CHAPTER - IV

THE ROLE OF THE INDIAN JUDICIARY
–AN APRAISAL

4.1 INTRODUCTION:

"The Court should stand at the very top of the pyramid of all bodies that administer the law, so what is needed first and foremost to ensure this is that the Courts of law be genuinely independent of anyone, no matter who he be. No Court decision should be a hostage to the time, prompted by current political, economic or other motives." 1

Domestic violence towards woman is perhaps the most pervasive and commonest manifestation of violence in Indian marital life. Women are an integral part of Indian society but suffer from the violence in the family which doesn't seem to be substantially curbed by either education or awareness.

In fact, domestic violence is one of the few phenomena which seems to have cut across all the cultural, socio-economic, educational ethnic and religious barriers which usually divide the society and increase with a rise in woman's education and also prevails among the elite classes.

Now, it is 60 years since the Independence of our country, but the women are still being treated as commodity and as a result, more atrocities on women are on the rise.

In India, the crime graph of the atrocities on women has scaled an alarming pick. Cases of different kinds of domestic violence like dowry death, brideburning, cruelty etc. have become a daily affairs.

Recently, almost every six hours, some where in India, a young married woman is burnt alive, beaten to death or forced to commit suicide. The latest statistics of crimes against women in India reported by the Home Ministry’s National Crime Records Bureau are quite shocking.

According to crime report, published by National Crime Records Bureau, Ministry of Home affair, in the year 2005 there are 6,787 cases of dowry deaths and 58,319 cases of cruelty by husband and relatives. In India, every 102 minutes, there is a criminal offence of any sort including domestic violence.²

A recent study, reports that at least 45 percent of Indian women are slapped, kicked or beaten by the their husbands and 75 percent of battered women contemplate suicide. There is an annual increase of 28 percent (approx) in cases of domestic violence, while a large number of cases go unreported. Close to five crore women in India are suffering from violence in their homes and only 0.1 percent of them, ever pick up the courage to report the abuse.

Domestic violence is violence that occurs within the private sphere, generally between individuals who are related through intimacy, blood or law.

In other words Domestic violence is a violent victimization of women within the boundaries of family, usually by men or his family, to whom they are married or with whom they have marriage like relationship. Therefore, Domestic violence is a violation of the women’s human rights, women’s rights to physical integrity, liberty and her right to life itself. When states fail to take basic steps needed to protect women from domestic violence or allow these crimes to be committed with impunity, states are failing in their obligation to protect woman from torture.

In this context it is also noted that, woman who are victims of domestics violence are unable to leave abusive situations, due to several social and financial

factors. Often, women who are subjugated to domestic violence are totally dependant on their husbands and have no places to go. There is a woeful dearth of institutions, which can provide temporary shelters for battered women in different parts of India. Even familial support is lacking. Parents feel that they have done their duty by getting their daughter married and she should adjust in the family and tolerate. Even if a women is economically independent, factors like custody of children prevent her from leaving her violent husband. Thus, domestic violence must be seen as a social problem and not a personal, private affair. In India, many women are at risk of further violence or even being killed by their partners, when they attempt to leave the abusive relationships.

Therefore, incidents of domestic violence often go unreported, because the women are reluctant to bring any complaint against members of her own family. She would rather suffer the continuous abuse (be it physical, mental, economic or sexual) at home than face social rejection and risk of separation from her children. Most women do not have the courage to complain against such violence because it would make her an outsider within her marital family. All these aforesaid circumstances, pointout that the issue of domestic violence is different from other general forms of violence and needs to be treated so, because women are, as a group, placed in a weaker position.

India has an independent judiciary with strong constitutional safeguards. It has a single, integrated, hierarchical all-India judicial system. At the apex of the entire judicial system exists the Supreme Court of India, below which are the High Courts in each state or group of states. Below the High Courts lie a hierarchy of Subordinate Courts i.e. District Courts, Panchayat Courts etc.

On the 28th of January, 1950, two days after India became a sovereign Democratic Republic, the Supreme Court of India was inaugurated.
The Supreme Court of India is the ultimate interpreter of the constitution and laws of the union, states and the local authorities and the protectors of the Fundamental Rights guaranteed by the constitution. Thus the Supreme Court is the guardian of the constitution. The law, declared by the Supreme Court is binding on all the Courts within the territory of India. For doing “Complete Justice,” it is authorized to pass appropriate decrees and orders in any case before it, such orders are enforceable throughout the country and it can order any one to appear before it or call for any document. It is empowered to invalidate the laws made by even the parliament, the highest legislative authority. It can issue writs or orders to any administrative authority, in any part of India, for preventing any infringement of the Fundamental Rights. The Supreme Court of India has writ jurisdiction (Art 32), original jurisdiction (Art 131), Appellate jurisdiction (Art 132), Extraordinary Jurisdiction (Art 136), Advisory jurisdiction (Art 143) and Review power (Art 137).

Every High Court is a Court of records, which has all the powers of such a Court, including the power to punish for contempt of itself. Neither the Supreme Court nor the Legislature can deprive the High Court of its power of punishing a contempt of itself. The constitution of India brought the High Courts directly under the Supreme Court, as parts of a single integrated hierarchical Judicial system. However, the Constitution does not vest in the Supreme Court any direct administrative control over the High Courts affecting their functioning as independent judicial institutions.

Subordinate Courts deal with all disputes of civil or criminal natures as per the powers conferred on them. In every state, there is a system of Subordinate Courts below the High Court. The constitution secures the independence of subordinate Judiciary from executive under article 233. Each state is divided into judicial districts presided over by a district and sessions judge, who is the highest judicial authority in a district. Below him there are Courts of civil jurisdiction, known in different states as munsifs,
sub-judges, civil judge and the like. Similarly, criminal judiciary comprises sessions judge, additional sessions judge, assistant sessions judge, chief judicial magistrates, judicial magistrate of first and second class, executive magistrate etc.

In this context it is also noted that, the last 31 years (1976-2007) of Indian legal history have witnessed a growth of new jurisprudence “Jurisprudence of Masses”. There has emerged a co-operative and collaborative effort to bring to light, the common causes and sufferings of the Indian masses, who are poor, illiterate and unable to seek judicial remedies for their maladies. This new phenomenon is known as “Public Interest Litigation” (PIL). Public Interest Litigation is considered to be a new juristic horizon, and important step in widening the scope of the administration of Justice. PIL is an essential rule of judicial activism. 3

The strict rule of locus standi i.e. a person aggrieved only can initiate the action, is relaxed in case of PIL. It is a process of epistolary jurisdiction of the Supreme Court. The Court has entertained the complaints under Article 32 & 226 made through letter addressed to it by public spirited individual or voluntary organisations of the violation of the rights of disadvantaged, dispossessed and deprived person or group of persons who because of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief.

Today domestic violence tragedies are becoming too frequent in India. With a view to prevent women from domestic violence, the Courts in respect of women accepted letters as petitions. The Supreme Court framed certain guidelines which are to be followed by the High Courts for entertaining the letters and petitions as the Public Interest Litigation.

3. “Judicial Activism” is the term used for the unconventional roll played by the Court when it gives value judgements and grants relief of the aggrieved person or persons according to its moral and social sense of justice in a situation where statutory laws is silent or even contrary. It has also been defined by some jurists as “non interpretive Judicial Review.” It is also called “Judicial law making” – from Judicial Activism and Social Change – Dr. K.L. Bhatia, Deep & Deep Publication, New Delhi, page- 242
These guidelines are mentioned below:-

1. No petition which involves the personal or individual matter shall be entertained as Public Interest Litigation matter except as indicate here after.

2. The letters or petitions against atrocities on women in particular (a) harassment of bride or cruelty (b) bride burning (c) rape (d) murder (e) kidnapping etc. will ordinarily be entertained as Public Interest Litigation.

In Joint Women Programme vs State of Rajasthan & Others, the Hon’ble Supreme Court stated that “it is true that grave damages may inherit where a mere letter is entertained as a petition from a person whose status is unknown, as no sense of responsibility can be attributed to such communication. It is, therefore submitted that except in special circumstances, the document petitioning the Court for relief should be supported by satisfactory verification. It is however, submitted that, the above mentioned rule, shall not be applied in the case of women applicants. In India, women are generally poor, illiterate and having no resources to contact the police. Therefore, whenever an application from a woman, though having several defects and without verification is received by Courts, it shall be entertained by them.”

In India every human being is born free, but the women’s freedom has always been neglected in the name of custom, honour, family welfare and social prestige. After independence, the government of India, sought by legislation, other means to change bad or wrong social practice and to uplift the condition of the womanhood. Our judiciary has granted equal rights of women with men. It has been playing the role of a catalyst in protecting the human rights of women.

Generally the human rights of women include the right to equality before law, the right against gender discrimination, the right against harassment, right to abortion,

5. AIR 1987 SC 2060.
right to privacy and the right to economic empowerment. Recently the right against
domestic violence has also gained recognition as a human right.

The Indian judiciary did not lag behind in protecting right against domestic
violence as a human right of women and came forward with an aim to mitigate or
eradicate domestic violence by different valuable judgments and generate public
awareness against such social evil.

In this context it can be noted that prior to 1983, there were no specific
provisions pertaining to violence inside the home. Husband could be convicted under
the general provisions of murder, abetment to suicide, causing hurt and unlawful
confinement etc. But these general provisions of criminal law did not take into account
the specific situation of a woman facing violence within the home as against the assault
by a stranger. The offence committed within the privacy of the home by a person on
whom the woman is emotionally dependant, needs to be dealt with on a different plane.
It was extremely difficult for women to prove violence by husbands and in-laws
"beyond reasonable doubt" as required by criminal jurisprudence. There would be no
witness to corroborate their evidence as the offences are committed behind closed
doors. Not only that, if the beating did not result in grievous hurt, as stipulated by the
I.P.C, the routine and persistent beatings would cause grave injury and mental trauma
to the woman and her children. So, different criteria had to be evolved to measure those
injuries. Therefore, all the existing laws and statutory provisions which are state
empowering rather than people empowering need to be addressed.

Usually, complaints can be registered only after an offence has been committed.
But in a domestic situation a woman would need protection even before the crime has
occurred, when she apprehends danger to her life, as she is living with and is dependant
on her assaulter. Unfortunately it has been noticed that the victim woman seldom takes
shelter of the provisions of I.P.C against her husband, even for assaulting her. The
police, being as much a part of the value system which condones wife beating, will not register a complaint against a husband for assaulting the wife, even when it has resulted in serious injuries under sections 323, 324 of I.P.C. It is generally assumed that a husband has a right to beat his wife. Not only that instead of registering her complaint, the police would counsel her about her role in the house, that she must please her husband and obey him. She is sent back without even registering a complaint. So a special law was needed to protect a woman in her own home.

After 1983 the criminal procedure code, 1973 were amended twice, first in 1983 and then in 1986 to create special categories of offences to deal with domestic violence. In 1983 section 498A was added to the Indian Penal Code, making cruelty to a wife by the husband or relatives, an offence. Section 304B was added in 1986 to make dowry death, an offence.

Section 304B I.P.C provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise, than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called “dowry death” and such husband or relatives shall be deemed to have caused her death and shall be punished with imprisonment for minimum of seven years but which may extend to life imprisonment.

Sometimes life for a woman in the family of the husband is so intolerable and so miserable, that it drags the woman towards suicide and it is in such cases, the section 498A I.P.C, comes into play. Section 498A was intended to prevent women from dying a dowry death, its object was to give women a legal tool, to deal with cruelty both mental and physical, while they are still alive. Therefore, section 498A addresses the woman at the point when she is still alive and section 304B after she is dead. There
is a narrow gap between section 498A and section 304B i.e. between staying alive and being dead.

The 1983 (Criminal Law Amendment) Act also inserted section 113A in the Indian Evidence Act, 1872 which raises presumption as to abetment of suicide by a married woman. It lays down that when the question is whether commission of suicide by a woman had been abetted by her husband or any relative of her husband, and it is shown that she had committed suicide within a period of seven years of marriage from the date of her marriage, that her husband and such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Further, Section 113B was inserted into the Indian Evidence Act, which makes the presumption of dowry death mandatory, once it is shown that the accused had subjected the deceased woman to cruelty or harassment for or in connection with any demand for dowry. This section is perhaps the most important aspect of section 304B of the I.P.C because it concludes murder if and when the conditions of cruelty against the woman have been sufficiently proved. Another corresponding amendment in the Cr.P.C in the first schedule made the offence under section 304B cognizable and non-bailable.

It is also mentioned that section 174(3) of Cr.P.C 1973 as amended in 1983 makes a “postmortem” mandatory in a number of cases of suicide when :-

i) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person has committed an offence in relation to such woman, or

ii) the case involves the suicide by a woman within seven years of her marriage or
iii) the case relates to the death of a woman within seven years of her marriage and any relations of the woman has requested for postmortem, or
iv) there is a doubt regarding the cause of death, or
(v) the police officer for any other reason considers it expedient to do so.

Section 176 of the Cr.P.C as amended in 1983 makes inquiry by a Magistrate mandatory, if the cause of death falls under section 174(3) (i) and 174(3) (ii) of the Cr.P.C.

Today, domestic violence against women are treated as criminal offence in India. In criminal offence it is the state which is the prosecuting body. Hence it is extremely important to safeguard the right of an individual accused, against the state machinery during a criminal trial. So strict procedures of investigation have to be followed and the rules of evidence have to be strictly adhered to by the Indian judiciary. The three major Acts which governs criminal trials are (i) the Indian Penal Code, 1860 (I.P.C) which lays down categories of offences and stipulates punishment, (ii) the Criminal Procedure Code, 1973 (Cr.P.C) which lays down procedural rules for investigation and trial and (iii) the Indian Evidence Act, 1872 which prescribes the rules of evidence to be followed during a trial. In domestic violence cases like dowry death, bride burning etc. usually the accused are convicted under Sec. 302 / 304B /306 /34 / 498A I.P.C etc and F.I.R, inquest report and postmortom report are three essential piece of evidence in these cases. But unfortunately, it has been noticed that often the investigation done by the state machinery, is so casual, negligent and defective, that allows the criminals of domestic violence to get away with their offence easily. The police generally try to patch up the whole case and are reluctant to register an F.I.R. The attitude is that family matters, which are private and should not be 'blown up'. In many domestic violence cases, unnatural deaths are written off as natural deaths, when the perpetrator/husband belong to the upper middle classes and can use their wealth and
influence to change various reports. Usually many unnatural death cases due to
domestic violence, have been registered as suicide, due to stomach pain, evil spirits or
as kitchen accidents and stove bursts, because, in this way, the strong arm of law cannot
touch the in-laws and the husband of the innocent victim woman and they escape easily.
In many domestic violence like bride burning, dowry death cases, the police waste time
on trivial details, and do not respond quickly and sensitively, which creates a mental
pressure upon the family of the victim woman. In cruelty and wife beating cases, the
role of the police is very crucial, but in reality there is a complete lack of interest in
the police force to follow up these cases seriously. Valuable informations are lost at the
initial stages, for the carelessness of the police and thus conviction becomes very
difficult. It is also noted that the women are beaten by their husbands in the husband’s
house and those incidents occur mostly at night so it is very difficult for those victim
wives to report the matter immediately to the local police station, though in these
cruelty and wife beating cases “prove the offence beyond reasonable doubt” is
necessary in criminal jurisprudence. Therefore, often it is impossible for the victim
women to prove the offence against their husbands and in-laws. It is also added that,
the most common form of domestic violence, the wife beating takes place behind
closed doors and considered as a private matter so the police are reluctant to intervene.
In India, women from all sections of society, all income groups, educational levels and
socio-economic strata get beaten. We people generally hear more about lower class
women getting battered because they have less privacy. They live in small houses or
often have a shared accommodation whereas rich people have more privacy, they are
conscious and use other means to suppress the information. They play loud music to
drown the shrieks of pain of the bettered wife and if the wife is hurt badly, they can
always get her treated by a private physician and tell that the injuries are the result of
some other mishap.
FIRST INFORMATION REPORT (F.I.R) :

In Domestic violence cases the First Information Report (F.I.R) plays a very determining role in the entire process of prosecution. But the fact is that most F.I.R’s are tailor made, the tailors here being the police. 70% of the recorded deaths due to Domestic Violence have been registered as accidents. In most cases, the common story is the saris or clothes of the young daughter-in-law catch fire in the time of boiling milk or cooking. In complaints of burns due to stove burst, no burst stove is ever seized and in some case, there is no stove to seize. In case of hanging and poisoning, the police reports this death as suicide. However, the fact that hanging can be made to camouflage murder. Women are either throttled or beaten to death and then hanged to make it appear as a suicide. In such cases, it is not uncommon for the husband and in-laws to take down the deceased women even before the arrival of the police with the excuse of rushing her to the hospital. Many times significant and valuable evidence like burnt pieces of cloth, diary, letters, little notes, stoves, weapons etc are destroyed either deliberately or out of sheer carelessness. In cases of dowry deaths the investigative officer often express no concern or care for collecting and preserving the crucial pieces of circumstantial or documentary evidences and the process of investigation is very slow. It sometimes takes a week or a fortnight and in some cases even a month since the incident has occurred. This delay in time, provides all the accused enough time to threaten, and intimidate the girls side, to go into hiding, to tamper and destroy evidences and even to secure anticipatory bail. So for this kind of incomplete FIR the accused persons easily conceal their crimes and escape from their punishments. Often the judiciary for this type of incomplete FIR dismiss the domestic violence cases like dowry death, bride burning etc without giving proper justice to the victim and their family and direct further proper inquiry which only delay the cases. This prolonged
delay for several years also helps the accused to get bail easily.6

INQUEST REPORT:

In domestic violence cases another important piece of evidence is the inquest report. The report of a police officer under section 174 of Cr.P.C 1973 is popularly known as the inquest report. This report is made by the investigating officer just to indicate the injuries which he has found on the bodies of the deceased person. It may be witnessed by one or two persons, but it is not necessary for the investigating officer to record the statements of such witnesses or to get such statements signed by them. The absence of inquest report is indicative of the fact that the prosecution story was still in an embryo state, it is essential for the prosecution and lends credence to the prosecution case.

