The violence against women continues to increase in India, but in the recent past, to minimize crime against women and in tune with the constitutional mandates, the state has enacted many woman specific laws and also introduced specific amendments to Indian Penal Code, the Indian Criminal Procedure Code, the Evidence Act and other Statutes. These changes were necessitated to enhance rate of conviction as at present it is noticed that in women related crimes conviction rate is a meager 4%. Therefore, at times, critics have pointed out that very little effort, both in terms of making the law more sensitive to women and in terms of enforcing it has been made in the past few years by the State to actually curb or deal with the violence. Women continue to suffer without adequate legal or other redress. Before evaluating the existing legal provisions aimed at protecting the interests of women, in IV, V and VI Chapters an attempt has been made to elucidate women specific laws. To make the study manageable, the focus is on some women specific provision in the Indian Penal Code and other important legislations relating to crime against women in general and dowry death and dowry related crimes, rape and sexual assault including molestation, domestic violence and indecent representation of women, in particular are analysed.
4.1 Dowry death and dowry related offences

The National Commission for Women in India in one of its annual reports states that ‘everyday, almost every six hours, somewhere at some place, in India, a young married woman is being burnt alive or beaten to death or being pushed to commit suicide. Over the past few years, the cases of bride burning have registered a sharp increase throughout India.' It was stated that as women make steady progress in all fields, demolishing the so-called male bastions one by one the one thing that seems to elude them is respite from the strangle-hold of dowry. Progressive as it may be, Karnataka recorded 307 dowry-related deaths in 2005, 18 more than in 2004.

This is the state of affairs in 2005 and it is difficult to imagine the gravity of the offence before this period. But some attempts have been made to tackle the problem by prosecuting the culprits under the provision of I.P.C. Section 302, 304 A, 304 B, 306 ,498 A, and Section 113A and 113B of Indian Evidence Act. But the offence take place within the four corners of the family, and were not reported, even reported very rarely culprits were punished because culprits and the victims are family members.

Before 1983, there were no specific provisions pertaining to violence within the matrimonial home. Husbands and in-laws could be convicted under the general provisions under law relating to murder, abetment to suicide, causing hurt and wrongful confinement. Accordingly in Somanath v. State of

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Hariyana,3 husband was convicted for murder of his wife by burning her. The Court observed that this was case of horrendous murder. Bhagwant Singh v. Commr. of Police Delhi,4 where a women died due to burn injurious. The husband was prosecuted and his contention was that deceased herself set on fire. The Court in this case rightly observed held that "Young women of education, intelligence and character do not set fire to herself to welcome the embrace of death unless provoked and compelled to that desperate step by the intolerance of their misery". Similarly in Jaspal Singh v. State of Punjab,5 the prosecution story was that soon after the marriage, the husband's demand for dowry began. The demands were not met, ultimately husband strangulated wife and burnt her body. The High Court convicted the husband to the life imprisonment. However, these general provisions of criminal law did not take into account the specific situation of a woman facing violence within the home as against assault by a stranger. It was strongly felt that an offence committed within the privacy of home by a person on who is emotionally dependent needs to be dealt with on a different plane.

But at the same time it was extremely difficult for woman to prove violence by husbands and in-laws 'beyond reasonable doubt' as was required by criminal jurisprudence. There would be no witness to corroborate their evidence, as the offences are committed behind closed doors and within the four walls of the house. Thus, different criteria had to be evolved to measure injury. For example:

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3 1980, Cri. L.J. 926.
5 1984, Cri. L.J 691.
generally, 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, when she apprehends danger to her life, as she is living with and is dependent on her assaulter. Thus, special concessions have been made in the law dealing with woman.

Before the enactment of the Criminal Law Amendments Acts, 1983 and 1986, dowry deaths were dealt with under Section 302 of the Indian Penal Code i.e., murder or under Section 306 i.e., abetment to suicide.

The amendments relating to dowry violence introduced two new types of offences in the Indian Penal Code. A new Section 498A of the Penal Code dealt with 'cruelty' and 'harassment' for dowry. The section defined cruelty as harassment of a woman by her husband or a relative of his, to coerce her or her relatives into giving dowry.\(^6\) Cruelty was however defined as willful conduct, which was likely to drive a woman to commit suicide or to cause her grave physical or mental injury.\(^7\) Although this section's primary purpose may have been to deal with dowry violence, it had a wider significance, since domestic violence came to be perceived as criminal conduct.

