
<th>% of conviction in Maharashtra on tried cases.</th>
<th>% of conviction in India on tried cases.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Reg</td>
<td>Conv</td>
<td>Accq</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>150</td>
<td>24</td>
<td>57</td>
<td>29.63</td>
<td>16.00</td>
</tr>
</tbody>
</table>

N.B.: Year-wise crimes for 22 yrs. have been collected and mentioned earlier but here only last total col. is mentioned as above.

Researcher's Analysis: The special rule of evidence is provided by corresponding provision has been made in Indian Evidence Act by new section 114 A which provides for mandatory presumption as to absence of consent of prosecutrix in rape cases under sub-section (2) to 376 when she states so before the Court. However, the benefit of presumption in favour of prosecution is not available to cases of rape under sub-section (1) of 376 and (f) of Sub-section (2) to 376 i.e. rape on woman when she is under 12 years of age. Considering the new provisions by Amendment of 1983, bifurcating section 376 IPC into two sub heading viz Sub-section (1) and (2) of 376, the crime statistics of rape cases under sub-sections (1) and (2) to 376 IPC have been separately collected with the basic object of examining the effect of mandatory presumption in favour of prosecution under section 114 A in
Evidence Act as to absence of consent of prosecutrix if she states so before the Court.

From the period of 22 years from 1983 to 2004, 150 cases of gang rape and rape under special circumstances have been registered under section 376(2) IPC with conviction in 24 cases and acquittal in 57 cases from all five districts of North Maharashtra.

The conviction rate on total tried/disposed of cases by the Court is 29.63% whereas it is 16% on total registered cases. If the conviction rate u/s 376(2) IPC is compared with that of u/s 376(1) IPC, then it is as good as double of the conviction rate under section 376(1) IPC which could be due legal provision of mandatory presumption as to absence of consent of prosecutrix by virtue of new provision under section 114-A in Indian Evidence Act, by Amendment Act of 1983.

The conviction rate of rape under special circumstances u/s 376(2) IPC is certainly much more higher than the conviction rates in crime of i) Cruelty to woman under section 498-A IPC, ii) Abetment to commit suicide due to cruelty u/s 306 IPC r/w 498-A IPC, iii) Dowry death u/s 304 B IPC and iv) Rape u/s 376(1) IPC. The comparatively higher conviction rate u/s 376(2) IPC is indicative of positive result of new legal provisions of section 114 A In Indian Evidence Act which provides mandatory presumption as to absence of consent of the prosecutrix if she states so before the Court.

Though the conviction rate is much more higher than conviction rates in other crimes against woman, still it does not seem to be deterrent and effective for the prevention of such serious and heinous crime against woman as 84% culprits of gang rape and custodial rape are absolved from their criminal liabilities.

The conviction rate u/s 376(2) IPC has not been separately mentioned in “Crime in Maharashtra” publication hence the conviction rate in five districts of North Maharashtra could not be compared with conviction rate in Maharashtra as well as conviction rate in India as it is also not mentioned separately in “Crime in India” publication.
Comments: Except in the year 2002, the diagram does not indicate any abnormal increase or decrease in the crime u/s 376 (12) IPC. In the year 2002, 17 cases, the maximum number during the last 22 years have been reported. However, it indicates the gradual upward trend as it increased upto 14 in the year 2004 from 5 cases in the year 1984. Hence it is felt necessary to make the provisions of gang and custodial rape more deterrent in nature so as to prevent such heinous crime of gang rape against woman.
(C) The disposal of custodial / gang rape cases by the Court with conviction rate shown on Pie-diagram 376 (2) IPC

**Disposal of cases by the Court**
- Disposal 54%
- Pendency 46%

**Conviction Rate on total tried/disposed cases by the Court**
- Acquittal 70%
- Conviction 30%

**Conviction rate on total registered cases**
- Registered 86%
- Conviction 14%

It indicates:

i) Disposal of cases by the Court - 54%
ii) Pending cases - 46%
iii) Conviction rate on total tried cases by the Court - 14%
iv) Acquittal rate - 70%
v) Conviction Rate on total registered cases - 30%
D) Analysis of some cases of conviction and acquittal u/s 376 (1) IPC:

On conviction: Total 17 cases on conviction have been collected from all the five districts and their details have been mentioned in the statement of the concerned district. However, only the researcher’s comments / analysis are mentioned as follows:

Researcher’s Comments / Analysis: Out of 17 cases of gang rape, in only 6 cases (i.e. in 35% cases), the minimum mandatory punishment of 10 years imprisonment was awarded to the accused persons which indicates that in 65% of cases of gang-rape, the punishment less than minimum mandatory punishments were given by the Court, might be depending upon the seriousness of the particular case.

If we further analysis, then it is seen that out of remaining 11 cases, in 5 cases, the punishment of 7 years imprisonment was given which is the minimum mandatory punishment of rape u/s 376 (1) IPC, as per Amendment of 1986. It indicates that the accused in above 5 cases were punished for less-serious crime of rape u/s 376 (1) IPC.

However, in 6 remaining cases out of 17, (i.e. in 35% cases), less punishment than the minimum mandatory punishment of 7 years imprisonment in simple rape u/s 376 (1) IPC have been awarded to the accused persons (5 years imprisonment in 4 cases, 3 years in 1 case and only till raising of the Court in 1 case). As the punishment less than the minimum mandatory requirement of 7/10 years imprisonment were awarded, these cases should have been considered as proper and fit cases for appeal for enhancement of punishment but it has not been done so.

On acquittal: Total 18 cases have been collected on acquittal and their details including grounds of acquittal are mentioned in the statement of concerned district. However, only the comments / analysis of researchers have been mentioned as follows:

Researcher’s Comments: Out of 18, in 6 cases i.e. 30%, the complainants had turned hostile, resulting the cases into acquittal. In two cases, the
medical evidence was not supportive to persecution whereas in one case of Chalisgaon Police Station in Jalgaon Dist., the Investigating officer has not been examined in the Court.

E) **Researcher’s Analysis / finding on rape u/s 376 (1) & custodial/gang rape etc. u/s 376 (2) IPC through Primary data i.e. questionnaires:**

I. The majority of views to the extent of 77% (574 our of 742) indicate that the present provisions are sufficiently strong enough to deal with the crime of rape custodial and gang rape.

II. **On awareness of general public about these provisions:**

The majority views of 72% indicated that the general public are well aware of these provisions. However 28% (535 out of 742) replies indicate that the general public are not aware of these provisions.

III. **On the trial of rape cases by only woman judges:**

Though 54% (404 out of 742) replies have suggested the trial of rape cases by women judges, fairly large number of replies i.e. 46% have indicated that the trial of rape cases by woman judges only will not be advisable. Particularly the judges, Public Prosecutors and Lawyers have given more negative replies that trial of rape cases should not be made compulsory by woman judges.

**Suggestion from Researcher:** Considering the positive and negative replies, the researcher feels that it should not be made mandatory to try the cases of rape by women judges. However it is suggested that whenever it is possible then rape cases be tried by women judges as the victim will feel more comfortable in disclosing the facts of rape to women judges. But it should not be made as a statutory rule as the male judges are equally sensitized for women’s problems.

**Trial by fast-track Court:** The researcher further suggests that the rape cases be tried by fast-track court so that the disposal will be quick. This should be made as a statutory rule, which will help in ensuring justice to victim quickly.
IV. On suggestion for any changes in Indian Evidence Act:

It is transpired through majority of replies i.e. 51% that there is no need of any amendment in Evidence Act through 49% replies have indicated some changes in Evidence Act.