The inquest report ascertain whether a person had died under suspicious circumstances or an unnatural death and, if so, what is the apparent cause of death? The inquest report is a document of vital importance as it gives an earlier version of the occurrence and has to be prepared promptly, because it has to be sent to the doctors along with the dead body when it is sent for postmortem examination.

Inquest is to be held at the spot where the victim wife has died in unnatural circumstances due to domestic violence by her husband and in-laws and after holding inquest the dead body shall have to be sent to the doctor for holding postmortem examination. The police has, however, a discretion not to send the body for postmortem examination only when there may be no doubt about the cause of death and its discretion has to be exercised by the police officer, prudently and honestly. When the first information report has been written after the inquest report, the first information

   b) On code of Criminal Procedure - B. B. Mitra, Venus Book Distributors, Calcutta, page- 444 to 460
report loses all authenticity. Statement made by the investigating officer in the inquest report is not a statement made by a witness during the investigation but it is a record of what the officer himself had observed and found.

The investigating officer is required to gather the statements of the bride's parents, as to marriage details, history of harassment as well as conduct a physical examination of the body—a very crucial source of evidence for pre-mortem violence. However, most I.Os are reluctant to examine the body of the deceased closely for marks of torture, partly due to our socialization that makes it awkward for a man to scrutinise the body of a woman without feeling uneasy. In domestic violence cases, often the family of the deceased is summoned to the I.O for recording their statements. Sometimes parents, who are in a terrible state of shock, at the sudden loss of their daughter, do suffer memory lapses and therefore, may be unable to respond coherently. In such cases, opportunity should be created for a further recording of details, and the sequence of events, after the rituals connected with the last rites are over. In some cases the parents of the bride are aware of the harassment but are totally in dark as to the nature of harassment or cruelty, that their daughter has been subjected to. Therefore, when the I.O asks the shocked parents at the inquest, if they suspect foul play or if they have reason to doubt the veracity of the death, they reply in the negative.7

POSTMORTEM REPORT:

The postmortem report is a very critical element in the prosecution of a case. The postmortem is obligatory in all the cases of unnatural deaths of married women within 7 years of marriage, as the report is supposed to provide clinching evidence of the true circumstances of the death. However, in reality, the postmortem report doesn't reflect this expectation or requirement.

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7. On code of Criminal Procedure - B. B. Mitra, Venus Book Distributors, Calcutta, page-566 to 570
Most postmortem reports are written up in the most callous ways with no regard to specify the details. As soon as the police report a case of hanging or burning, the medical mind is already set – it is a case of suicide. Most postmortem reports, reflect a routine conclusion “death due to shock or death due to asphyxia”. They even fail to describe, the nature of wounds and scars, found on the deceased women. There is no attempt to go further or dig deeper into the investigation whether the women have been throttled and then hanged or burnt. Where women have been throttled and then immediately set on fire, the postmortem report must state whether the traces of soot or carbon were present, either in the oesophagus trachea region or in the lungs. This will confirm if the deceased was alive at the time of burning. If they are absent, then it will indicate that at the time of burning she was not breathing, which means that she was already dead by the time she was burnt. Such kinds of findings, if stated in the postmortem reports, together with circumstantial evidence, would facilitate in getting a conviction. But in reality, in many cases the accused conniving with doctors, to have the postmortem reports tailored in ways, that do not indict them and through this foul play many deaths due to domestic violence are treated as suicidal death or accidental and the accused and his family easily escape from severe punishment.

So, many women, who have suffered domestic violence, feel that, despite the existence of different laws i.e. Dowry Prohibition Act 1961, section 498A, section 304B, section 306, section 302 of I.P.C, The Protection from Domestic Violence Act 2005, section 113A, section 113B of The Indian Evidence Act, section 174, section 176 of Cr.P.C etc, most victims fail to receive appropriate relief, because in most cases, even when, the circumstantial evidence clearly indicates that the wife was killed due to domestic violence, the police seem to go out of their way to establish her death, as a case of suicide or accidental death. There are also widespread allegations that the police often collaborate with the murderers in producing false postmortem and forensic
reports, even destroying circumstantial evidence, so that the accused can easily secure acquittal. As a result of these incomplete evidences, the cases are dismissed and the accused husbands and in-laws are getting away after torturing and even murder, because the women and their families cannot "prove beyond reasonable doubt" that the women are victims of domestic violence.

Investigation of dowry death cases has special links with the science of forensic medicine because of the special nature of the investigation. Deaths due to domestic violence are figuratively called bedroom deaths. In most cases, no outsider including the investigating officer can have any knowledge about the circumstances and events that led to the death. The offenders being the custodians of the dead body and the facts which actually happen many hours before till they volunteer to make its occurrence known, after the death and thus have all the time to eliminate or tamper with any sort of clues. In these circumstances the investigating officer is completely at the mercy of medical experts to interpret the cause of death. Often the mode of death noticed, be it asphyxia, drowning or burning, may prove to be post mortal, ipsofacto, suggesting homicide in place of suicide.

Only forensic medicine can provide decisive proof to the investigating officer. Therefore the success of the investigating officer in investigating dowry death cases largely depends upon forensic medicine experts. As for example, in a poisoning case, the investigating officer may overlook the importance of recording the time when the deceased ate last? How many hours there after, the first symptoms of poisoning were noticed? What were those symptoms and how many hours there after death occurred? Thus, the interaction between the investigating officer and forensic medicine experts is crucial to give the investigation a direction and if the investigating officer adequately employs his common sense and intelligence during the preliminary stage of investigation, while examining the dead body and the scene and collects all
incriminating clues and evidences without restricting himself to the apparent cause of death, no criminals can escape from punishment, also they cannot fool and deflect the Judiciary from pronouncing the right Judgment for this type of heinous crime.8

MARITAL RAPE:

In this context it is also mentioned that, Marital Rape is one kind of domestic violence. Today, in India, women are also raped by her husband’s relatives like father-in-law, brother-in-law etc. According to the Supreme Court, rape is not only a crime against the entire society, it destroys the entire psychology of a woman and pushes her into deep emotional crisis. Marital rape is the most common and repugnant form of masochism in Indian society. It is hidden behind the iron curtain of marriage. Social practices and legal codes in India mutually enforce the denial of woman’s sexual agency and bodily integrity, which lie at the heart of women’s human rights. Rape is rape. Be it a stranger rape, date rape or marital rape. The law does not treat marital rape as a crime. Even if it does, the issue of penalty remains lost in a cloud of legal uncertainty. The legal system must be forced to accept rape within marriage as a crime.

When one mentions the word ‘rape’, the tendency is to think of someone who is a stranger, an evil, malicious person. No one ever thinks of rape in the context of marriage. Women themselves find it difficult to believe that a husband can rape his wife. After all, how can a man be accused of rape, if he is only availing of his conjugal rights?

Despite the unwillingness to recognise marital rape as a crime, the fact remains that marital rape is prevalent throughout the society. Women’s bodies are outraged, regardless of their educational qualifications, class or status. Women themselves don’t make a noise about it or talk about their experience. This is because cultures worldwide

discourage the women from openly discussing sexual matters, let alone within marriage. Most women don't even think of rape by their husbands, as marital rape. The prevalent viewpoint is that when a women marries, she is willing to fulfill her husband's conjugal rights. Once she has made commitment, she cannot be backout of it. Since sexual relations are part of the marriage setup, a woman cannot refuse to have sex with her husband. By the same token, a husband cannot be said to have raped his wife. Though the historical myth that rape by one's partner is a relatively insignificant event causing little trauma, but research indicates, that marital rape often has severe and long-lasting consequences for women. The physical effects of marital rape may include injuries to private organs, lacerations, soreness, bruising torn muscles, fatigue and vomiting. Women who have been battered and raped by their husbands, may suffer other physical consequences including broken bones, black eyes, bloody noses, knife wounds etc which occur during the sexual violence. Specific gynecological consequences of marital rape include miscarriages, stillbirths, bladder infections, infertility and the potential contraction of sexually transmitted diseases, including HIV. Women who are raped by their partners, are likely to suffer severe psychological consequences as well. Some of the short term effects of marital rape include anxiety, shock, intense fear, depression, suicidal notion and post traumatic stress. Long-term effects often include disordered eating, sleep problems, depression, problems in establishing trusting relationships, an increased negative feelings about themselves. Psychological effects are likely to be long lasting. So marital rape survivors report flashbacks, sexual dysfunction and emotional pain for years after the violence. Indian rape legislation (Sec. 375 I.P.C) specifically exempts marital rape. This allows husbands to have complete sexual control over their wives, indirect contravention to Human

rights regulations. Only those married women who are separated from their husbands are covered by the rape legislation. The law simply echoes the social belief, that women have no right to their own bodies, their desires are subject to those of their husbands.

A faint hope was raised by the Law Commission in its 42nd report. This report advocated the inclusion of sexual intercourse by a man with his minor wife as an offence. But a joint committee reviewing the proposal dismissed it.

Recently, in Writ Petition (Cr) No. 33 of 1997, the petitioner “Sakshi”, an NGO interested in the issues concerning woman, approached the Supreme Court of India for directions concerning the definition of section 375 of I.P.C. The Supreme Court by its order dated 13th January 1998, directed the Law Commission to indicate its response with respect to the issues, raised in the aforesaid writ petition. Then the Law Commission in it’s 172nd Report on “Review of Rape Laws” recommended changes for widening the scope of the offence in section 375 I.P.C and to make it gender neutral.

In this report, it is also recommended that “Marital Rape” should be made a crime in Indian Criminal laws. Forced sexual intercourse by a husband with his wife should equally be treated as an offence, just as any physical violence by a husband against the wife is treated as an offence and shall be punished with either description for a term which may extend to two years or with fine or with both. The Law Commission in its 172nd report, recognised Marital rape as one kind of Domestic Violence.

In India there are different kinds of domestic violence like wife beating or use of violence including hitting, punching, slapping, kicking, shoving, choking etc, Forced abortion, Forced prostitution, Forced Sati, cruelty, female foeticide, bigamy, marital rape, dowry death, bride burning etc.

But generally, women or their close relatives have accessed the judicial system,
mostly to seek relief in form of divorce, judicial separation, maintenance etc. The criminal justice system has been mostly used in relation to dowry death, bride burning etc related offences. There have hardly been any cases registered for hurt, grievous hurt, wife beating etc. What the women usually want is relief from their sufferings. It is only in dowry deaths, murders, bride burning etc related offences, that an attempt is made to bring the accused husbands and in-laws to police custody.

In different kinds of domestic violence cases the Indian judiciary is playing a dynamic role in expounding the law and clarifying the legal norms so that culprits do not escape punishment on account of technicalities and inadequacies of law.

The Indian judiciary usually deals with domestic violence cases like cruelty, bride burning, dowry death, bigamy, murder etc. Often in India the victim women of domestic violence offences are seeking divorce, judicial separation, maintenance from husband, custody of children etc. from the court for getting redressal from their accused husbands and relatives of their husbands who tortured them mentally and physically. There has been a plethora of judicial pronouncement on domestic violence cases ever since the enactment of Dowry Prohibition Act 1961.

The attitude of the judiciary at the apex level has been in favour of women, the crux of which can be condensed to Justice Mohan's judgment in Paniben vs State of Gujrat\textsuperscript{10} – “Everytime a case relating to dowry death comes up, it causes ripples in the pool of the conscience of this Court. Nothing could be more barbarous, nothing could be more heinous than this sort of crime. The root cause for killing a young bride or daughter-in-law is avarice and greed....”

Today judges try to step in the shoes of the deceased wife while trying cases of domestic violence and keep the compulsion of women in mind. They make full use of path breaking precedent cases decided by the apex Court and decide the cases with an open mind.

\textsuperscript{10} 1992 CrLJ p-2919
4.2 IMPORTANT SUPREME COURT CASES RELATING TO DOMESTIC VIOLENCE:

Some important cases relating to domestic violence by which the Indian Judiciary tried to eradicate this heinous and deep rooted crime from the society are stated below:

**Bhagwant Singh vs Commissioner of Police, Delhi**

In this instant case Gurinder Kaur, daughter of Shri Bhagwant Singh died in suspicious circumstances in her husband Amarjit Singh’s home. At the time of marriage, no dowry was taken by Amarjit Singh’s family. After a few months from marriage, Gurinder became the victim of constant ill-treatments by her mother-in-law for dowry. Ultimately Gurinder Kaur aged 22 years was found dead of third degree 100% burns from a kerosene fire in the bathroom of her matrimonial home.

The commissioner of Police Delhi states that Gurinder Kaur was admitted in the hospital with 100% burn injury by her father-in-law Shri Kartar Singh Sawhney and died without making any statement regarding the occurrence. After that the police started investigation and from the investigation they inferred that it was a case of suicide. The father of the deceased had vigorously contended that the investigating agency in this case did not carryout its statutory duties in a bonafide manner and deliberately withheld the filing of a police report and resorted to delaying the progress of the investigation, in order to ensure that no proceedings were taken against the accused in the case.

In this case the Hon’ble Supreme Court observed that—"it is invariably a matter of considerable difficulty to ascertain the precise circumstances in which the incident occurred. As the incident takes place in the home of the husband, the material witness

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are usually the husband and his parents or other relations of husband staying with him. Whether it was cooking at the kitchen stove, which is responsible for the accident or according to the inmates of the house, there was an inexplicable urge to suicide or whether indeed the young wife was the victim of a planned murder, are matters, closely involving the intimate knowledge of a woman’s daily existence”.

According to Hon’ble Justice Pathak of Supreme Court, it is stated that – “It is impossible to escape the conclusion that, in a case such as this, the death of a young wife must be attributed either to the commission of a crime or to the fact that mentally tortured by the suffocating circumstances surrounding her, she committed suicide. Young women of education, intelligence and character do not set fire to themselves to welcome the embrace of death unless provoked and compelled to that as a desperate step by the intolerance of their misery. It is pertinent to note that such cases are evidences of a deepseated malady in our social order. The greed for dowry, and indeed the dowry system as an institution, calls for the severest condemnation”.

In this instant case Hon’ble Justice Pathak found some discrepancy in the investigation and ordered that “The investigation of the case was transferred from the police administration of Delhi to the central Bureau of Investigation at the instance”.

State (Delhi Administration) vs Laxman Kumar and Indian Federation of women Lawyers vs Shakuntala. 12

It is a case of bride burning where kerosin had been sprinkled on the body of Sudha with the view to kill her and fire was set to her clothes by her husband Laxman Kumar, brother-in-law Subhas Chandra and mother-in-law Shakuntala. There is no eye witness to testify the act of setting fire to Sudha, which is the prosecution case and the defence case is that the saree of Sudha catching fire accidentally.

In this case the trial Court had found the accused persons guilty and awarded them extreme penalty but the High Court had acquitted all the accused persons.