\(^6\) Sec. 498A of the IPC: Husband or relative of husband of a woman subjecting her to cruelty- Whoever being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

\(^7\) Act 46 of 1983 Cases of cruelty by the husband and the relatives of the husband which culminate in suicide by, or murder of, the hapless woman concerned, constitute only a small fraction of the cases involving such cruelty. It is therefore proposed to amend the IPC, the Code of Criminal Procedure and the Indian Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by their in-laws.
The later 1986 amendment to the Indian Penal Code created a special type of offence called dowry death to combat the increasing incidence of dowry deaths. Under this section, if a woman died an unnatural death within 7 years of marriage and it was shown that just before her death she had been subjected to cruelty or harassment by her husband or his relatives for dowry, such a death shall be deemed to have been caused by the husband or his relatives. The punishment for causing this death is imprisonment for a minimum of 7 years and a maximum of life imprisonment.

4.2 Bride burning

Bride burning is a shame of our society. Poor never resort to it, rich do not need it. Obviously, because it is basically an economic problem of a class which suffers both from ego and complex. That is social ostracisation needed to curtail increasing malady of bride burning. Dowry is a deep rooted social evil, cause of ever so many unfortunate deaths of young ladies. It is an offence brutal and barbaric. It is generally committed inside the house and more often with a circumstance to give an impression that it was a suicidal death. It is true that legislation can not by itself normally solve deep rooted social problems. One has to approach them in other ways too, but legislation is necessary and essential, so that it may give that push and have that educative factor as well as the legal

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8 Sec. 304B Dowry Death — 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 relative shall be deemed to have caused her death.
sanctions behind it which help public opinion to be given a certain shape. Experience shows that the demand of dowry and the mode of its recovery take different forms to achieve the same result and various indirect and sophisticated methods are being used to avoid leaving any evidence of the offence. Similarly, the consequences of non-fulfillment of the demand of dowry meted out to the unfortunate bride takes different forms to avoid any apparent casual connection between the demand of dowry and its prejudicial effect on the bride. This experience led to various legislative measures. 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 relative shall be deemed to have caused her death. Accordingly in *Prabhudayal v. State of Maharashtra,*\(^9\) there was demand for dowry and cruel treatment to the deceased. Death of deceased was due to 100% burns. There was total absence of shouts or cries and Medical evidence showing asphyxia was not due to burn. Accused persons watching incident through window without any hue and cry or without any serious attempt to save deceased, the court rightly observed that, it was a case of murder and not suicidal death. Similarly in *Kundula Bala Subrahmanayam v. State of Andhra Pradesh,*\(^10\) failure of parents of deceased to

\(^9\) AIR 1993 SC 2164.
\(^10\) AIR 1993 SCC 1321.
transfer land in name of her husband conclusively established to be the strong motive for accused for bride burning. The Supreme Court observed that dying declarations by deceased voluntary, consistent and truthful and Medical evidence supporting dying declaration. Subsequent conduct of the accused consistent only with hypothesis of guilt of accused. But in Maniram v. State of Madhya Pradesh,\textsuperscript{11} Court wrongly acquitted the accused on the ground that, dying declaration recorded by Sub Inspector was in nature of F.I.R. and no attestation from doctor taken to the effect whether patient was conscious or not. There was no other evidence against accused except dying declaration which was of highly doubtful nature. Even though there was an allegations that accused husband poured kerosene oil on deceased wife, set fire and ran away.

\textbf{4.3 Cruelty and harassment}

The introduction of Section 498A into the Penal Code has opened a floodgate of complaints by women alleging cruelty and harassment at the hands of their husbands and in-laws. The available case law, however, shows that the courts have often not taken a very strict view, and Section 498A has been defined very narrowly to include cruelty and harassment of only a very grave nature. Besides, some High Court judgements have interpreted Section 498A to mean only the kind of cruelty which has led a woman to commit suicide. The purpose of the reform was to punish cruelty, which would include not only harassment for dowry but also any willful conduct which would be likely to cause grave injury or danger to life, limb or health (both mental and physical). This

\textsuperscript{11} AIR 1994 SCC 211.
objective has not been realized. Accordingly in Manjushree Sarda v. State of
Maharastra case\textsuperscript{12}, the Session's Court, Pune, convicted the husband of
murdering his wife by poisoning. But the husband was acquitted by the Supreme
Court on the ground that the husband's guilt was not proved beyond reasonable
doubt and that the wife might have committed suicide out of depression. In
another case, the Madhya Pradesh High Court set aside the conviction of three
years and acquitted the mother-in-law. The Court observed that since the
deceased ended her life by self-immolation when neither of the in-laws were
present in the house, suicide in all probability was committed out of frustration
and pessimism due to her own sensitiveness, therefore harassment and
humiliation was not proved.\textsuperscript{13}