Suggestion from Researcher: The researcher supports the view of one Public Prosecutor that the evidence of Police should be believed i.e. the confessional statement made before Police Officer should be made admissible in the court as presently such statement made before the Police Officer is not admissible in court as evidence unless it leads to recovery under section 27 of Indian Evidence Act. The researcher suggests that the confessional statement made by the accused before the Police Officer of the rank of Deputy Superintendent of Police should be made admissible in court by way of amendment in Indian Evidence Act in cases of rape u/s 376 (1), custodial and gang rape u/s 376 (2), dowry death u/s 304 (B) and abetment to commit suicide u/s 306 r/w 498 (A) IPC as the chances of direct evidence are very less in such cases due to different nature of these crimes from other type of crimes.

V. On awarding compensation to victim of rape:

It is transpired through substantial majority i.e. 83% that the victim of rape should be awarded compensation from the State which will be recoverable from the property of accused:

The Researcher strongly supports the positive views of awarding compensation to the victim by the State, which is recoverable from the property of the accused. It is pertinent to mention here that the Hon'ble Apex Court and many High Courts have awarded compensation to the victim of rape from the accused though there are no any specific statutory provisions presently in the Act. Hence, the researcher further suggests that the legal provisions u/s 376 (1) and 376 (2) IPC be suitably amended, making it mandatory for awarding compensation to the victim of rape from the property of the accused.
VI. On ‘death penalty’ no accused on conviction in rape u/s 376 (1) IPC:

The majority views to the extend of 67% (501 out of 742) have suggested the ‘death penalty’ with maximum positive replies from women activists i.e. 74%

**Suggestion from Researcher:** The researcher does not support the view of ‘death penalty’. However, if it a rape with murder, then ‘death penalty’ shall be made as mandatory punishment considering such case as rarest of rare cases.

VII. On ‘death penalty’ to accused on conviction in rape on girl child below 10 years of age:

It is transpired that the majority of 68% (503 out of 742) have suggested the ‘death penalty’ to accused on conviction in rape on girl child below 10 years of age with maximum majority from legal experts (Public Prosecurots-95%; parctising Lawyers-79% & Judges-69%) and also substantial majority of 81% (218 out of 258) from woman activists.

**Suggestion from Researcher:** The researcher noticed during the present study that the girls of 5 to 7 years of age have been raped mercilessly by the accused of prudence age, and hence such rape should be treated as the rarest of the rare cases of rape. Hence the researcher feels that the ‘death penalty’ should be provided along with the imprisonment for life, and let the discretion be exercised by the trial Judge to decide the quantum of punishment including that of ‘death penalty’. Hence the researcher suggests the necessary amendment in section 376 IPC for incorporating the additional provisions of ‘death penalty’ alongwith present provision of imprisonment upto life in case of rape on girl below 10 yrs. of age.

VIII. On ‘death penalty’ in gang rape and custodial rape cases u/s 376 (2) IPC:

It is transpired through majority of 77% (571 out of 742 respondents) that ‘death penalty’ is suggested in gang rape and custodial rape cases u/s 376(2) particularly by the majority from Public Prosecutors-i.e. 89% (71 out of 80), Women Acticists-79% (204 out of
742), Advocates-74% (105 out of 142) and Judges-59% (17 out of 29) have suggested 'death penalty' in gang rape and custodial rape cases.

**Suggestion from Researcher:**

Considering the most seriousness of gang rape and custodial rape cases, the researcher supported that 'death penalty' should be included alongwith imprisonment of life and let is be decided by the trial judge to decide the punishment depending upon the test of rarest of rare cases.

It is pertinent to mention here that the Justice Malimath Committee has not recommended "death penalty" to accused of rape due to likely murder of victim by the accused after committing rape.
3. Other offenses of sexual intercourse u/s 376 B, 376 C & 376 D when sexual intercourse does not amount to rape u/s 376 (1) IPC:

i) Whether the above provisions are known to the respondents:

It is transpired that 83% (614 out of 742) of respondents are aware of these provisions. But 17% (128 out of 742) respondents are unaware of these provisions. It is further transpired that respondents from women activists to the extent of 25%, practising lawyers-20%, Public Prosecutors-12%, Police Officers-10% and Judges-7% are still not knowing about these provisions.

ii) On such cases, noticed by the respondents but without any cognizance:

It is transpired that 43% respondents have noticed such cases without any cognizance of such cases.

iii) On awareness of general public:

The combined replies from 60% respondents opined that the general public are aware of these provisions but 40% respondents feel that the general public are not aware of these provisions.