The S.C relied on the evidence of the witnesses, who had not only rushed to the spot but took a leading part in putting out the fire from the bride’s person and ensured her despatch for medical assistance at the shortest interval and as expected of good neighbours, informed the police, called a taxi and extended help and sympathy to the victim. They could not be said to have an animosity towards the accused. The defence version was that the brother-in-law had come at 9 pm and Sudha went to heat food for him, it was in between that the child cried for milk and mother-in-law asked Sudha to first heat the milk. She went to light the stove which was kept in the open and her saree caught fire. There was no explanation why she went to light the stove when the gas was available and why it was not used? The deceased was in an advanced stage of pregnancy. Why did she go in the open without any warm clothes and squatted on the ground only in a nylon saree? The defence explanation of an accident and the saree catching fire was rejected by the Supreme Court as unbelievable on the basis of circumstantial evidence. The relationship of the deceased with the in-laws was strained, she was subjected to physical and mental torture without any consideration being shown for her delicate health. The Court observed that it was not a case of death by stove-burst, it was a cold blooded murder.

It was also added by the S.C that – Infact, when Laxman Kumar the husband of the victim Sudha was available on the place of occurrence, without whose active association Shakuntala, the mother-in-law could not have managed the event all by herself, so both Shakuntala and Laxman Kumar were responsible for the killing of Sudha by setting her on fire. They had therefore committed the offence of murder and were liable to be convicted for the offence punishable under section 302 of the I.P.C.

Therefore, Hon’ble Justice Ranganath Misra of S.C directed that the two accused Smt. Shakuntala and Laxman Kumar should be sentenced to imprisonment for life, but the appeal against Subhas Chandra was dismissed on evidence of doubt and his acquittal by H.C was upheld.
Samunder Singh vs State of Rajasthan

It is a bride burning case. In this case Hon’ble Justice Thakkar of S.C said that "In dowry deaths, the High Court should not grant anticipatory bail in disregard of the magnitude and seriousness of the matter. The matter regarding the unnatural death of the daughter-in-law at the house of her father-in-law was still under investigation and the appropriate course to adopt was to allow the concerned Magistrate to deal with the same on the basis of the material before the Court at the point of time of their arrest in case they were arrested. It was neither prudent nor proper for the High Court to have granted anticipatory bail which order was very likely to occasion prejudice by its very nature and timing."

The Hon’ble Supreme Court therefore consider this essential to sound a serious note of caution for future. The High Court is under no compulsion to exercise its jurisdiction to grant anticipatory bail in a matter of this nature.

Joint women’s programme vs State of Rajasthan

In this case Supreme Court was informed about two dowry deaths and slackness in investigation there of and directed the State of Rajasthan and State of Haryana that in dowry death cases investigation shall be conducted, by an officer not below the rank of Superintendent of Police. In case, it has so far been conducted by an officer lower in rank to him, the Superintendent of police will also give a fresh look to the whole matter and proceed further with the investigation without being inhibited by the view taken by the subordinate officers earlier, if circumstances so demand.

The Hon’ble Supreme Court also by way of interim order directed the State of Rajasthan and Haryana to create “Special Dowry Cell” at the State level to investigative into the dowry deaths through specialised investigative Units. The Court also directed that two social workers who are interested in women welfare may be included in the dowry cells.

13. AIR 1987 SC 737, 1987 CrLJ- 705
14. AIR 1987 SC 2060
Bhupinder Singh vs State of Punjab\textsuperscript{15}

It is a case of dowry death, where wife was administered poison as a consequence of which she died. Here Gian Kaur, the victim was the only daughter of Baltej Singh and he got her married to Bhupiner Singh by spending all his savings. After marriage Bhupinder Singh and his parents wanted money as dowry and also tortured her mentally and physically for dowry. Gian Kaur informed her father about the demand of dowry and torture. Finally Gian Kaur died under mysterious circumstances. The chemical examiner in his report stated that the death of Gian Kaur was due to organo phosphorous compound poisoning. Some days before this incident Bhupinder Singh threatened to kill his wife for a motor cycle. The husband, mother-in-law and father-in-law were convicted under section 304B I.P.C and they were all sentenced to life imprisonment.

In this case the Hon’ble Supreme Court stated that “it cannot therefore be held that there should be acquittal on the failure of the prosecution to prove the possession of poison with the accused. Murder by poison is invariably committed under the cover and cloak of secrecy. No body will administer poison to another in the presence of others. The person who administers poison to another in secrecy will not keep a portion of it for the investigating officer to come and collect it. The person who commits such murder would naturally take care to eliminate and destroy the evidence against him. In such cases, it would be impossible for the prosecution to prove possession of poison with the accused. The prosecution may, however, establish other circumstances consistent only with the hypothesis of the guilt of the accused. The Court then would not be justified in acquitting the accused on the ground that the prosecution has failed to prove possession of the poison with the accused.

The Court added, the poison murder cases are not to be put outside the rule of

\textsuperscript{15} From AIR 1988 SC 1011, 1988 CrLJ 1097
circumstantial evidence. There may be many facts and circumstances out of which the Court may be justified in drawing permissible inference that the accused was in possession of the poison in question. There may be many facts and circumstances proved against the accused which may call for tacit assumption of the factum of possession of poison with the accused."

Wazir Chand vs State of Haryana\textsuperscript{16}

In this instant case, Veena the deceased was married to Wazir Chand’s son Kanwar Singh. She died of burn injuries within less than a year of her marriage at the residence of her husband, Kanwar Singh, who was living with his father Wazir Chand and mother Krishna Devi. It was alleged that, the cause of death was dowry. The prosecution case was that, not being satisfied with the dowry she brought, her husband and in-laws were making demands for further articles of dowry from Veena and her relatives and were harassing humiliating, and insulting Veena and ultimately she was driven to commit suicide by setting herself on fire. She was shifted to a nursing home and within six hours, she died.

The husband Kanwar Singh, the father-in-law Wazir Chand and mother-in-law Krishna Devi were charged and tried before the Court of the learned Additional Sessions Judge, Faridabad, under section 306 and 498A respectively of the I.P.C. The Supreme Court on appeal held—"it is clear that if any person instigates any other person to commit suicide and as a result of such instigation, the other person actually commits suicide, the person causing the instigation is liable to be punished for abetting the commission of suicide under section 306 I.P.C for abetment of suicide. A plain reading of provision shows that, before a person can be convicted of abetting the suicide, it must be shown that the person committed suicide.

\textsuperscript{16} AIR 1989 SC 378, 1989 CrLJ 809
The learned Additional Sessions Judge, acquitted mother-in-law but convicted the husband and the father-in-law under the aforesaid sections of the Indian Penal Code. The husband was sentenced to undergo rigorous imprisonment for a period of three years and a fine of Rs 500 under section 306 IPC and was further sentenced to rigorous imprisonment for one year and payment of a fine of Rs 100 under section 498A IPC.

In this case there was no satisfactory evidence on the basis of which a conclusion could be reached with reasonable certainty that the accused committed suicide. The accused could not therefore be convicted under section 306 I.P.C. However with regard to section 498A IPC the Court held that, there was ample evidence that repeated demands were made interalia by the husband and father-in-law on Veena and her parents for articles of dowry and money. There was also evidence that Veena made statements immediately after her marriage right up to the time of her death that she and her parents were being harassed for the dowry. In fact, what is the most telling circumstance is that after the death of Veena, a large number of dowry articles seem to have been taken back by Veena's family members from Wazir Chand's residence which were admittedly being given as dowry. There was also substantial evidence to show that an amount of Rs 20,000 to 25,000 was demanded from brother of Veena and her mother for setting up Veena's husband in business and they were unable to satisfy these demands. This proves the case of the prosecution under section 498A of the I.P.C.

The Hon'ble Supreme Court therefore agreed with the conclusion reached by the Additional Session Judge and confirmed by the High Court in this connection and confirmed the conviction and sentence imposed on Wazir Chand and Kanwar Singh under section 498A of the Indian Penal Code.
Ravinder Kaur, daughter of Gurbachan Singh, resident of Amritsar, was married to Satpal Singh son of Harbhajan Singh. There were persistent demands of dowry from the wife by her husband and in-laws. She suffered taunts, humiliation and torture. Above all, insinuation was made that, the pregnancy she was carrying on was an illegitimate child. The prosecution case was that, these taunts, humiliation and torture amounted to instigation and abetment that compelled the deceased to commit suicide by pouring kerosene oil on herself and ignite it. Although incident took place at 2.30 pm, she was shifted to hospital only at 6.30 pm, by that time she had died. No effort was made by any one in the house to save her. The trial Court convicted the husband, father-in-law and mother-in-law of the deceased Ravinder Kaur as abettor under section 306 of the Indian Penal Code and sentenced them for a rigorous imprisonment for five years and to a fine of Rs 2,000 on each of them. The High Court did not agree with the findings of the trial Court and acquitted them.

On appeal the Supreme Court restored the conviction of the accused made by the trial Court. The Supreme Court observed—

“Having regard to the circumstances of the case, there is no direct evidence indicating the circumstances, in which the death took place, the conduct of the accused and the nature of the crime with which the accused was charged, there cannot be any scope of doubt that the learned sessions Judge was right and the conviction was properly made. This is not a case where there could be two views possible, on the facts found and on the facts which could not be possibly be found because of the nature of the offence. The fact that two views are reasonably possible, is not established by the fact that two different conclusions are reached by two adjudicatory authorities. The factum of that may be only a piece of evidence, but whether two views at all are

17. AIR 1990 SC 209, 1990 SCC (Cr) 151
possible or not, has to be judged in all circumstances by the Judge, by the logic of the facts found in the background of law.”

Justice Ray of Supreme Court, concurred with the above observation and said—

“In the instant case on a proper consideration and weighing of the evidences the only reasonable view that can be taken is that the cruel behaviour and constant taunts and harassment caused by the accused persons while deceased was in her in-laws’ house, instigated her to commit suicide and in our considered opinion no other reasonable view follows from a proper consideration and appraisement of the evidences on record. As such the decision cited above is not applicable to the facts and circumstances of the instant case.”

The Supreme Court also stated that—Direct evidence is hardly available. It is the circumstantial evidence and the conduct of the accused persons which are to be taken into consideration for adjudicating upon the trustfulness or otherwise of the prosecution case. The evidence of the prosecution witnesses clearly testified to the greedy and lusty nature of the accused persons in that they persistently taunted the deceased and tortured her for not having brought sufficient dowry from her father. It is also in evidence that they also taunted her for carrying an illegitimate child. All these tortures and taunts caused depression to her mind and drove her to take the extreme step of putting an end to her life by sprinkling kerosene oil on her person and setting fire. Circumstantial evidences as well as the evidence of the prosecution witnesses clearly prove beyond reasonable doubt, that the accused persons instigated and abetted Ravinder Kaur, the deceased, in the commission of the offence by committing suicide by burning herself.

i) She was in the house of her in-laws,

ii) there is ample and sufficient evidence that she had complained that she was taunted for bringing meagre dowry, and
iii) that even insinuation that she was carrying "an illegitimate child." The aforesaid facts stand established by cogent and reliable evidence. These are grave and serious provocations enough for an ordinary woman in the Indian setup, to do what the deceased is alleged to have done.

iv) there is also evidence that the persons in the house of her in-laws including the mother-in-law, mother of the accused Satpal Singh, made no attempt to save her from the burn injuries.

v) the absence of any burn injury in the hands of the people around indicates and establishes that there was no attempt to save the deceased, though she was seen being burnt.

vi) the evidence of attitude and conduct of the in-laws, the father-in-law, mother-in-law and the husband after Ravinder Kaur, the deceased, got burns, in not informing the parents and not taking prompt steps to take her to Hospital for giving medical assistance, corroborate the inference that these accused persons connived and abetted the crime.

Criminal charges must be brought home and proved beyond all reasonable doubts. While a civil case may be proved by mere preponderance of evidence in criminal cases the prosecution must prove the charge beyond reasonable doubt.

Even after the introduction of section 498A of the I.P.C and Sec. 113A of the Indian Evidence Act, the proof must be beyond any shadow of reasonable doubt. There is a higher standard of proofs in criminal than in civil cases, but there is no absolute standard in either of the cases. The standard adopted must be the standard adopted by a prudent man which, of course, may vary from case to case, circumstances to circumstances.

Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy the social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice, according to the law.
8. **Shanti vs State of Haryana**\(^\text{18}\)

The Hon'ble Supreme Court in this case point out the differences between section 304B and 498A of the I.P.C.

In the case, the deceased by name of Smt. Kailash was the daughter of Hari Bhagwan, was married to one Sat Pal. The deceased after marriage was living in her matrimonial home along with her mother-in-law Shanti and her sister-in-law Krishna. It is alleged that these two women were harassing the deceased all the while after the marriage for not bringing scooter and television as a part of the dowry and she was treated with cruelty. Also, the two appellants did not send the deceased to her parent's house and drove out the brother as well as the father of the deceased, complaining that scooter and television was not given as dowry. Finally, the father of the deceased came to know that deceased had been murdered and cremated by the two ladies with the help of other three persons. A report was given and the police could recover only bones and ashes. The Supreme Court confirmed the convictions of the appellants passed by the Courts under section 304B I.P.C and observed:

"The prosecution has established beyond all reasonable doubts, that the appellants treated the deceased cruelly and the same squarely comes within the meaning of "Cruelty" which is an essential under section 304B IPC and that cruelty was for the demand of dowry".

While delivering the judgement, Hon’ble Justice K. Jayachandra Reddy of Supreme Court categorically observed that:

"Section 304B and 498A of I.P.C deal with two distinct offences and are not mutually exclusive. It is true that "cruelty" is a common essential to both the sections and that has to be proved. The explanation to section 498A gives the meaning of "Cruelty". In Section 304B I.P.C there is no such explanation about the meaning of

\(^{18}\) *AIR 1991 SC 1226, 1991 CrLJ 1713*
"cruelty" but having regard to the common background to these offences, the meaning of "Cruelty or harassment" will be the same as given in explanation to section 498A under which cruelty by itself amounts to an offence and is punishable, and such death should have occurred within seven years of the marriage. No such period is mentioned in section 498A, I.P.C and the husband or his relative would be liable for subjecting the woman to "cruelty" anytime after the marriage. Further a person charged and acquitted under section 304B can be convicted under Section 498A without charge being there, if such case is made out. But from the point of view of practice and procedure and to avoid technical defects it is necessary in such cases to frame charges under both the sections and if the case is established they can be convicted under both the sections but no separate sentence need be awarded under section 498A in view of the substantial sentence being awarded for the major offence under section 304B I.P.C."

Therefore Supreme Court points out that though section 304B and 498A I.P.C may contain offences that have cruelty as the root cause, they are essentially separate and distinct and charges have to be filed under both. In this aforesaid case, the deceased was alleged to have committed suicide though the conduct of the in-laws after the death of the daughter-in-law was extremely suspicious. They hastily cremated her even without informing her parents, and in the absence of material which could indicate a case of natural death, the High Court convicted the accused under section 304B IPC and dismissed the charge of section 498A IPC. The accused came to the Supreme Court to contend that the very fact that the High Court acquitted them under Section 498A, meant that there was no proof of cruelty. The Supreme Court held that the convictions are confirmed under section 304B I.P.C of each of the accused and there is no evidence as to the cause of death but the cruelty on the part of there two accused is established. But in bringing about the death, there is no evidence as to the actual part played by the accused. Further both the accused are women. Under these circumstances a minimum sentence of seven years' rigorous imprisonment would serve the ends of justice.
State of Uttar Pradesh vs Asoke Kumar Srivastava

It is a story of a well-to-do family. Here, the deceased Meera was married to Ashok Kumar Srivastava. The marriage had taken place less than a year ago. After the marriage her in-laws, including her husband, were not satisfied with her on account of her failure to meet their demands for dowry. She was taunted, harassed, tormented and tortured. A few days before the incident there was a heated argument in her father's house where the husband had gone to fetch her. He returned without her. But wife went to her husband's house despite the refusal of the father-in-law. The father-in-law refused to admit her to the matrimonial home. She was insulted, ill-treated and done to death.