In a case under Section 498A IPC, the Bombay High Court held that it is
not every harassment or every type of cruelty that could attract Section 498A. It
must be established that beating and harassment was with a view to force the
wife to commit suicide or to fulfill illegal demands of husband or in-laws, which, in
the court's opinion, the prosecution failed to prove in this case.\textsuperscript{14} In similarly in
case from the Bombay High Court, the judge observed that, the offence under
Section 498A had not been proved; since the evidence did not conclusively
establish that the deceased had committed suicide.\textsuperscript{15} The judge in fact agreed
that the deceased Antkala, had been ill-treated and harassed by her husband.

\textsuperscript{12} 1986, Cr J. 453.
\textsuperscript{15} Kushal v. State of Maharashtra, (1990), (1), HLR, 328.
at the instance of his parents, and her body had been found floating in a tank. The Court however observed that Section 498A of the IPC contemplates that a woman should drive herself to death or injury and the main ingredient of Section 498A is proof of suicide. If the death is attributed to anyone else, the offence could not be established under the section 498A.

Similarly in Waghmare v. State of Maharashtra, for instance the court held that since the applicant had not established that the beating and harassment was with a view to forcing her to commit suicide, or to fulfill the illegal demands of the husband, it did not amount to the offence of cruelty as defined under section 498A of IPC. In this case, the applicant had alleged that her husband and in-laws had started harassing her to obtain a motor cycle, and on one occasion, two months after the marriage, her brother-in-law had poured kerosene on her and set her on fire. The court, after taking note of the fact that the brother-in-law had not been accused in the case, held that since the incident had occurred prior to the insertion of Section 498A in the IPC, this evidence would not help the complainant/applicant.

These decisions of the Courts show how courts have misinterpreted Section 498A so as to exonerate perpetrators of violence against women. Several cases also indicate that it is only while setting aside a conviction for dowry death or other grave offences that the courts have held that cruelty under section 498A has not been proved. Thus in Masood Ahmed v. State case, the

16 (1), HLR, 438.
17 1991, (2), HLR, 566.
court observed that the demand for Rs.10,000 for helping a business and for a colour TV could not be held to be in connection with dowry, and hence the accused could not be convicted for dowry death. The court, however, went on to hold that it was apparent that the deceased had been harassed and treated cruelly and that the accused was guilty under Section 498A of the IPC. The mother-in-law’s behaviour in spitting on the complainant and the husband’s beating were considered as further evidence of cruelty. However, as the accused had already been in jail for 3 years, the court reduced had earlier been sentenced to 4 years rigorous imprisonment under Section 304 B IPC.

In another well-publicized case, the woman, Vibha Shukla, was found burnt while the husband was present in the house. A huge amount of dowry was paid at the time of the wedding and there were several subsequent demands for dowry. Vibha had delivered a daughter; the family did not accept the child and she were left behind in her parent’s house. The Bombay High Court set-aside the order of conviction of the Session’s Court, acquitting the husband of the charge of murder and harassment under Section 498A. The court observed that the offence of murder could not be proved beyond reasonable doubt and that occasional cruelty and harassment cannot be construed as cruelty under the section.¹⁸

4.4 Abetment to suicide

It is generally noticed that, 'no woman unless of unsound mind will resort to suicide; having burnt or strangled herself'. One of the most significant amendments that were introduced in the Indian Evidence Act allowed the courts to presume that, in certain circumstances, a husband or his relative had abetted the suicide of a woman. Accordingly in Shyama Devi v. State of West Bengal,\textsuperscript{19} allegation of the prosecution was that on account of persistent mental and physical torture by the husband and mother-in-law, the deceased committed suicide. The trial court convicted both the accused. But on appeal, the Calcutta High Court felt that there was neither hardly any reliable evidence of torture nor any evidence that the mother-in-law or her husband instigated the deceased to commit suicide. In view of this conviction of both the accused was set aside.