It was further transpired that many respondents have noticed such cases and they have mentioned the brief facts of such cases without mentioning the names of victims.

Researcher’s comments: The above cases indicated that such offences of sexual exploitation of women u/s 376(B), 376(C) & 376 (D) IPC do take place but no cognizance of such cases are taken might be due to two main reasons -i) the working and other women under custody or care are not aware of these legal provisions and ii) the victims of such cases do scare of defamation to themselves.

iv) Researcher’s comments / suggestions on the recommendation of National Commission for women (NCW)

The NCW has suggested to add new section 114 B in Evidence Act providing for mandatory presumption as to commission of sexual intercourse where the question is whether sexual intercourse had been committed and the victim-woman of alleged rape describes the act of sexual intercourse,
committed, the Court shall presume that the sexual intercourse has been committed.

The researcher feels that the above recommendation should be accepted which will certainly enhance the conviction rate and give justice to the victim of rape.

4. Soliciting views: whether trial of cases of marriage and sex related crimes against women be tried by women judges:

The combined positive replies i.e. 51% (381 out of 742) have suggested that such cases of atrocities against women should be tried by women judges with 49% negative replies having 100% negative replies from judges.

Suggestion from Researcher: Considering the positive (51%) and negative (49%) views, the researcher feels that all the cases of atrocities on women (all marriage and sex-related cases) are not required to be tried by women judges but as suggested by many persons from all the groups, the cases of rape u/s 376 (1) and custodial & gang rape u/s 376 (2) to the possible extent should be tried by women judges as the victim of rape will feel more comfortable and speaks more frankly before women judge rather male-judge but it should not be made as mandatory legal requirement.

Suggestion for trial by fast track court: The researcher feels that the cases of abetment to commit suicide u/s 306 r/w 498 (A) IPC (i) dowry death u/s 304 (B) IPC and (ii) rape cases u/s 376 (1) & (2) IPC should be tried by fast-track Court for speedy disposal.

5. Soliciting views on other relevant matters: on attitudinal changes by these provisions towards women:

Researcher’s Comments: findings through questionnaires:

The combined positive replies are 78% which indicate that these provisions could bring the changes in mental attitude toward women to treat them with respect and dignity with negative replies of 22% only. Considering the views / suggestions and crime trend in respect of various provisions particularly dealing with marriage and sex-related crimes, there is certainly positive changes in the attitude of every body towards the women, particularly after the amendment in 1983 and 1986 by making more stringent provisions for dealing with atrocities on women though the
objectives of these provisions have not been achieved to a satisfactory level in bringing the desirable changes in the attitude of male-dominated society to treat the women with respect and dignity.

6. Soliciting views on basic principles of our legal “Accusatorial System vis-a-vis Inquisitorial System.

A) Researcher’s Analysis / finding through questionnaires:

As there are many Police Officers and women activists who are not law graduate, both the systems have been explained in the question and their application in respective Countries and then solicited the views whether inquisitorial system should be adopted in India replacing accusatory system particularly in cases of custodial and gang rape u/s 376(2) IPC and dowry death u/s 304 B IPC, for making these provisions more deterrent in prevention of such crimes against women as in these two types of crimes, the chances of direct evidence and independent eye-witnesses are absolutely negligible.

It is transpired through majority of 79% replies that inquisitorial system is supported in respect of these two type of crimes. In particular, the persons from all groups i.e. women activists-87%; Public Prosecutors-84%; Police Officers- 77%; Practicing Lawyers-84% and Judges - 55% have supported the inquisitorial system in these two types of crimes.