Meera was found on fire at about 2.30 or 2.45 a.m., after that she was strangulated. It was established that while her body was in flames, her husband, her sister-in-law and father-in-law were chatting in the verandah as if nothing has happened. None of them tried to help Meera. The testimony of the one of the Prosecution Witness was that when after burning Meera was dragged to the smaller room by the accused then her tongue was inside the mouth but when she was brought back her tongue was protruding out, thereby suggesting that the three accused persons made sure that her life was extinct by strangulating her. This inference was corroborated by medical evidence. Soon after that, the house was locked and the accuseds could not be found. The trial Court found all the three accused guilty of the crime, convicted all the three accused persons under section 302 / 34 I.P.C and awarded them life imprisonment. But the High Court, on appeal acquitted them.

The Supreme Court set-aside the order of acquittal passed by the High Court and restore the order of conviction and sentence passed by the trial Court.

Justice Ahmadi of Supreme Court said that- In this case, the witnesses had no reason to falsely implicate the accused. There was no reason to disbelieve their

testimony. That was quite natural because the father who rushed to the place of incident had not enquired of their names having regard to the strain, stress and tension in which he was at the relevant point of time. The witnesses could not be said to be falsely set up by father of deceased. The evidence of father of deceased regarding quarrels on account of insufficiency of dowry was corroborated by evidence of witnesses. All this, coupled with the fact that accused persons absconded after incident leave no room for doubt that the three accused persons were the joint authors of the crime.

However, his Lordship said a cautious approach should be made in cases of circumstantial evidence—

"....while appreciating circumstantial evidence, the court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negatived on evidence. Great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstance relied upon be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. But this is not to say that the prosecution must meet any and every hypothesis put forward by the accused, however far-fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise."

Harbans Lal vs State Harayana.\textsuperscript{20}

In this instant case the deceased Santosh Rani was married to Harbans Lal. Soon after the marriage the mother-in-law Smt. Vidyawanti and the husband Harbans Lal started harassing the deceased on the ground, that she had brought lesser dowry. They

\textsuperscript{20.} \textit{AIR 1993 SC 819, 1993 CrLJ 75}
used to abuse her and treat her in a cruel manner. Two years after marriage, finally the deceased and her baby child Sweety aged about 9 months had been burnt by her husband and mother-in-law inside the house by sprinkling kerosene oil on her and setting fire.

In this instant case the deceased Santosh Rani in her dying declaration, clearly said that on the day of occurrence at about 2 P.M her husband and her mother-in-law sprinkled kerosene oil on her and set her on fire and at that time she along with her nine months’ old child sweety were lying in the room and that the child died on the spot as a result of the burn injuries.

Two dying declarations were produced before the Court of which one was recorded by the doctor, to whom the deceased was taken for treatment and second one, carrying thumb impression of deceased written by a person and attested by Sarpanch.

In the dying declaration, given before the doctor, the deceased had given all details of occurrence and the version was natural and not suffering from any inherent infirmities. The declaration was duly recorded by the doctor & signed by himself and two other Doctors who were attending on the injured. There is also a certificate that she was fully conscious and mentally alert and remained so till the recording of the statement was complete.

As regards the second dying declaration there is no reference in F.I.R. There were so many suspicious features about the second dying declaration and there is no knowing as to when it was brought into existence, and the same has not been proved by any competent witness.

The trial Court acquitted both the accused because of the conflicting dying declaration, the High Court convicted both of them under section 302 read with Sec 34 of the Indian Penal Code.

The Supreme Court said that on the basis of such a suspicious and unproved document, the dying declaration recorded by the doctor and attested by two other doctors cannot be discarded when the same satisfies all the other tests and requirements.
Justice K. Jayachandra Reddy of Supreme Court said that The Supreme Court observed that the High court has rightly set aside the order of acquittal as there is only one view possible namely that the accused and accused alone caused the death of the two deceased. The court held that the plea of accused was that the deceased committed suicide in room bolted from inside. No evidence was produced regarding the same. It was further held that if the deceased had committed suicide, she, as a mother would be the last person not to save her daughter of tender age. The fact that the child also received burns and died would positively go to show that both of them were burnt to death at the hands of some others who can be none else than the two accused. This is a very telling circumstance and it completely rules out the theory of suicide and as such the accused persons are liable to be convicted under Section 302 and 34 of I.P.C.

Therefore, the Supreme Court agreeing with the High Court relied on the first dying declaration as it felt that “on close scrutiny we are satisfied that it does not suffer from any infirmity and further it is corroborated by other circumstances.”

State of Himachal Pradesh vs Nikku Ram. 21

In this instant case, Justice Hansaria said that – “We have mentioned about dowry thrice because this demand is made on three occasions i) before marriage ii) at the time of marriage and iii) after the marriage. Greed being limitless, the demands become insatiable in many cases, followed by torture on the girl, leading to either suicide in some cases or murder in some.”

Here the deceased Roshani was married to Nikku Ram. After the marriage her husband Nikku Ram’s mother-in-law Batholi Devi, sister-in-law Kamala Devi started taunting Roshani for bringing less dowry. They demanded television, electric fan and buffalo etc. They started treating Roshani with cruelty. Her mother-in-law Batholi was

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21. AIR 1996 SC 67, 1995 SCC (Cr) 1090

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alleged to have given a blow with drati (a sickle like instrument) causing an incised wound on the forehead of Roshani. Unable to bear the torture, she consumed naphthalene balls which proved fatal and died due to cardio respiratory arrest.

Nikku Ram, his mother and sister were convicted under section 304B, 306 and 498A I.P.C. The trial court after analysing the oral and documentary evidences, including the testimony of the doctor who had conducted autopsy, came to the conclusion that the prosecution failed to establish the charges beyond reasonable doubt and therefore acquitted all the three accused. But the trial court find Batholi the mother-in-law guilty under Section 324 I.P.C and keeping in view the advanced age of Batholi (more than 80 years) imposing a fine of Rs. 3,000/- which would be paid within two months, failing which Bathole would undergo simple imprisonment for one month. Fine, if paid, shall be made over to the parents of Roshani.

The High Court refused to grant leave to appeal, by a short order observing “all the essential features of the prosecution case has remained unsubstantiated and the accused could not have been convicted on the vague and unsubstantiated allegations.” The Supreme Court also upheld the order of the trial Court and stated that the prosecution failed to bring home the offence either under Section 304B or 306 against any of the accused. The injuries as found on the person of Roshani could not have caused her death, despite the demands being dowry, the offence would not attract the mischief of section 304B.

The accused party had demanded television, electric fan etc. from Sant Ram, the father of Roshani but there is no reliable evidence that Roshani was being harassed within the meaning of explanation (b) of section 498A.

Under Section 306 none of the accused could really be said to have abetted suicide as per the definition of “abetment" in Section 107 I.P.C. Therefore offence under S.306 was not made out. The mother-in-law who caused injuries, was sentenced under S.324 I.P.C and was fined Rs. 3000 as she was 80 years old. The others were acquitted.
Section 304B of I.P.C attracted in suicide cases:

Now it can be noted that, the court in several cases stated that section 304B IPC will be attracted whenever a woman dies within seven years of her marriage and there is evidence that she was harassed by her in-laws or husband in connection with the demand for dowry. It is immaterial whether she committed suicide or was murdered.

A landmark decision was given by Andhra Pradesh High Court in Public Prosecutor Vs Tota Basava Punniah.22 – This was a case of death by hanging within three years of marriage. Evidence showed that dowry was demanded. The Court held that "even if it is a case of suicide section 304B I.P.C is attracted."

The court once again reiterated in the same case that irrespective of the mode of death, if the death occurs within seven years of marriage and the death is unnatural, homicidal or suicidal, Sec. 304B would apply. The Court rejected the contention of the counsel of the accused who argued that the medical evidence showed that the death was due to asphyxia on a account of hanging, and that section 304B does not apply to cases of suicide.

The Court held that Section 304B applies where the death of a woman is caused by burns or bodily injury or occurs otherwise than under normal circumstances, provided, other conditions are satisfied. Since the death of the deceased was on account of hanging, it was still death otherwise than under normal circumstances, and even if she had committed suicide by hanging, the death would still fall under Section 304B as long as it can be shown that she was subjected to cruelty or harassment by the in-laws in connection with any demand for dowry.

In Premwati Vs State of M.P 23 – the accused were the mother-in-law and the husband of the deceased Sunita who had died of poisoning within two years of her marriage.

22. 1989 CrLJ 2320 (AP)
23. 1991 Cr LJ 268 (MP)
The accused were charged under section 304B and 306 I.P.C. The court held that section 304B I.P.C will be attracted, not only when death is caused by someone but when it occurs unnaturally. The accused will be guilty of dowrydeath if this occurrence is preceded by cruelty or harassment by the in-laws or if this torture is inconnection with dowry demand, if the connection between the two is established, mere occurrence of death is enough, though the death may not have been caused by the in-laws.

It is also stated that—"The framers intended and contemplated the liability of the occurrence of death of the bride to be fastened on the in-laws though they did not cause it, by creating a fiction.

If the husband or his relations create such circumstances as would compel a person to choose death as the only way of getting out of the misery, such treatment would also attract section 304B.”

ABETMENT OF SUICIDE :

Section 306 I.P.C says that if any person commits suicide, whoever abets the commission of such suicide will be punished with imprisonment of either description for a term which extends to 10 years and shall also be liable to fine.

In Bhagwant Singh vs. Commissioner of Police, Delhi,24 it was said that—it is impossible to escape the conclusion that in a case, the death of young wife must be attributed either to the commission of a crime or to the fact that being mentally tortured by the suffocating circumstances surrounding her, she commits suicide. Young women of educative, intelligence and character do not set fire to themselves to welcome embrace of death until provoked and compelled to take the desperate step by the intolerance of their misery.

24. AIR 1983 SC 826
While civil case may be proved by mere preponderance of evidence, in criminal case, the prosecution will have to prove charge beyond reasonable doubt. Even after the introduction of the Section 498A of the Indian Penal Code and section 113 of the Indian Evidence Act, the proof must be beyond any shadow of reasonable doubt.

In *Gurucharan Singh vs. Satpal Singh*\(^{25}\) the Supreme Court said “that the conscience of the court can never be bound by any rule, but that is coming itself indicate the consciousness and prudent exercise of the judgement, where death of a human being is caused by any burns or bodily injury or occurs otherwise then under normal circumstances, within 7 years of marriage and it is also shown that before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for securing any property or valuable security from her or her relatives. It would come under the meaning of dowry death, provided, it is in connection with any demand for dowry as defined under the Dowry prohibition Act, 1961.”

In *State of Punjab vs Iqbal Singh*\(^{26}\)

and *Brijraj Prem Chand vs State*\(^{27}\)

It was said that when the question at issue was whether a person was guilty of dowry death of a women and the evidence discloses that immediately before her death, she was subjected by such person to cruelty and/or harassment in connection with any demand for dowry under section 113B of the Evidence Act which provides that court shall presume that such person had caused the dowry death. Of Course, if there is a proof of a person having intentionally caused her death that would attract section 302 of I.P.C. Under such circumstances, situation may arise when the husband or the relatives by their wilful conduct, created a situation which they knew will drive the women to commit suicide and she actually does so, the case would squarely fall within ambit of section 306.

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25. *AIR 1990 SC 209*
26. *1994 II DMC (1) at page 7.*
27. *AIR 1989 SC 377*
of Indian Penal Code. In such a case, the conduct of the person would be tantamounting or provoking or virtually pushing of no return which would compel her to put an end to her miseries by committing suicide.

**IMPORTANCE OF CIRCUMSTANTIAL EVIDENCE IN A DOMESTIC VIOLENCE CASES:**

In domestic violence cases, most of the cases of bride burning and dowry deaths are cases of pre-planned murders, committed in the privacy of the culprit's house. It is very difficult to obtain direct evidence or any eye witness, only the conduct of the accused and the circumstantial evidence is there adjudicating about the truthfulness of the prosecution case.

One must be very careful in appreciating this evidence. A witness may lie but circumstances donot lie. However, circumstances may not lie but it can definitely mislead e.g. in a preplanned murder, the culprit may create circumstances to protect himself and trap some innocent person. In a case where a wife dies under suspicious circumstances in her husband's home, it is a matter of considerable difficulty to ascertain the precise circumstances in which the accident occurred. The main witnesses are the husband, inlaws, neighbours etc.

The Court must take into consideration that young women (of education, intelligence and character) do not set fire or embrace death unless anybody compel her or provoke to take that desperate step, by intolerable misery. Such cases are proofs of a deep seated melody in our social system. There are a number of cases, where the husband and wife are alone in the home. In other cases there are other members of the family, such as the mother-in-law, the father-in-law, brother-in-law, sister-in-law and other near relative. It is difficult in such case to say with any certainty or beyond all reasonable doubts if any one among them or whether all of them were guilty of burning her and causing her death. To establish a case against the husband where he alone is charged or
where he faces trial along with other relatives, the prosecution generally relies on circumstantial evidence. The courts have insisted that the circumstantial evidence against the accused should be definite, conclusive in nature and must be consistent with the guilt.

In Lichhmadevi vs State of Rajasthan.28 The Court have laid down, that the following conditions must be fulfilled before a case against an accused based on circumstantial evidence can be said to be fully established :-

i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances must or should and not may be established.

ii) the facts so established should be consistent only with the hypotheses of the guilt and inconsistent with innocence.

iii) the circumstances should be of a conclusive nature.

iv) they should exclude every possible hypothesis except the one to be proved.

v) there must be a chain of evidences as complete as not to leave any reasonable ground for the conclusion of consistent with innocence of the accused when a case can be said to be proved only when there is certain evidence and no person can be convicted on pure moral consideration.

In serval cases Supreme Court relied upon the circumstantial evidence e.g.

1) Wazir chand vs State of Haryana29

2) Surinder Singh vs State of Rajasthan30

3) Jaspal Singh vs State of Punjab.31

28. AIR 1987 SC 1985
29. AIR 1989 SC 378
30. AIR 1987 SC 737
31. Cr LJ 1984 SC 691
4) Delhi Administration vs Laxman Kumar & Indian Federation of Women Lawyers vs Shakuntala.\(^{32}\)  
5) Gurbachan Singh vs Satpal Singh.\(^{33}\)  
6) Bhupendra Singh vs State of Punjab.\(^{34}\)  
7) Bachalal vs State of U.P.\(^{35}\)  
8) State of U.P vs Asoke Kumar Srivastava.\(^{36}\)  
9) Sharad Birdichand vs State of Maharashtra etc.\(^{37}\)

**In State of U.P vs Ashok Kumar Srivastava.\(^{38}\)**

The Supreme Court observed that—while appreciating circumstantial evidence the court must adopt a very cautious approach and should record a conviction only, if all the links in the chain are complete, pointing to the guilt of the accused and every hypothesis of innocence is capable of being negatived on evidence. Great care must be taken in evaluating circumstantial evidence and if the evidence relied on, is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

**In another cases of Mulak Raj vs. Satish Kumar\(^{39}\)**

The Supreme Court observed that in cases of circumstantial evidence motive bears important significance. The failure to prove motive is not fatal as a matter of law. Proof

\(^{32}\) AIR 1986\(^{\text{a}}\) SC 250  
\(^{33}\) AIR 1990\(^{\text{a}}\) SC 209  
\(^{34}\) AIR 1988\(^{\text{a}}\) SC 1011  
\(^{35}\) (1986) 3\(^{\text{a}}\) Crimes 413  
\(^{36}\) AIR 1992\(^{\text{a}}\) SC 840  
\(^{37}\) AIR 1987\(^{\text{a}}\) SC 1622  
\(^{38}\) AIR 1992\(^{\text{a}}\) SC 840  
\(^{39}\) AIR 1992\(^{\text{a}}\) SC 1175
of motive is never an indispensable for conviction. When facts are clear, it is immaterial that no motive has been proved. Therefore, absence of proof of motive does not break the links in the chain of circumstances connecting the accused with the crime, nor militates against the prosecution case.

**PRESUMPTIONS IN DOWRY RELATED OFFENCES:**

The Supreme Court delivered a landmark judgement in *Gurbachan Singh vs Satpal Singh*\(^{40}\) which made the application of Section 113A retrospective. In this case it was held that a presumption under section 113A of the Evidence Act would be attracted and applied relating to a case where the accused was charged under Section 306 I.P.C. A question had arisen as to whether the presumption under section 113A of the Indian Evidence Act could be raised in the said case or not because while that Section was added by Act 46 of 1983, the death of deceased Ravindra Kaur in that case, had happened prior to the enactment of the said section. It has been held that the provisions of the said section do not create any new offence and as such it does not create any substantial right but it is a matter merely of procedure and as such it is retrospective and shall apply to that case. It is also noted that The Dowry Prohibition (Amendment) Act, 1986, also amended the Indian Evidence Act, 1872, by inserting a new Section 113B Presumption as to dowry death.