The fact of the matter is that in such cases, there is paucity of evidence. Direct evidence is hardly available and many a time circumstantial evidence is scanty. Particularly, the evidence of mental and physical torture abetting the wife to commit suicide is not always available. The presumption under section 113A will come into operation only when it is shown that the deceased was tortured or harassed leading to her committing suicide. Similarly in Wazir Chand v. State of Haryana,\textsuperscript{20} the Court did not punish the accused as there was no evidence to support the charge of abetment to commit suicide. The accused is innocent, not

\textsuperscript{19} 1987, Cri, L J. 1163.
\textsuperscript{20} AIR, 1989, SC, 379.
because there are no witnesses but because they do not want to come forward and testify.

While referring to Section 113A of the Indian Evidence Act, the Supreme Court\textsuperscript{21} in 1983 clarified that the courts can presume that suicide by a woman has been abetted by the husband or a relative when two factors are present: (a) that the woman has committed suicide within a period of seven years from the date of marriage, and (b) that the husband or relation had subjected her to cruelty. Cruelty for this purpose is defined in Sec. 498A of the Indian Penal Code. The Supreme Court went on to comment that the legislature had realized the need to provide for additional provisions in the Indian Penal Code and in the Indian Evidence Act to check in growing menace of dowry deaths.\textsuperscript{22}

A large number of dowry deaths occur due to the continuous harassment of young brides who commit suicide by setting themselves on fire. As the suicide is often committed within the confines of the matrimonial home, there is invariably no direct evidence indicating the circumstances in which this suicide took place. In \textit{Ravinder Kaur} case\textsuperscript{23} for instance the girl was said to have committed suicide by sprinkling kerosene oil on her body and then setting herself on fire. Ravinder Kaur had been living with her husband and in-laws prior to her death. Whenever she visited her parents, she told them that her in-laws taunted her for bringing insufficient dowry and threatened that she would be thrown out of the house if she did not bring more dowry.

\textsuperscript{21} Brijal v. Premchand and Ors, 1989 (2), HLR, 126.
\textsuperscript{22} Ibid, at p. 136.
The Court considered the conduct of the in-laws and husband in not informing the police after the suicide and not taking steps to take her to the hospital. The Court held that the circumstantial evidence and the fact that the persons in Ravinder Kaur's house including her mother-in-law made no attempt to save Ravinder Kaur, proved their culpability.

The Supreme Court rejected the view of the High Court that the case had not been proved beyond reasonable doubt. It criticized the High Court judgment and said that though criminal charges must be proved beyond all reasonable doubt, the doubt 'must be of a reasonable man' and warned against an 'exaggerated devotion to the rule of benefit of doubt'. The Supreme Court further held that justice cannot be made sterile on the plea that it is better to let a hundred guilty escapes than punish an innocent. Letting the guilty escape is not doing justice according to law.24 Again in Basnat Kumar v. State of M.P.,25 the husband was accused of beating his wife frequently. The mother-in-law and the Sister-in-law also joined in assaulting her mercilessly. The inhuman treatment made the wife so depressed and one day she committed suicide. The court held that the husband or the in-laws can not be guilty of abetment to suicide because the beating were much prior to the act of suicide. Similarly Baburam v. State of Madhya Pradesh,26 allegation of the prosecution was that, deceased committed suicide due to abetment but the court observed that, prosecution case not proved beyond all reasonable doubt. No inference against innocence of accused can be

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25 1990, Cr. L. J, NOC, 45.
26 (2002) 1, DMC 305 (SC).
drawn appellant was acquitted of charge Under Section 201 r/w Section 306 IPC and in this there was no cross – appeal filed by state, the court does not think necessary to go into this aspect of the no motive why appellant father-in-law should cause or abet her suicide because of not bringing in sufficient dowry. In *Giridhar Shankar Tawade v. State of Maharashtra*, the Court acquitted the accused under section 498A and said that, to have an event sometime back cannot be termed to be a fact taken note of in the matter of a charge under Section 498 A. The legislative intent is clear enough to indicate in particular reference to explanation (b) that they shall have taken a series of acts in order to be construed as harassment within the meaning of explanation (b). The letters by itself though depict a reprehensible conduct, would not however bring home the challenge to section 498A against the accused. Acquittal of a charge under section 306, as noticed here in before though not by itself a ground for acquittal under Section 498A but some cogent evidence is required to bring home the charge of section 498 A as well, with which the charge cannot be said to be maintained. Presently we have no such evidence available on record. But in *Surender v. State of Haryayna*, there was an abetment of wife to commit suicide. Inference drawn from facts that, deceased wife harassed by appellant husband with demands of dowry. Ultimately appellant turned her out of the matrimonial home. She then went to her parents' house and stayed there for three months. At that time she was pregnant – she was thereafter taken back by

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27 (2002), 1, DMC 780, (SC).
appellant with the assurance that he will treat her well. But 10 days thereafter she committed suicide. The court convicted the accused on the ground that, on facts, offence under Ss. 306 and 498A made out and observed that, young pregnant woman would not ordinarily commit suicide unless she was compelled to do so. Deceased would not have felt depressed if she had not been harassed on account of dowry.