Suggestion from Researcher: There are substantial majority views supporting the ‘inquisitorial system’ in place of existing ‘accusatory system’ particularly in respect of two types of crimes against women one is of ‘dowry death’ u/s 304 B IPC and second of ‘custodial & gang rape’ u/s 376 (2) IPC. In 1983, the stringent provisions for the severe punishment of custodial & gang rape u/s 376 (2) were made by Amendment in IPC with mandatory presumption by new section 114 (A) in Indian Evidence Act. The mandatory presumption u/s 114 (A) in Indian Evidence Act has certainly proved to be effective in raising the conviction rate in such rape cases but still has not achieved the punishment and deterrent objectives of the new amended section as the conviction rate is only 29.63% on tried cases.

In 1986, the provisions on ‘dowry death’ 304 (B) IPC has been added to IPC with mandatory presumption by new section 113 (B), added to Indian
Evidence Act with the object of severe punishment and prevention of 'dowry death' of young married women for non-fulfillment of dowry demands. It is transpired during the present study, that these new provisions of 'dowry death' with corresponding provisions of mandatory presumption in Indian Evidence Act could not achieve the punitive and deterrent objects of the Amendment of 1986 as the average conviction rate on tried cases is only 16% and only 4.8% in India. In 1983, a discretionary presumption by section 113(A) was added to Indian Evidence Act in cases if abetment to commit suicide still the average conviction rate on total tried cases by Court is only 8.93% from five districts, which was also further corroborated by average conviction rate of 8.76% in Maharashtra. The above conviction rate indicates that it could not achieve any positive results in bringing conviction to accused in cases of abetment to commit suicide.

B) Adversarial / accusatorial system and the views of Justice Malimath Committee:

The committee is not in favour of changing over to 'Inquisitorial System' but has suggested some measures which amounts to little deviation from present 'Adversarial System' for improving the present adversarial system by adopting some useful features of inquisitorial system, such as the Court's duty to search for 'truth'. The Committee has opined that "quest for truth" shall be guiding star of the Criminal Justice System. The Committee has further recommended the conferment in inherent powers on every Criminal Court which are not with lower judiciary but only with High Court. By the recommendation, the Court shall be empowered to summon and examine any person as a witness as per requirement and issue suitable instructions to investigating officers to assist the Court in finding truth.

The Committee has further suggested to empower the Court to question the accused during trial with the object of ascertaining the truth and draw the proper inferences including adverse inferences against the accused, if the accused refused to answer the questions, put to him by the Court.

i) On Standard of Proof:

As per fundamental principle of adversarial system the accused is presumed to be innocent and the guilt of the accused should be proved beyond reasonable doubt. The Committee has come to the conclusion that
this standard of proof places very unreasonable burden on the prosecution. In continental countries, the standard of proof is much lower namely "Preponderance of Probabilities". The committee has recommended that the standard of 'proof beyond reasonable' should be done away with and it be replaced by standard higher than 'preponderance of probabilities and lower than 'proof beyond reasonable doubt' namely "clear and convicting" standard of roof should be statutorily prescribed legally by proper amendment. The researcher feels that the conviction rate in custodial & gang rape cases u/s 376 (2) IPC armed with mandatory provision u/s 114 A Evidence Act and in "dowry death" cases u/s 304 B IPC, armed with mandatory presumption u/s 113 B Evidence Act is very low rather not sufficient to achieve the punitive and deterrent objects of law behind above provisions. It is pertinent to mention here that the substantial majority from respondents to questionnaires have supported the inquisitorial system in cases of 'dowry death' and custodial and gang rape cases. The researcher strongly feels that though the complete inquisitorial system is not advisable, but standard of proof should be that of "preponderance of probabilities" and should be much more less than present "standard of proof beyond reasonable doubt" which will certainly enhance the conviction rate and then only the punitive and deterrent object of Dowry death u/s 304 B IPC and Gang rape / custodial rape u/s 376 (2) IPC will be achieved as the chances of direct evidence and eye witness to support the prosecution case are remote which are the main reasons for poor conviction rate in such cases.