These Provisions were enacted with a view that they would go a long way in solving the problem of battered wives or of dowry victims or cruelty to married women. But these provisions have failed to achieve their objectives.

In spite of these provisions, the young married women are being tortured, harassed and even burnt to death or pushed to commit suicide on the alter of dowry. The culprits go scot free due to the lack of evidence.

\(^{40}\) *AIR 1990 SC 209*
DYING DECLARATION IN DOMESTIC VIOLENCE CASES:

A dying declaration or a statement is made by a person, who after making the statement dies. This statement is an exception to the general rule that hearsay evidence is not admissible evidence, unless such evidence is tested by cross-examination. Under Section 32 of the Evidence Act, when a statement is made by a person as to the cause of his/her death or as to any of the circumstances of the transaction which resulted in his/her death, in case wherein the cause of the death of that person comes into question, such a statement, oral or in writing, made by the deceased to the witness before his or her death is a relevant fact and is admissible in evidence. Such a statement made by the deceased person before his or her death is called the "dying declaration", and, falls in that category provided it has been made by the deceased while in a fit mental condition. A dying declaration, made by the person on the verge of death has a special sanctity to it, as at that moment a person is considered most unlikely to make an untrue statement. Therefore, a dying declaration has a sacrosanct status, as it is verbal testimony given by the deceased victim.

Once the statement of the deceased victim and the evidence of the witnesses testifying to the same, passes the test of careful scrutiny of the Courts, it becomes an important piece of evidence and if the Court is satisfied that the dying declaration is true and free from any embellishment, such a dying declaration, by itself can be the basis for recording a conviction even without looking for corroboration. If there are more than one dying declarations, then the Court must scrutinize all of them to find out if each one of them passes the test of being trustworthy. They must be consistent on the material particulars before the Court can accept and rely upon the same.

In Shakuntala vs State of Punjab41

It is stated that—The general principle behind basing a conviction for a dowry

41. 1994 SCC 1781
death is that the Court must establish that, the dying declaration is reliable and that it does not contain inconsistencies. If there are inconsistencies, the Court must re-examine the case history and attempt to identify corroborating evidence, that supports the prosecution case to sustain the crime of dowry death that would render the dowry death acceptable.

In case of **Smt. Kamala vs. State of Punjab**\(^42\)

The Supreme Court observed that it is also settled in all these cases that the statements should be consistent throughout, if, the deceased has severed opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent.

In another case, The Supreme Court said that a dowry death recorded on the basis of nods and gestures is not only admissible but also possesses evidentiary value to the extent that the recorder can ensure that the victim can clearly understand the questions \(^43\)

In case of **State (Delhi Administration) vs. Laxman Kumar**\(^44\)

The court while rejecting the written dying declaration, held that it did not attach full credence to the oral dying declarations. There have been instances where conviction has been based solely upon a written dying declaration when it has been found to be totally acceptable. The Court is not prepared to attach that type of importance to the oral dying declarations in this case. However, the Court held that the oral dying declarations would be available for use as corroborative material in this case. The Court emphatically pointed out that though it would not have been prepared to base the conviction on the oral dying declarations alone, such dying declarations were not to be totally rejected and the same can be used as corroborative material.

In the instant case the Supreme Court pointed out that the dying declaration of the burnt bride was recorded not by a magistrate nor by a doctor but by the investigating

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\(^42\). *AIR 1993 SC 374*.

\(^43\). *1994 (4) SCC 182, Meesla Rama Krishna Vs. State of Andra Pradesh*

\(^44\). *AIR 1986 SC 250*. 

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officer without explaining the non-availability of the Magistrate and the doctor. It was not signed by the deponent although literate and not proved to be incapacitated to sign by the burnt injuries. The time of the statement was also not indicated in the document. At the time, the declaration was recorded, none of her relations were present. The fitness of the deponent to make a declaration was also doubtful. The dying declaration was also not recorded in the form of questions and answers. The Court held that the declaration was not acceptable.

The Harbans Lal vs State of Haryana\textsuperscript{45}

Two dying declarations were produced of which one was recorded by the doctor to whom the deceased was taken for treatment, stating that she was burnt by her mother-in-law and husband and the second one, carrying thumb impression of the deceased, written by a person and attested by sarpanch supporting that the deceased committed suicide. The Court held that second dying declaration was not proved by competent witness and it could not be relied upon.

In Somenath vs State of Haryana\textsuperscript{46}

After recording her statement that her husband had burnt her, the wife pleaded that the husband should not be beaten or punished. Therefore dying declaration have a very unique and critical position in cases of bride burning. These statements should not be accepted on their face value as they do not disclose the actual cause of death.

Where the husband because of the brutal behaviour, fears that the wife “may blame him or his parents in her dying declaration, due to that reason, he threatens his wife, her children or her loved ones with dire consequence, if she tells the truth. In this circumstance the threat is so over powering that she has no courage to come out with the truth in the last moment of her life. In such cases generally conflicting dying declarations are made, there fore, the judge should read between the lines and interpret the dying

\textsuperscript{45} AIR 1993 SC 819
\textsuperscript{46} AIR 1980 SC 1226

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declaration with an eye on the social reality of the life of an Indian women. In most of
the cases of domestic violence, the judges rely heavily on the dying declaration. Its
witnesses and shortcomings are made the reasons for acquitting the accused. Neither the
police nor-the judges seem to consider it worthwhile to go into other evidences including
the circumstantial evidence.

**BAIL:**

Domestic Violence like dowry death, bride burning etc. are very serious crimes. If there is a primafacie case against the accused, bail should not be given. Granting bail or anticipatory bail to the accused has a very demoralizing effect on the victim's family. The experience shows that the freedom is mostly misused by the accused. Enlarging the suspects at the stage of investigation creates impediments in no proper investigation of the case. Under Section 304B, the dowry death is punishable with imprisonment for a term of not less than seven years but it may extend to life imprisonment. The crime is made cognizable. It is non-bailable and triable by a magistrate. It is a brutal crime so the court should not be swayed by emotions in favour of the suspects. In dowry death cases, bail should not be granted till the investigation is completed.

The provisions of Criminal Procedure Under section 437, 438, 439 regarding bail are also applicable in the case of bail in domestic violence cases ie bride burning, dowry death etc. The provision of bail to women under criminal Procedure Code is not mandatory but it is discretionary. In dowry death and bride burning etc. Cases too, the anticipatory bail can be granted under Sec. 438 of Cr PC.

In **Surinder Singh vs State of Rajasthan.**

The Supreme Court recorded a serious note of caution for future. In this case, the Court said that—in "Dowry Deaths" the High Court should not grant anticipatory bail disregarding the seriousness and the magnitude of the matter. The matter regarding the unnatural death of the daughter in law at the house of her father-in-law was still under
investigation so the appropriate course to adopt was to allow the concerned magistrate to deal with the same on the basis of the material before the court at the time of their arrest in case they were arrested. It held that it was neither prudent nor proper for the High Court to have granted anticipatory bail This order was very likely to prejudice the case by its timing.

In case of **Sumendra Sing vs State of Rajasthan**\(^{47}\)

The Supreme Court observed that the widespread belief that dowry death are even now treated with some casualness at all levels, seems to be well grounded. The High Court has granted anticipatory bail in such a matter. The Supreme Court said that the High Court should not have exercised its jurisdiction to release the accused on anticipatory bail.

The matter regarding the unnatural death of daughter-in-law was still under investigation and the appropriate course to adopt was to allow the concerned magistrate to deal with the same on the basis of the material before the Court at the point of time of their arrest in case they were arrested. The High Court was under no compulsion to exercise its jurisdiction to grant anticipatory bail, in the matter of this nature. There cannot be any straight jacket formula also that whenever any allegation of bride burning on the ground of dowry death is made against any husband, the Court must reject the anticipatory bail application. In other words, no absolute proposition of law or a straight jacket formula can be laid down that in no case of bride burning and dowry deaths the anticipatory bail can be granted.

The provisions with regard to cancellation of anticipatory bail and a bail under the Code of Criminal Procedure are also applicable in the case of dowry death and bride burning like domestic violence cases.

Therefore the object underlying the cancellation of bail and anticipatory bail is to protect the fair trial and secure justice to the society by preventing the accused who is at

\(^{47}\) *AIR 1987 SC 737*
liberty by the bail order tampering with the evidences and prosecution witness, threatening the family members of the deceased victim and creating problems of law & order situation etc. So the bail granted to the accused may be cancelled at any time if the accused misuse his liberty or tries to harass or threaten the witnesses.

Therefore in domestic violence cases, Court should be always very cautious in cancelling or granting bail or anticipatory bail.

**In Amarnath Gupta Vs. State of Madhya Pradesh** 48

The High Court’s order granting bail to the accused was reversed by the Supreme Court. The High Court granted bail on the ground that the victim’s diary contained a letter written by her stating that no body was to be blamed for her suicide, and further, the High Court felt that since the father-in-law was an advocate there was nothing on record to show that they would misuse the liberty granted to them. The Supreme Court, while reversing the High Court’s decision, observed that “Sentimentalism has no place in the judicial process and yet sensitivity to a social problem and commitment to a constitutional mission is a virtue it has sustained so far.”

**Satvir Singh vs State of Punjab** 49

In the instant case Tejinder Pal Kaur was married to Satvir Singh. They had two children out of that wedlock. Though dowry was given at the time of marriage the husband and parents in law of the deceased Tejinder Pal Kaur started harassing her after about 4 or 5 months after the wedding, for not giving a car and a house as part of the dowry. They used to hurl taunts on her pertaining to the subject, including telling her that she had brought rags instead of wedding costumes.

Ultimately on account of the cruel treatments by her husband and in-laws she ran into the rail infront of a running train to end her life as well as her miseries once and for all. But she did not die due to this incident but lost her left hand from shoulder joint and

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48. *1990 Cr LJ 2163*

49. *AIR 2001 SC 2828*
got her spinal cord ruptured. She turned into a paraplegic.

The Trial Court convicted her husband, father-in-law and mother-in-law under section 116 read with section 306 & Section 498A of IPC and sentenced them to rigorous imprisonment for two and a half years and a fine of Rs 10,000/- each under section 306 IPC and sentenced them to imprisonment for two years and a fine of Rs 5,000- each for section 498A IPC.

On Appeal the H.C substituted Section 306 I.P.C with section 304B I.P.C to be read with section 116 I.P.C and alteration was made in the quantum of sentence by escalating it to rigorous imprisonment for five years each for the accused.

On appeal, the S.C observed that—there is no question of considering section 304B unless death of a woman had occurred. In the present case the death did not occur. There is dearth of evidence to show that Tejinder Pal Kaur was subjected to cruelty or harassment connected with the demand for dowry soon before her attempt to commit suicide. The crux of the offence under Section 306 itself is abetment. In other words, if there is no abetment there is no question of the offence under section 306 coming into play. It is inconceivable to have abetment of an abetment. Hence there cannot be an offence under section 116 read with section 306 I.P.C.

Therefore the accused cannot be convicted under Sec. 116 I.P.C either by linking it with Section 306 or with section 304B IPC. Then the conviction and sentence passed on them under section 116 IPC is set aside.

But S.C upheld the sentence under section 498A IPC by the trial court but enhance the fine to rupees one lakh each for all the accused and order to remit the fine amount in the trial Court within three months from the day of order, failing which each of the defaulter shall undergo imprisonment for a further period of nine months.

Shivcharan Lal Verma vs State of Madhya Pradesh 50

In the instant case, deceased Mohini was married to Shivcharan. During the life

50. JT (2002) 2 SC 641
time of the first wife Kalindi, Shivcharan married Mohini for second time and after marriage both Kalindi and Shivcharan tortured Mohini as a result of which she ultimately committed suicide by burning herself. The incident occurred inside the house of Shiv Charan while Kalindi and Shivcharan were in the one room and Mohini was in some other room.

After analyzing the entire evidence the trial court came to the conclusion that prosecution has been able to prove both the charges against both Kalindi & Shivcharan beyond reasonable doubt and convicted them under sections 306 and 498A IPC and have been sentenced to imprisonment for seven years for conviction under section 306 IPC and three years for conviction under section 498A IPC.

On appeal, the High Court reappreciated the evidence and affirmed the conviction and sentence aforesaid.

On further appeal to the S.C the Hon’ble Justice G.B.Pattnaik, S.N Phukan & S.N. Variava said that the alleged marriage with Mohini during the subsistence of Valid marriage with Kalindi is null and void. Therefore they set-aside the conviction and sentence under section 498A of the I.P.C, but in case of Section 306, on going through the entire evidence it is absolutely clear that on account of torture by both Kalindi and Shiv Charan that Mohini committed suicide inside the house of Shiv Charan in another room. Therefore the accused have been sentenced to undergo rigorous imprisonment for seven years but having regard to the facts and circumstances of this case the hon’ble Judges reduce the sentence to five years.

Gananath Pattnaik vs State of Orrisa\textsuperscript{51}

In the instant case, deceased Rashmirekha was married to Gananth Pattnaik, and a male child was born to the parties. After marriage the deceased had been subjected to ill treatment, harassment and cruelty by the appellant and his family members. The

\textsuperscript{51} 2002 (1) crimes 309(SC)
husband of the deceased also had illicit connection with his brother's wife. Ultimately the deceased had committed suicide by hanging herself in the bathroom, on account of cruelty for dowry demand.

The accused husband of the deceased was convicted under Section 304B & 498A I.P.C. After trial the accused was acquitted of the charge framed against him under Sec. 304B IPC but convicted under section 498A IPC and sentenced to three years rigorous imprisonment. The H.C also affirmed the judgment of the trial court. According to the parents of the deceased the accused was taking away the child from her. He also did not allow the deceased to sit on scooter and was frequently staying absent from the house.

On appeal the S.C observed that there was no evidence on the record to hold that the deceased had conceived the apprehension of the accused having illicit relations with his sister-in-law which led her to end the life. There was no legal evidence in the case which could be made the basis for returning a finding with respect to the alleged cruelty of the accused to the deceased and the prosecution had failed to prove beyond doubt that the appellant had committed the offence under section 498A of I.P.C. Therefore the S.C allowed the appeal, gave the accused Gananath Pattnaik the benefit of doubt and acquitted him of the charge under section 498A of I.P.C and his bail bond stood discharged.

C.V. Govindappa vs State of Karnataka

In the instant case C.V. Govindappa married (the deceased) Yashodhama. Before the marriage there was demand for dowry of jewels and Rs 50,000/- in cash and of which only a part was paid. The remaining part was being paid in instalments. Govindappa the husband of Yashodhama was repeatedly demanding the payment of dowry in cash and also jewels. He was treating his wife with cruelty, as evident from letters written by her to her parents. Though there were two children, the accused did not stop the ill treatment upon his wife. On the date of the incident, there was a quarrel between the husband and

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52. AIR 1998 SC 792, 1998 SCC (Cr) 683
the wife which was noticed by the neighbours and in the evening her husband had poured kerosene oil on her and set fire. She died due to burn injuries.

The Court of Session disbelieved the evidence adduced by the prosecution and acquitted the accused. But the High court set aside the judgement of the Court of session and convicting the accused Govindappa for offences under section 302, 304B and 498A IPC and sentencing him to imprisonment for life for the offence under Section 302 IPC and rigorous imprisonment for two years and payment of fine of Rs.1000/- for offence under section 498A I.P.C, with a direction that the substantive sentences of imprisonment were to run concurrently.

After going through the entire evidence the S.C said that—“It is admitted that the appellant Govindappa did not take his wife to the hospital or make any attempt to get any medical aid for her when he knew that she was suffering from burns. He had seen her admittedly lying on the ground with flames, yet he did not take any steps to help her or take her to the hospital. He only restored his scooter from the flames for which he sustained burn injuries in his left hand and himself hospitalised for treatment.

That conduct of the appellant is very suspicious and undoubtedly a circumstance to be taken into account for deciding the question whether the appellant was guilty or responsible for the death of deceased.

Finally S.C upheld the judgement of the H.C and directed the accused to surrender his bail and undergo sentence.