In case of dowry death u/s 304 B IPC, the researcher further feels that considering the facts, that dowry death occur as in-laws and husband's place, hence it should be made to cast the burden on the accused to explain the circumstances of the death and that should be in his statement being recorded by Police Officer and that statement should be made admissible in Court by amending Evidence Act and if the facts, mentioned in the initial statement are transpired subsequently to be false or Contradictory or Suspicious, the adverse inference should be drawn by the judge against the accused. If the above suggestion is accepted and necessary amendment is made in Evidence Act, coupled with mandatory presumption u/s 113 B in Evidence Act, Certainly the conviction rate will be much more improved and will help to achieve the punitive and deterrent objects of Law on dowry death.
ii) On compensation to victim: The Committee has recommended that a law should be enacted to provide reasonable compensation to the victim. The Committee has further recommended that the victim should be permitted to participate in the trial in Criminal cases involving serious offences punishable with imprisonment for 7 years and above. The researcher strongly feel that the above recommendation should be immediately accepted in cases of atrocities against women by proper amendment in the law besides many verdict to award compensation to the victim of rape.

iii) On more cases for summary trial:

Considering the long pending period for trial of less serious cases, it is recommended that all cases, punishable with imprisonment to 3 years and below should be summarily tried with power to magistrate to award punishment upto 3 years. The Committee has further recommended that every magistrate should have the power to try summarily. The researcher feels that the above recommendation should be followed in cases of ill-treatment to women u/s 498(A) IPC as such cases are pending in Court for years together.

iv) On witnesses Rights and obligation:

The Committee has recommended to provide normal courtesy and dignity to the witnesses by providing seating / resting arrangement to them toilet and drinking water facilities etc. to then including the revised reasonable travelling expenses and their prompt payment to the witnesses.

On obligation – The Committee has recommended a summary procedure for trial and enhancement of punishment. It is further recommended that before the evidence of witnesses is recorded the judge should caution the witnesses that it is the duty of the witnesses to tell the truth and if the Court finds that he is telling lie, then the Court has power to punish him.

Researcher feels that above recommendation should be accepted in all the cases of atrocities against women. During study it is transpired that many cases including Dowry Death and rape are acquitted due to hostile witnesses. Presently section 191 IPC provides for punishment for false evidence. Recently one star witness Zahira was punished for giving false evidence in famous case of Gujarat Godhra Riot. As per section 344 Cr.P.C., summary trial is provided in such cases. The cases are of giving false evidence u/s 191
IPC and fabricating false evidence u/s 192 IPC are non-cognizable bailable though non-compoundable.

**The researcher feels** that these cases should be made cognizable which will certainly prevent the witnesses turning hostile, particularly in all cases of atrocities against women as the conviction rate is very less in such cases due to hostile witnesses.

**v) On offences against women:** In cases of cruelty to women u/s 498 (A) IPC, the committee has recommended that the cases u/s 498 (A) IPC should be made bailable and compoundable as the offence u/s 498 is non-bailable and non-compoundable due to which amicable settlement is not possible. The researcher feels along with many respondents of questionnaires that the offence should be made compoundable and also should be brought under the perview of 'Lok-Adalat' for settlement. But **researcher strongly feels** that offence u/s 498 (A) IPC should not be made 'bailable' as the effect of offence of cruelty to women will be substantially reduced which will not achieve its deterrent object of law.

**vi) On- 'no death penalty for rape':** The Committee is not in favour of imposing death penalty in rape cases for its opinion that the rapists may kill the victim. Instead of death penalty, the Committee has recommended sentence for imprisonment for life without commutation or remission which will be higher than the punishment of imprisonment for life, presently prescribed under the Law.

The researcher feels that the above recommendation should be accepted in rape cases u/s 376 (1) IPC but not in cases of custodial and gang rape u/s 376 (2) IPC. The researcher besides many respondents' suggestions feel that the 'death penalty' shall be prescribed in custodial and gang rape cases u/s 376 (2) IPC and in rape on girl child below 10 years of age. This has been suggested by respondents to questionnaires by substantial majority which has been mentioned earlier while discussing crime under above legal provisions.

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