**Pyare Lal vs State of Haryana**\(^{53}\)

In the instant case the deceased Usha Rani was married to Pyare Lal. According to the father of the deceased, after 5 to 7 months from marriage, the husband of Usha Rani started torturing his daughter for Rs. 10,000. Various steps were taken to settle the matter between the accused Pyare Lal and Usha Rani, and ultimately the deceased lived with her

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53. *AIR 1999 SC 1563*
husband without any problem for four or five months. Then Usha Rani and his husband lived separately from her parents in-laws. Out of this wedlock two children were born. After shifting the residence, the husband again started to torture her. Finally, the death of the deceased took place by consumed insecticide poison, close to the date of shifting of residence.

The deceased expressed her desire to live with her father for that reason. The trial Court convicted the husband Pyare Lal under section 304B I.P.C and 498A IPC. The H.C also upheld this judgement. The Supreme Court observed that—

"Whatever demands of dowry arise after the marriage, over which there were differences between the parties, were settled or got receded when the deceased resumed co-habitation with her husband. There is no whisper thereafter of any demand of dowry. The cruelty otherwise inflicted on the deceased would be a relevant circumstance to maintain the conviction of the appellant under section 498A of the I.P.C. Unless there was evidence of dowry demand, section 304B of I.P.C would not be attracted. For the kind of treatment meted out to the deceased, section 304B I.P.C cannot be attracted and therefore the appellant cannot be held guilty for the said offence."

The Supreme Court acquitted the accused husband of the charge under section 304B but his conviction and sentence under section 498A I.P.C is sustained.

**Kans Raj vs State of Punjab**⁵⁴

In this instant case Sunita Kumari was married to Rakesh Kumar. After the marriage Rakesh Kumar the husband of the deceased Sunita Kumari rasied a demand of Rs 15,000/- for a scooter and refrigerator. The parents of the deceased fulfilled that demand by giving Rs 20,000/- to him. Rakesh Kumar used to threaten Sunita that she would be done to death because of having inadequate dowry. His demand of a colour TV was also fulfilled. The deceased, on persistent demands of the accused Rakesh Kumar

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⁵⁴. *AIR 2000 SC 2324*
had withdrawn the total sum of Rs 26,000 from the accounts which was opened by the father in her name. According to the father of the deceased Sunita Kumari, she was being taunted by her mother-in-law Ram Piari, brother-in-law Ramesh Chander and his wife Bharti but details of the alleged taunting had not been spelt out.

It was alleged, that the parents of the deceased were not informed about the death of the deceased Sunita Kumari by the husband or in-laws of the deceased. When Ram Drishan the brother of the deceased came to deliver some customary presents to her sister he found his sister's deadbody lying at the entrance room and the accused husband and in-laws of her sister were making preparations for her cremation. He also noticed ligature marks on the neck of his sister. He first informed his parents about the death of his sister Sunita Kumari over the telephone. The husband and in-laws had not given any satisfactory answer as to how Sunita Kimari died but it is not disputed that Sunita Kumari committed suicide about 3 1/2 years after the marriage. The brother of deceased Sunita Kumari lodged an F.I.R against the accused husband and in-laws of Sunita Kumari. The father of the deceased filed a separate complaint under section 302, 304B I.P.C against all the aforesaid accused.

The trial Court convicted all the accused under section 304B, 306, 498A I.P.C and sentenced each of them to undergo 10 years' rigorous imprisonment for Section 304B IPC, 7 years rigorous imprisonment and a fine of Rs 250 each for section 306 IPC, and two years rigorous imprisonment and a fine of Rs 250/- each for section 498A IPC. All these sentences were to run concurrently. On Appeal, The H.C reversed the judgement of the trial court and acquitted the accused persons of all the charges.

The Supreme Court observed that—there is no reliable legal and cogent evidence on record against the other accused ie mother-in-law, father-in-law, brother-in-law & his wife etc. “For the fault of the husband, the inlaws or the other relations cannot in all cases be held to be involved in the demand of dowry. In cases, where such accusations are made, the overt acts attributed to persons other than husband are required to be proved
beyond reasonable doubt. By more conjectures and implications, such relations cannot be held guilty for the offence relating to dowry deaths. A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits.” The S.C upheld the judgement of H.C regarding accused persons except the husband.

But according to Justice G.B. Pattanaik, Justice R.P. Sethi, Justice Shivraj V. Patil, of Supreme Court—there is reliable legal and cogent evidence on record to connect Rakesh Kumar, the husband of the deceased with the commission of the crime under section 304B, 306 and 498A I.P.C. The S.C upheld the judgment of the trial court regarding conviction of Rakesh Kumar under section 304B, 306 and 498A IPC but the sentence is reduced to seven years’ rigorous imprisonment under Section 304B IPC, under section 306 IPC it is reduced to 5 years besides paying the fine as imposed by the trial court. In default of payment of fine shall suffer rigorous imprisonment for one month more. Under Section 498A IPC sentence to two years rigorous imprisonment and fine Rs. 250, in default of payment of fine the accused will further undergo rigorous imprisonment for one month. All the sentences were directed to run concurrently.

Alamgir Sani vs State of Assma

In this instant case, one Almgir Sani married Dr. Anjum Ara. After one year of marriage Dr. Anjum Ara committed suicide by hanging herself inside the bathroom. After receiving a telephonic massage that a woman had died on suspicious circumstances from Dr. Kalpana Sharma, police went to the place of occurrence. They found the body of Dr. Anjun Ara lying dead on the bed. The father of the deceased was informed by telephone about the death. Husband of the deceased (Appellant in this case) and one Bhaskar Ali, servant of the house were arrested. The father of the deceased made an FIR that he had

55. AIR 2003 SC 2108
no doubt that his daughter had committed suicide inside the bathroom (by hanging). There
after the post mortem doctor opined that the injuries were antemortem and homicidal in
nature. The doctor also opined that the injuries were not self inflicted or accidental.

After receiving the postmortem report the father of the deceased changed his
report to the police. Then he alleged that his daughter had been murdered by her husband
for non fulfilment of demand of dowry made by the appellant.

The husband of the deceased was charged under section 302 and 304B of I.P.C.
The appellant pleaded not guilty and claimed to be tried. The prosecution led the evidence
of 12 witnesses. Father, mother brother, a friend of the family of the deceased gave
evidence of the demand of dowry made by the appellant and his brother after the
marriage.

On the day of incident, the deceased was seen in her bedroom upto 12 p.m and
also the appellant was then found sitting in the same bedroom. At 2 pm the appellant was
alone and said his wife was in bathroom. At 4 p.m the young brother of the deceased
came from school and enquired about her. On knowing that she was at the bathroom for
long hours, the servant was asked to peep inside the bathroom through a gap in the wall
by climbing a pipe. when he did that the deceased was seen in a sitting position and
appeared dead, as her head was stooping down. Appellant then went to the bathroom
immediately and brought the body of the deceased out and put it on the bed. Thereafter
a doctor was called in, who declared the victim as dead and then the appellant informed
the police.

The trial court acquitted the accused from conviction under section 302 but
however convicted him of the charge under Sec 304B and sentenced him to life
imprisonment. The High Court considered the entire evidence in detail and confirmed the
conviction of the appellant by the trial court.

Mr. Jaspal Singh of defence submitted that the evidence of demand for dowry
could not be believed and costing doubt on the veracity of the testimony of the father and
as the appellant was acquitted under section 302 I.P.C the presumption under section 113B of the Evidence Act stands rebutted, because there was no intention or knowledge shown to cause death, so the appellant was held not responsible for the death of the deceased.

On appeal the Supreme Court upheld the judgment of the courts below and after analyzing the entire evidence they found no flaw or fallacy in the reasoning adopted by the courts below. The S.C stated that the death had taken place within seven years of the marriage and there was sufficient evidence of demand of dowry so the presumption under Sec. 113B of Evidence Act. was invoked. There was no evidence in rebuttal. The Supreme Court therefore see no reason to interfere and dismissed the appeal.

**Kunhiabdulla vs State of Kerala**

In this instant case, the deceased (Sherifa) was married to Kunhiabdulla and resided at a remote village of Kerala. There was an agreement during marriage to pay Rs 35000/- as dowry. The victim committed suicide by jumping in a well. It was alleged that since the entire amount was not paid the deceased was subjected to mental and physical harassment.

On completion of investigation charge-sheet was filed and to further the prosecution version, 17 witnesses were examined, but the accused persons ie husband of the deceased and his mother pleaded innocence and examined 3 witnesses. According to them the deceased had accidentally fallen into the well and it was not a case of suicide.

The trial Court found some unexplained discrepancies, in the evidence of the main witnesses relating to demand of dowry and therefore, it became unsafe to convict accused persons. The learned counsel for the accused appellants submitted that there was no dispute regarding the payment of dowry of a sum of Rupees 30,000/- because this amount was already kept in a Bank in the name of the deceased. This negates the plea of prosecution that there was greed for money. The well was not covered on the sides and

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56. *AIR 2004 SC 1731*
one eye witness was there who saw the alleged occurrence, this ruled out the possibility of suicide and it was possible as was held by the trial court that the deceased had slipped.

The High Court should not have interfered with the view of the trial court. The evidence of prosecution in no way shows that the mother allegedly demanded dowry. After the payment of 3000/- there was no harassment. So no question of any demand immediately prior to the alleged occurrence. Sec 304B of I.P.C had therefore no application here.

In response, learned counsel for the State of Kerala, submitted that the High Court have discarded the plea taken by the accused persons that the deceased accidentally fell into the well. The trial Court proceeded on erroneous premises to hold that the demand of dowry was not established by the prosecution overlooking the evidence of neighbours i.e Moideen, Kunhammed etc those who categorically stated about the harassment meted out to the deceased for non payment of dowry.

On Appeal, the Hon’ble Justice Y.K. Sabharwal and Justice Arijit Psayant of the S.C stated as follows :- “When the question before the Court was that whether the accused has committed the dowry death, then the factual scenario as described by the evidence of some witnesses is considered in the background of legal principles, the inevitable conclusion is that the accusations have been clearly established, so far as accused appellant No.1, husband of the deceased is concerned. But in respect of accused-appellant 2, mother-in-law of the deceased, evidence against her relating to alleged demand of dowry is not cogent and no credible evidence has been brought on record to substantiate the accusations. Therefore, while upholding the conviction and sentence imposed so far accused appellant No.1 is concerned, we direct acquittal of accused appellant No 2. The accused-appellant No.1 is directed to surrender to custody to serve the remainder of the sentence, if any. The bail bonds of accused appellant No.2 be cancelled.”

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Dhain Singh vs State of Punjab

In the instant case, Shinder Kaur (the deceased) was married to Dahin Singh. After marriage the husband wanted more dowry and started harassing her, so she left her matrimonial home and started staying with her parents.

Then at the intervention of the local panchayet a settlement was effected and about two months prior to her death she left her parents house and again started staying with her husband Dahin Singh.

After some days the victim Shinder Kaur had died due to burn injuries and Dhain Singh was responsible for cruelty on account of demand for dowry. Not only that the accused without informing the parents and relatives of the deceased cremated the body of the deceased Shinder Kaur and also tried to cause disappearance of evidence. He also did not inform the matter to the police. The trial court convicted the accused Dhain singh under section 304B and 201 I.P.C and sentenced him to rigorous imprisonment for a period of ten years and rigorous imprisonment for a period of two years respectively.

The second accused ie the paternal uncle of the accused Dhain Singh convicted under section 201 I.P.C and was sentenced to rigorous imprisonment for a period of two years.

The High Court of Punjab and Haryana upheld the Judgment of the trial court. On appeal the Supreme Court stated that the failure to inform the parents of the deceased and police about the incident and the fact that the injured was not admitted in any hospital shows that everything was done in clandestine and secret manner and circumstances of the case would show that the 2nd appellant was party to the secret disposal of the dead body. So S.C upheld the judgment of the Courts below.

Yashoda and another vs State of M.P

In the instant case, Kalicharan was married to Gangabai (deceased). At the time

57. AIR 2005 SC 1450
58. AIR 2005 SC 1411
of marriage some amount in cash and some ornaments were given by the parents of Gangabai. Gangabai went to her matrimonial home after the marriage but returned after 5-6 days. She reported to her parents and brother that her father-in-law, mother-in-law as well as her husband were demanding a gold chain, a ring and a earring and had threatened her that if she did not bring those items, she will not be sent to her parents house again. The evidence on record clearly established that there was persistent demand for gold ornaments and she was being persistently ill-treated by the accused for not bringing those gold ornaments and her death occurred in circumstances which can not be considered to be normal.

15 days after her last departure from the parents house the victim Gangabai was admitted to hospital in an unconscious state on complaint of diarrhoea and vomiting. Death of the deceased took place within half an hour of her admission into hospital.

The evidence on record revealed that the deceased was taken to the hospital in a critical condition when she was about to die and infact she died within half an hour of her admission in the hospital. The accused made no effort to inform the parents of the deceased about her death and on the contrary cremated the body of the deceased on the same night in a suspicious manner. The accused were charged under section 304B, 498A, 201, 176, 34 of I.P.C by the police.

The husband Kalicharan was separated as he was found to be a juvenile and his case transferred to the Juvenile Court for his trial.

The father-in-law, mother-in-law and eight other accused persons were put up for trial before the fourth Additional Sessions Judge under section 498A, 304B, 201 I.P.C. The learned session Judge by his judgment and order found the father-in-law and mother-in-law guilty of the offence under section 498A, 304B, 201 I.P.C and sentenced them to undergo one year rigorous imprisonment and to pay a fine of Rs 500/ under Section 498A. He also sentenced them to undergo ten years rigorous imprisonment and a fine of Rs 1000/ under section 304B I.P.C and two years rigorous imprisonment and
fine of Rs 500/- under section 201 I.P.C. But the trial court acquitted the remaining 8 accused persons who were charged of the offence under section 201 I.P.C and found no evidence to support the charge. The High Court of Madhya Pradesh, bench at Gwalior also upheld the conviction and sentence of the trial court.

On appeal, the Supreme Court observed that, on the basis of the evidence the prosecution had successfully proved its case that there was a persistent demand for gold ornaments ever since the marriage of the deceased Gangabai with Kalicharan, which demand was reiterated on many occasions and the demand last made was just 15 days before the occurrence of the incident. If the cruelty or harassment of demand for dowry is shown to have persistent, it shall be deemed to be happening “soon before death”, if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death.

The Supreme Court was therefore satisfied that the prosecution had successfully proved its case against the appellant i.e parents-in-law of the deceased and upheld the judgments of the Courts below and dismissed the appeal of the accused.

**BIGAMY**

Today bigamy is becoming an uncontrollable crime. Social pressures and economic compulsion force the victim women whose husbands are deserting them to keep quiet and suffer the hardships and indignities with stoicism. In this type of crime it is not an easy task for the first wife, to prove the “solemnization” of the second marriage beyond reasonable doubt. In this case, generally the court’s attitude has not been very cooperative. In this context it can be stated the actual number of such cases are much higher than the reported figures reveal because the greatest difficulties for the wife in proving the offence of bigamy is the requirement of strict proof of second marriage.

Today, though, bigamy is a very serious crime the courts are extra careful and convict an offender only on the basis of very reliable and cogent evidence. The main thing
to be proved is that the first marriage was subsisting when the spouse contracted the second marriage. Both the marriages must be valid in the sense that necessary ceremonies required by the personal law governing the parties had been duly performed and that the second marriage was void only by reason of its taking place during the life time of the first spouse.

Some important cases of bigamy are stated below:

**Gopal Lal vs State of Rajasthan**

In the instant case Gopal Lal married the complainant Kanchan and a child was born out of this wedlock. Soon thereafter the parties appeared to have fallen out and parted company. While the first marriage was subsisting, Gopal Lal contracted a second marriage with another lady Kamlabai which according to the custom prevalent amongst Tellis is a valid marriage commonly known as nata marriage. The complainant first wife Kanchan filed a complaint, on the basis of which the appellant Gopal Lal was convicted under section 494 I.P.C.

The H.C upheld the decision of the trial court and convicted the appellant Gopal Lal under section 494 I.P.C and sentenced him to two years rigorous imprisonment and fine of Rs 2,000/-. The S.C observed that—in this instant case, the evidence clearly established that the second marriage which was performed by the appellant Gopal Lal with Gopi was a valid marriage according to the custom of the nata marriage, prevalent in the Telli Community to which the appellant belonged and during the subsistence of the first marriage the accused Gopal Lal solemnized the second marriage, therefore the appellant must be held to have committed the offence of bigamy under section 494 I.P.C. In the instant case the appellant was sentenced to two years of imprisonment and a fine of Rs. 2000/- but the appellant has already paid a fine of Rs. 2000/- in these circumstances,

59. *AIR 1979 SC 713*
S.C reducing the sentence of imprisonment from two years to one year but maintaining the sentence of fine and with this modification dismissed the appeal by directing the appellant to surrender and serve out the remaining portion of the sentence.

**Lingari Obulamma vs L. Venkata Reddy**¹⁰⁶⁰

In the instant case the appellant Lingari Obulamma had filed a complaint against the respondent L. Venkata Reddy on the ground that the respondent was her husband and while the first marriage was subsisting he had contracted a second marriage and was, therefore, guilty of the offence of bigamy as enshrined in Sec 494 of I.P.C. It was also stated that after about 3 years of the first marriage the relations between the husband and wife became strained and they separated but there was no divorce. The trial Court ultimately convicted the accused under section 494 of I.P.C.

The case went up in revision to the High Court which accepted the revision and acquitted the accused on the ground that there was no proof of a valid marriage having been contracted between accused no 4 and accused No. 1. the High Court pointed out that under the Hindu Law two essential ceremonies of a valid marriage are Datta Homa and Saptapadi i.e taking seven steps around the sacred fire. The H.C found that there was absolutely no evidence to prove that any of these two essential ceremonies had been performed, therefore, the marriage was void in the eye of law & the conviction under section 494 I.P.C could not be sustained.

 Against this order the appellant filed a petition for special leave and after obtaining special leave, the appeal was placed before S.C for hearing.

 In support of the appeal it submitted that in the instant case, the parties belonged to the Reddy Community and were therefore governed by custom and under their custom the two ceremonies mentioned by the H.C were not necessary at all to constitute a valid marriage. The other ceremonies which were necessary under the custom, had been performed according to purohit.

¹⁰⁶⁰. *AIR 1979 SC 848*
The S.C observed that in the instant case there was no evidence to show that there was any custom amongst the Reddys which, out weighed the written text of law. In Re Dolgonti Raghava Reddy case (AIR 1968 Andh Pra 117) clearly shows that among the Reddy community of Telangana area the two ceremonies ie. Datta Homa and Saptapadi were not necessary to constitute a valid marriage. But the parties of this instant case belongs to the Reddy Community not of Telangana area, but that of Raiseelama area. Therefore in this case, these above mentioned ceremonies were essential to constitute a valid marriage but the existence of the custom was neither mentioned in the complaint nor proved in the evidence. the S.C upheld the High Court judgment that prosecution had failed to prove that the second marriage was a valid marriage & acquitted the respondents.

**Dhanalakshmi vs R. Prasanna Kumar**

In the instant case, the appellant Dhanalakshmi married the respondent R. Prasanna Kumar and out of this wedlock they had two children. After four years of marriage they separated and the legal battle commenced. The first respondent R. Prasanna Kumar moved the city civil court for divorce. The appellant instituted criminal complaint in the court of the Metropolitan Magistrate under section 494, 496, 498A, 112, 114, 120 120B & 34 I.P.C against the respondent and others who abetted the respondent on his second marriage.

It was alleged that the respondent R. Prasanna Kumar married another lady while the proceedings for decree of divorce were still pending & the marriage was performed secretly in the presence of the other respondents.

On appeal of the R. Prasanna Kumar the High Court by the impugned order quashed the proceedings before the trial court.

On appeal, the S.C observed that the High Court in the instant case is clearly in error in assessing the material before it and concluding that the complaint cannot be

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61. AIR 1990 SC 494.
proceeded with. It was in evidence that there were specific allegations in the complaint, disclosing the ingredients of the offence taken cognizance of. It is for the complainant to substantiate the allegations by evidence, at a later stage. In the absence of circumstances to hold prima facie, that the complaint is frivolous when the complaint does disclose the commission of an offence, there is no justification for the H.C to interfere. The S.C therefore allowed the appeal, setaside the impugned order & directed that the proceedings before the Magistrate shall be restored and disposed of in accordance with the law.

**Santi Deb Berma vs Kanchan Prava Devi**

In this instant case, Kanchan Prava Devi was married to Santi Deb Berma. During the subsistence of the first marriage, the appellant Santi Deb Berma contracted a second marriage with Namita Gosh. The respondent Kanchan Prava Devi filed a criminal complaint before the Munsif Magistrate 1st class, sadar and the trial court convicted the appellant under section 494 I.P.C and sentenced him for 1½ years rigorous imprisonment and in addition to pay a fine of Rs 1000/-. The rest of the accused arraigned along with the appellant were convicted under section 494 read with Section 109 I.P.C. Besides all the accused were also convicted under section 119 I.P.C.

On appeal by the convicted accused the additional Sessions Judge acquitted all the accused person inclusive of the appellant and stated that the parties to this proceeding are all Hindus but there was no specific evidence regarding the performance of the essential rite namely “Saptapadi” in regard to the second marriage, therefore the second marriage is not valid in law, and no offence under section 494 I.P.C was performed by the appellant Santi Deb Berma.

But the H.C on appeal, preferred by the respondent, reversed the judgment of the Session Court, based on three letters and the oral evidence to the effect that the appellant and Namita Ghosh were living together as husband and wife, though there is no plea that

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the marriage was solemnised, in accordance with the customary rites and usage, which
do not include Saptapadi. The H.C convicted the husband of Smt. Kanchan Prava Devi
under section 494 I.P.C and sentenced him to imprisonment, till rising of the court and
part fine of Rs 1500/- in default to undergo rigorous imprisonment for six months, with
a direction that out of the fine amount if collected, a sum of Rs 1000/- should be paid to
the complainant first wife.

On appeal, the S.C after analysing the entire evidence stated that the High Court
is not at all justified in drawing such an inference in the absence of any reliable &
acceptable evidence in regard to the performance of Saptapadi. The alleged second
marriage between the appellant and Namita Gosh, celebrated in defiance of law
applicable to the parties is held to be a marriage not valid in law. Hence the judgement
of the H.C is not sustainable, the S.C setaside the conviction & sentence awarded by the
H.C and acquitted the appellant. In fact, the S.C proceeded on the footing, that according
to the parties, the ceremony of Saptapadi was one of the essential requirements for
constituting a valid marriage.

Mohinder Singh vs Gulwant Singh with Mohinder Singh vs Mohinder Pal and others.63

In the instant case appellant is the brother of Jagjit Kaur. Jagjit was married to
Darshan Singh. While Darshan Singh’s marital tie with Jagjit Kaur was united and still
validly subsisting, he performed the second marriage, with Mohinder Pal and thereby
Darshan Singh committed the offence of bigamy. It is by the learned counsel appearing
on behalf of Darshan Singh who said that an engagement did take place as regards the
marriage proposal of Darshan Singh with Jagjit Kaur but no marriage was solemnised as
per the Sikh rites, in pursuance of the said engagement since Jagjit Kaur had left India
for England. He also added that Jagjit Kaur did not mention the alleged fact of her

63. AIR 1992, SC 1896, 1992 SCC (Cr) 361

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marriage in her passport, and that this very fact incidated that no marriage of Jagjit Kaur with Darshan Singh was solemnised.

The appellant filed a complaint before the court of the chief Judicial Magistrate under section 494. The Learned Chief Judicial Magistrate on being prima facie satisfied that the offence of bigamy punishable under section 494 and read with S.109 I.P.C was made out issued process by his order to all the eight accused arrayed in the complaint, of whom seven were the respondents who abetted the offence of bigamy, therein, barring Darshan Singh who was not a party in the proceedings initiated under section 482 Cr P.C and directed all the accused to appear before him.

All the respondents without appearing before the CJM approached the H.C by filing a petition under section 482 of Cr.P.C, praying to quash the proceedings as held against them.

The H.C allowed the petition filed under section 482 of the Cr.P.C and quashed the complaint filed by the appellant Mohinder Singh and all the subsequent proceedings arising there on.

On, Appeal the S.C observed that—in the present case while quashing the criminal proceedings in a complaint under section 494 for bigamy the H.C exceeded the scope of enquiry contemplated under section 202 and had gone into the question of sufficiency of evidence for conviction of offence of bigamy and arrived at the conclusion that the complaint did not contain allegation of the performance of second marriage of Darshan Singh with Mohinder Pal, though there was admission of second marriage by the accused persons, the order of the H.C quashing the proceeding was liable to be setaside.

On thorough examination of the materials, Hon’ble Justice S. Ratnavel Pandian, Justice M. Fathima Beevi and Justice Yogeshwar Dayal of the S.C also added that there was no sufficient material for proceedings, as against Lal Singh & Charanjit Kaur who are arrayed as accused No. 4 and 5 in the complaint as having abetted the offence of bigamy, though there was sufficient ground as against the rest of the respondents.
The S.C setaside the impugned order of the H.C so far as the respondents other than respondent 4 and 5 are concerned, and directed the trial Court to proceed with the case and expeditiously dispose of the same on merits of the case, without being influenced by any of the observations made by them in justification of this order. The appeal was allowed only in respect of Gulwant Singh and Balboa Singh, respondents no. 1 & 2 and dismissed in respect of Lal Singh and Charanjit Kaur.

**Laxmi Devi vs Satya Narayan & others**\(^6^4\)

In the instant case, the respondent Satya Narayan was charged for an offence under section 494 I.P.C. It was held, that prosecution had not proved through proper witnesses “Saptapadi” to establish the factum of second marriage of the accused Satya Narayan with Bimla respondent No. 4. According to the trial court, it is “saptapadi” which establishes the factum of marriage, being an essential ceremony. Without proof of such a ceremony a case for bigamy cannot arise.

But the High Court reversed the judgment of the trial Court saying that—though “Saptapadi” a fact had not been proved, there was enough evidence to establish the factum of second marriage. There were eye witnesses who had seen the marriage and that was enough to bringout the charge.

The principle relating to “saptapadi,” taking of seven steps before the sacred fire cannot be insisted upon, if as of fact, the marriage is established. Therefore the Court below was wrong. The respondent was convicted under section 494 I.P.C.

On Appeal, the S.C observed that “Merely beceause the appellant was not in a position to prove the factum of second marriage punishable under section 494 of the I.P.C that does not mean the appellant should be left in the lurch. Exercising our powers under Article 142 of the constitution of India, appellant should be awarded compensation, which would bring some solace when her life was dismally dark.”

\(^6^4\) (1994) 5 SCC 545, 1994 SCC (Cr) 1566

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The S.C directed the respondent Satya Narayan to pay Rs 25,000/ to his first wife Laxmi Devi as compensation within eight weeks from this order.

S. Nagalingam vs Sivagami 65

In the instant case, S. Nagalingam married respondent complainant Sivagami. Three children were born from that wedlock. The respondent alleged that the applicant started ill-treating her & on many occasions she was physically tortured. As a result of that ill-treatment and severe torture inflicted by the appellant S. Nagalingam as well as his mother, she left her marital home and started staying with her parents.

While staying so, the respondent came to know that the appellant had entered into a marriage with another woman Kasturi, and that the marriage was performed at Thiruthani Temple within the State of Tamil Nadu. The respondent Sivagami filed a criminal complaint to the Metropolitan Magistrate against the appellant and six others, but all the accused were acquitted by the trial court. Aggrieved by the said judgment, the respondent preferred a criminal appeal before the High Court of Madras. On appeal, the High Court of Madrass held that the appellant had committed the offence punishable under section 494 I.P.C.

This was challenged before the S.C and in this case, the S.C observed that the marriage of the appellant with the respondent was subsisting at the time of the alleged second marriage. The Metropolitan Magistrate held that an important ceremony, namely, “Saptapadi” had not been performed and therefore, the Second marriage was not a valid marriage and no offence was committed by the appellant. The H.C reversing this decision on appeal, held that the parties are governed by Section 7A of the hindu Marriage Act as the parties are Hindus residing within the State of Tamil Nadu. It was held that there was a valid second marriage and the appellant was guilty of the offence of bigamy.

The Supreme Court stated that – “In this Hindu Marriage Act, 1955, there is a State Amendment by the State of Tamil Nadu, which has been inserted as section 7A.

65. AIR 2001 SC 3576.
Section 7A applies to any marriage between two Hindus, solemnized in the presence of relatives, friends or other persons. The main thrust of this provision is that the presence of a priest, is not necessary for the performance of a valid marriage. Parties can enter into a marriage in the presence of relatives or friends or other persons and each party to the marriage should declare in the language understood by the parties that each takes other to be his wife or, as the case may be, her husband, and the marriage would be completed by a simple ceremony requiring the parties to the marriage to garland each other or put a ring upon any finger of the other or tie a thali. Any of these ceremonies, namely, garlanding each other or putting a ring upon any finger of the other or trying a thali would be sufficient to complete a valid marriage. The evidence in this case, clearly shows that there was a valid marriage in accordance with the provisions of Sec.7A of the Hindu Marriage Act. According to the Priest the bridegroom brought the “Thirumangalam” and tied it around the neck of the bride and there after the bride and the bridegroom exchanged garlands three times and the father of the bride stated that he was giving his daughter to “Kanniyathan” on behalf of and in the witness of “Agnidevi” and the father of the bridegroom received and accepted the “Kanniyathan”.

He performed the marriage in accordance with the customs applicable to the parties. Under such circumstances, the provisions of Sec.7A namely the State Amendment inserted in the statute are applicable and there was a valid marriage between the appellant and kasturi. Therefore it was proved that the appellant S. Nagalingam had committed the offence of bigamy as it was done during the subsistence of his earlier marriage.

**Krishna Gopal Divedi vs Prabha Divedi**

In this instant case, Prabha Divedi is the first wife of Krishna Gopal Divedi. The husband of Prabha Divedi secured an exparte decree, divorcing his first wife, though the wife says that she never had any notice of the said decree or the proceedings commenced by her husband. The husband solemnised his marriage with another lady, presumably, on

the strength of the exparte decree, secured by him.

The first wife Prabha Devedi filed a complaint against the accused husband that he had committed the offence under section 494 of the I.P.C and moved for setting aside the exparte decree and succeeded in it as per the order passed by the H.C that exparte decree of divorce was setaside.

The Hon'ble Supreme Court quashed the proceeding taken pursuant to the criminal complaint filed by the first wife Prabha Divedi. The husband cannot be convicted for the offence under Sec.494 of the I.P.C on the premise that he had undergone a ceremony of marriage with another lady during the subsistence of his first marriage, because the order of H.C which setaside the decree of divorce, passed after the solemnisation of the aforesaid marriage, therefore at the time of this marriage the first marriage was dissolved by that exparte decree of divorce. The husband can not be convicted under section 494 even though exparte divorce decree was later setaside.

CONCLUSION:

In India, despite all the protective laws for domestic violence and several important judicial pronouncements, the cases of domestic violence are increasing.

Today, dowry demands have made the marriage a marketable commodity. Now the bride groom’s family demand all the things more cleverly to escape from punishment under the Dowry Prohibition Act 1961. They demand all the things from the parents of the bride either as gifts to the bride groom or as Streedhan of the bride. Dowry seekers are burning women for not fulfilling their demand of dowry though, ‘Dowry Prohibition Act’ is in force.

In India, desertion of an innocent wife, for giving birth to a female child, is rampant, also female foeticide is widespread and for that reason, the number of females for every 1000 male children has dropped from 1011 to 923, according to the last census. A girl child is still a burden to her parents. Many women do not want to take the girl child
home because of pressure from her husband and in-laws.

Not only that, for escaping from the severe punishment, today many husbands and in-laws torture their innocent wives mentally. Therefore, cases of suicide of the newly wedded wife due to domestic violence by the husband and inlaws have become a daily affair. Child marriage, Sati Pratha etc like most detestable customs are found in many parts of India despite of the enactment of Child Marriage Restraint Act, Prevention of Sati Act etc. Now-a-days cases of bigamy is becoming an uncontrollable crime, because it is not an easy task for the wife to prove the “Solemnization of the second marriage.”

But, a critical appraisal of the decided cases of Supreme Court reveals that today Judges while trying cases of domestic violences, try to use the path-breaking precedent cases by the apex Court as guideline and decide the cases with an open mind. Now the Judges always try to give pragmatic judgments within the frame work of law.

There are several reported cases of serious types of domestic violence like dowry deaths, bride burnings etc. where the culprit, with the active connivance of the police destroys the incriminating evidences of the offence. In such cases, the Judges now empathize with the victim and draw the appropriate conclusions from “Circumstantial evidences”.

Cases of bigamy and other kinds of domestic violence cases are now dealt with strictly by the Judges without insisting too much on legal rules. Judges are now moulding the laws according to the requirement of the cases.

Recently, the Supreme Court delivered a landmark judgment after taking into consideration the views of the National Commission for women (NCW) which had favoured the enactment of a piece of Central legislation on registration of marriages to weed out the lacuna existing in state laws. NCW, since it’s inception, supported the proposal with the S,C that maintenance of records relating to registration of marriages would greatly facilitate the disposal of litigations. The NCW had also supplied the draft
Bill prepared by it on compulsory Registration of Marriages. On 14 February, 2006 the Supreme Court has directed Central and State Governments to make changes in rules to ensure that all marriages irrespective of religion must be compulsorily registered.67

Moved by the plight of deserted women, fighting for rights like maintenance and child custody, a Bench of Justice Arijit Pasayat and Justice S.H. Kapadia of Supreme Court directed the Government to amend the law or frame rules and notify them within three months. They also directed the government to give wide publicity to the order and granted one month's time for public objections.68 The Court made it clear that the new rules should include the provisions for the consequences of non-registration and false declarations during the registration of marriage. The rules should specifically contain the provision, for the appointment of an officer for this purpose.

The Supreme Court observed that—if all marriages irrespective of religion are registered as mandatory, then it would help to prevent child marriages, to check bigamy and polygamy, to help the tortured women to exercise rights under marriage etc and also enable widows to claim inheritance and will defer husbands from deserting their wives easily.

The Supreme Court felt that this ruling was necessitated by the need of the time as certain unscrupulous husbands altogether deny their marriage, leaving their spouses in the lurch and also deprive them from seeking maintenance, custody of children or inheritance of property etc.

The Supreme Court has stated that rules framed by the Centre and States on registry of marriages would continue to operate till the respective governments framed proper laws for compulsory registration of marriages.

67. Register all marriages : SC – By Dhananjay Mahapatra—The Times of India 15 Feb, 2006

68. The Times of India, February 15, 2006 and The Telegraph, February 15, 2006
Though the Supreme Court was moved by considerations of gender justice, the order which many saw as a demonstration of judicial activism, may provide a stimulus to the campaign for promulgation of a Uniform Civil Code.

As per the opinion of many eminent legal experts, it is also noted that, non-registration of marriages affects mostly the women. So, the rule to ensure registration of marriages mandatory, would help the courts to save time to prove the authenticity of the marriage in different domestic violence cases like bigamy, desertion etc. It also helps the Judges to avoid a litigating spouse harassment and decide rights of inheritance easily in different matrimonial dispute cases. Usually several cases of “bigamy” ended in acquittal, because it was necessary for the wife to prove that both the marriages were “valid and binding”. The legal experts also recorded that living of the husband with a woman other than the wife merely gives the wife a civil right to divorce her husband and therefore, it was necessary to prove the fact of marriage to fix criminal liability on the husband. Today, while delivering judgments in different domestic violence cases, the Supreme Court asserted that a bride can be killed for multifarious reasons, so proof of the motive is not necessary for conviction of the accused. Not only that, Judges are now always trying to give proper justice to the victims of Domestic violence and prevent the accused to get acquitted, to escape from punishment, due to lack of evidence. The Judges now are making efforts to patchup the broken marriages and in many divorce cases they directed several couples to arrive at an amicable settlement, for the sake of their children. By this way the Judges are successful in bringing those couples together again. In many cases, those couples returned to court to inform the judges, that they were happy living together.

Recently the Hon’ble Calcutta High Court has given a remarkable instruction that the husband would be compelled to live seperately from his family with his wife only, if his wife so desires. The High Court of Calcutta has also stated that mere utterance of equality of right in both sexes would not serve the purpose, a husband is supposed to stay in a separate living place with his wife after marriage, if the wife does not want to live
with his parents and other relatives of her husband. He cannot force her to live with his parents because law does not permit such right to a husband.69

In another case, the High Court of Calcutta stated that if one victim wife, who has been abandoned by her husband is not able to bear the expenses to continue her proceedings of Court case against her husband, then she is entitled to get extra money from her husband for her Court proceedings.70

Generally, domestic violence in India takes place within the four walls of the house between people bound by the ties of marriage and family relations. As a result of that, it puts the prosecution in difficulty, to produce evidence and witnesses strong enough to support the standard of proof required by the criminal Justice system. Moreover, domestic violence, which is not physical i.e which takes the form of mental, emotional or psychological cruelty, cannot be easily proved.

There is also the problem of backlog of cases that exists generally in the Indian judicial system. Till recently, more than 30 million of cases were pending for disposal in various Courts of the country. The average time span for a dispute to be resolved, through court system, is about twenty years. This overcrowding in the docket, is due to several factors like inadequate judge and population ratio, poor-infrastructure, slow investigation of Criminal Cases, cumbersome litigation procedure etc.

In domestic violence cases especially dowry death, bride burning, murder etc, delay in justice becomes very intolerable to the victim and her family. The delay between the filing of the case and trial can sometimes be so long that the memory of the witnesses may be affected also. In addition, the interests of the witnesses during this period may have so changed that they will be unwilling to come to court and provide their evidence. Therefore the prosecution case may then fail and “Justice delay is justice denied” is now a very common dictum in our court of law.

69. Ananda Bazar Patrika, 16th September, 2003
70. Ananda Bazar Patrika, dated 14th January, 2004
In domestic violence cases lot of responsibility lies on the investigating officer and the prosecutor to gather all the necessary evidence in accordance with the requirements of the Indian Evidence Act and the Code of Criminal Procedure, so that, no lacuna appears which will permit the defendant’s counsel to secure an acquittal or a dismissal. The judicial system will have to reduce the huge backlog of cases and the delay in cases coming up for trial, so that, there is no delay in granting justice, especially in cases of such a sensitive nature. Today, for cases of maintenance and for matrimonial reliefs, a special magistrate court called “Mahila Court” are being established. Similarly, the Family Court Act has been introduced under which the cases between the parties to the marriage relating to restitution of conjugal rights, judicial separation, dissolution of marriage, proceedings for maintenance will be tried by a Family Court. The duty of the Family Court will be to make efforts for settlement.

It is noted that, in many of the matrimonial disputes during reconciliation proceedings, emphasis is again on women to go and live with their husbands, and to adjust like a good wife, but hardly, husband is asked to mend his behaviours.

Recently, a question mark hangs over the judiciary. It has been created by some Judges, whose conduct and Judgments are questionable. As for example, in February, 2005, the Supreme Court granted anticipatory bail to the inlaws of a woman who committed suicide as she was allegedly harassed over dowry demand. It is a rare order, where the prosecution charged the accused, for abetting the deceased wife Chandini to suicide, for dowry demand. The victim Chandini’s in-laws said that they had cordial relationship with their daughter-in-law and no demand for dowry was ever made by them.

A bench of Justice N. Santosh Hegde and S.B Sinha after pursuing all the material produced by the prosecution and the accused stated that—"We think it appropriate that the appellants should be released on bail in the event of their arrest." They would furnish two sureties of Rs 1 lakh each and would be entitled to accompany their lawyer during
the interrogation by the police. 71

Not only that, there are several cases where the trial court has convicted the accused but the High Court did not find cogent evidence about the identity of the accused and acquitted all of them. As for example—

1) State of (Delhi Administration) vs Laxman Kumar and Indian Federation of Women Lawyers vs Shakuntala 72
2) State of Punjab vs Amarjit Singh 73
3) Brijlal vs Prem Chand 74
4) State of Uttar Pradesh vs Ashoke Kumar Srivastava 75
5) Gurbachan Singh vs Statpal Singh 76
6) Subimal Sarkar vs Sachindra Nath Mondal 77
7) State of Karnataka vs M.V Manjunathegowda etc. 78

It is also mentioned that in those aforesaid cases, ultimately on appeal by the state, the Supreme Court sometimes reversed the judgment of the High Court for securing the justice and directed maximum and reasonable punishment to the accused. They generally in cases of brutal murder due to domestic violence preferred life imprisonment instead of death sentence, as a custodian of the Human rights of the accused.

In this context it can be stated that the Government of India recently decided to improve the Criminal Justice System of India and for this purpose the Justice Malimath Committee was constituted by the Ministry of Home Affairs, Government of India, by its order dated 24 November, 2000, to examine the fundamental principles of criminal law,

71. *The Times of India, 5th February, 2005—Supreme Court bail for dowry death accused.*
72. AIR 1986 SC 250
73. AIR 1988 SC 2013
74. AIR 1989 SC 1661
75. AIR 1992 SC 840
76. AIR 1990 SC 209
77. AIR 2003 SC 1108
78. AIR 2003 SC 809
particularly with a view to shorten the excessively long delays of criminal trials and to restore confidence in the Indian Criminal Justice system. The Committee on the Reforms of the Criminal Justice System, headed by a former Chief Justice of the Karnataka and Kerala High Courts and former member of the National Human Rights Commission of India (NHRC), Justice V.S. Malimath, recently submitted a comprehensive report with 158 recommendations, to improve the Indian Criminal Justice System, to the Ministry of Home Affairs, the Government of India in March 2003.79

The essence of the Justice Malimath Committee proposal, is a shift from an adversarial Criminal Justice system to an inquisitorial Criminal Justice system, based on continental European systems.

The Committee emphasizes that police investigations are at the beginning of every Criminal Justice System, therefore substantive strengthening of police force is a key proposal of the committee. The Justice Malimath Committee also makes recommendations for an improvement of the status of victims of Crime and Witnesses.

According to the Malimath committee there are several shortcomings or aberrations in dealing with the offences against women which need to be addressed. The Committee feels that a man who marries a second wife during the subsistence of the first wife, should not escape his liability to maintain his second wife under section 125 of the Code of Criminal Procedure, on the grounds that the second marriage is neither lawful or valid.80

The Supreme Court has held that, for proving bigamy, it is to be established that the second marriage was performed in accordance with the customary rites of either parties under the personal laws, which is not easy to prove. Therefore, the committee feels

79. “Recommendations of the Malimath Committee on reforms of Criminal Justice system”—Transcrip by Shankar Gopalakrishnan, people’s Union for Civil Liberties.

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that evidence regarding a man and woman living together for a reasonably long period should be sufficient to draw the presumption that marriage was performed according to the customary rites of the parties. The Committee in its recommendation No. 115 stated that—"the definition of the word “wife” in section 125 of the Cr.P.C be amended to include a woman who was living with the man like his wife for a reasonably long period". In its recommendation No. 116, it is stated that—“Section 494 of the IPC be suitably amended to the effect that if the man and woman were living together as husband and wife for a reasonably long period, the man shall be deemed to have married the woman according to the customary rites of either party.”

The Malimath Committee in its recommendation No. 118 stated that—“The Code may be suitably amended to make the offence under Section 498A of the I.P.C, bailable and compoundable. The committee notes that there is a “general complaint” that section 498A is subject to gross misuse, and uses this as justification to amend the provision.

It is pertinent to note that the committee provides no data to indicate how frequently the section is being misused. The committee was acting on rumour rather than research or independent study that either the committee or any other party has conducted.

The Committee states that it is “bothered” if the offence is non bailable and non-compoundable, since it results in the immediate arrest of the husband and/or other perpetrators, makes “innocent” persons “undergo stigmatization and hardship”, and makes “reconciliation and returning of the wife to the marital home almost impossible”.

The committee’s reasoning, ignores the torture and cruelty that a large number of women undergo, at the hands of their husbands and their relatives. The committee goes so far as to suggest, that if the husband loses his job or is suspended due to the arrest, the woman will find it more difficult to claim maintenance. Here too many assumptions are made, most of them based on the traditional, patriarchal notion that the Indian woman would rather suffer harassment at home and forgive it, than opt-out of the marriage. In this way, the Malimath Committee, instead of strengthening the law, has proposed to
make it toothless, by suggesting that the offence be made compoundable and bailable. Here the committee is more concerned with protecting men, from a vague notion of misuse of the law rather than protecting women from being subjected to violence within their homes. Therefore offences under section 498A must remain non-bailable and non-compoundable. If the offence is declared bailable, the accused will be entitled to be free on bail and the victim is likely to avoid filing a complaint for fear of harassment by the accused. It will make women vulnerable to more violence and to threats with regard to the Criminal process. The objective of the section 498A is to give women a legal tool to deal with cruelty while they are alive, and not for “reconciliation”.

Making 498A compoundable may also expose women to more serious domestic crimes such as dowry deaths. Section 498A must therefore also remain non-compoundable to demonstrate the seriousness of the threat to the woman’s right to life. The link between section 498A and 304B (which deals with dowry deaths) has to be understood in the light of the origin and development of law against cruelty/domestic violence.

The Malimath Committee does not recommend the criminalization of marital rape. All these recommendations also undermine India’s treaty obligation to respond with genuine and meaningful legal strategies to combat domestic violence under the United Nation Convention on the Elimination of All Forms of Discrimination Against Women.

An important object of the criminal justice system is to ensure justice to the victims, yet she has not been given any substantial right, not even to participate in the Criminal Proceedings.

Therefore, the committee thinking that the system must focus on justice to victim and has made several recommendations, some of them are stated below :-

1) The victim’s right to participate in criminal trial.
2) The victim, and if he/she is dead, his/her legal representative shall have the right to be impleaded as a party in every criminal proceeding where the
offence is punishable with 7 years imprisonment or more.

3) The victim has a right to be represented by an advocate of his/her choice and if the victim is not in a position to afford a lawyer, then the advocate shall be provided at the cost of the State.

4) The victim shall have a right to prefer an appeal, against any adverse order, passed by the court, acquitting the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation. Such appeal shall lie to the Court to which an appeal ordinarily lies against the order of Conviction of such Court etc.

The machinery of Criminal Justice System is put into gear when an offence is registered and then investigated. A prompt and quality investigation is therefore the foundation of the effective Criminal Justice System.

The committee made several recommendations in relation to the police, some are stated below:-

1) The quality of investigation must be improved.

2) A mechanism for co-ordination among investigators, forensic experts and prosecutors at the State and District level for effective investigations and prosecutions should be devised.

3) An apex Criminal intelligence bureau should be set up at the national level for collection, collation and dissemination of Criminal intelligence. A similar mechanism may be devised at the State, District and Police Station level.

4) As the Indian Police Act, 1861, has become outdated, a new Police Act must be enacted on the pattern of the draft prepared by the National Police Commission etc.

The committee has also made many important recommendations relating to the
witness protection, Duty of the Public Prosecutors etc for improving the Criminal Justice System.

The committee observe that, there is gross inadequacy of Judges to cope up the enormous pendency and new in-flow of cases. The vacancies in High Courts have remained not filled up for years. The committee is deeply concerned about the deterioration in the quality of Judges appointed to the Courts at all levels.

The committee also feels that criminal work is highly specialized and to improve the quality of justice only those who have expertised in criminal work should be appointed and posted to benches to deal exclusively with criminal work.

The committee made several recommencations to improve the judiciary some are stated below :-

1) Vacancies in the Criminal divisions should be filled up by appointing those who have specialized knowledge in Criminal law.

2) Intensive training should be imparted in theoretical, Practical and in Court management to all the judges.

3) In urban areas where there are several trial courts, some courts should have lady judges who should be assigned, as far as possible, for criminal cases relating to women etc.

In this connection it will not be superfluous to mention here that the 172nd Law Commission Report on “Review of Rape Laws” recommended changes for widening the scope of the offence in Section 375 I.P.C and to make it gender neutral.

It also recommended, Marital rape should be made a crime, in Indian Criminal laws.81 Forced sexual intercourse by a husband with his wife should equally be treated

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81. Law Commission 172 Report “Review of Rape Law”, March, 2000- by Mr Justice B.P. Jeeban Reddy, Ms. Justice Leila Seth, Dr. N.M. Ghatate, Dr. Subhash C. Jain website-http://lawcommissionofindia.nic.in
as an offence just as any physical violence by a husband against the wife and is treated as an offence and shall be punished with either description for a term, which may extend to two years or with fine or with both. The Law Commission on its 172nd report, recognised Marital rape as one kind of domestic violence. It is also mentioned that, the detail discussion upon Marital rape is already included early in this chapter.

Finally, from the above discussion it appears that Indian judiciary alone cannot solve this deep-rooted social problem like domestic violence by it's different landmark and valuable judgments only. So, what is required is not only a strong legal support network but also opportunities for economic independence, essential education and awareness among women. Alternative accommodation and a change in attitude and mindest of society including judiciary, legislature, administration, men and women concerned are essential to eradicate this barbarous problem by proper implementation of protective laws & judgments of Indian Judiciary.