4.5 Presumption of dowry death

A combined reading of section 304B of the Indian Penal Code and section 113B of the Indian Evidence Act indicates that there must be material to show that immediately before her death the victim was subjected to harassment or cruelty. Both the provisions are departure from the normal rule of evidence and a presumption arises against the accused in a case where the death of the victim occurred unnaturally within a period of seven years of the marriage. Virtually the same ingredients are required to be raised for the presumption under both the sections.

The presumption under these sections will apply if parties were validly married whether under personal law or customary law or statutory law.

A number of cases have come before courts in which the husband has harassed or treated with cruelty his wife within seven years of marriage leading to her death either because she was led to commit suicide or was poisoned or was put to death by pouring kerosene on her and setting her ablaze. In some cases the accused have been found guilty both under section 304B and section 498A of the Indian Penal Code and have been sentenced to various terms of
imprisonment and a fine. Accordingly, in *Prem Singh v. State of Haryana*, unnatural death of married woman in her husband's house within seven years of her marriage. Harassment by the husband for not bringing sufficient dowry was established. Medical evidence showing that the deceased died due to asphyxia as a result of smothering which is an unnatural death. No explanation offered by the husband as to how the deceased sustained several abrasions and contusions on her body. The Court observed that, in the circumstances, presumption of dowry death can be raised against the husband. High Court justified in reversing his acquittal. However, mother of the husband who resided separately, did not stand to gain from the demand of additional dowry and whose presence in the house at the time of the incident not established, she entitled to the benefit of doubt.

In *State of Punjab v. Iqbal Singh*, the Supreme Court, clarifying the position, observed:

"The legislature intent is clear to curb the menace of dowry deaths, etc., with a firm hand. We must keep in mind this legislative intent. It must be remembered that since crimes are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence is not easy to get. That is why the legislature has by introducing sections 113A and 113B in the Evidence Act tried to strengthen the prosecution hands by permitting a presumption to be raised if certain foundation facts are established and the

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30 1998 SCC 1714.
unfortunate event has taken place within seven years of marriage. Section 113B, Evidence Act provides that the court shall presume that such person had caused the dowry death. Of course, if there is proof of the person having intentionally caused her death that would attract section 302, Indian Penal Code. Then we have a situation where the husband or his relative by his willful conduct creates a situation which he knows will drive the woman to commit suicide and she actually does so, the case would squarely fall within the ambit of section 306, Indian Penal Code. In such a case the conduct of the person would tantamount to inciting or providing or virtually pushing the woman into a desperate situation of no return which would compel her to put an end to her miseries by committing suicide”. In Bhoom Singh v. State of Uttar Pradesh the Allahabad High Court took the view that section 113B of the Indian Evidence Act is procedural and therefore is retrospective in operation. Under section 113B of the Indian Evidence Act the presumption of dowry death arises if the death takes place within seven years of marriage and there is evidence to show that she was subjected to harassment and cruelty. Obviously, the presumption under the section relates to dowry death of a married woman and it has to be shown that before her death she was subjected by the accused to cruelty or harassment and such cruelty or harassment has been in connection with the demand for dowry. No such presumption can be drawn if the charge is confined to section 302. The presumption will arise when charge relates to section 304B of the Indian Penal

and it is shown that the married woman was subjected to cruelty or harassment in connection with demand for dowry.\textsuperscript{34}

It should be noticed that the words in section 113B of the Indian Evidence Act are that the married woman was subjected to cruelty or harassment soon before her death. This implies that there has to be close proximity between the incidents of cruelty or harassment for demand of dowry and the death of the woman. If the two are apart, the presumption will not apply. It can happen that after marriage a woman is subjected to cruelty or harassment, but party's compromise and acts of cruelty or harassment's cases. Thereafter if the woman died, no presumption can be raised. Thus proximity test is applied for determination whether the presumption under section 113B of the Indian Evidence Act could be invoked.\textsuperscript{35} However, once proximity test becomes applicable under section 113B, it becomes mandatory to apply the presumption and no option is left with the court. The court will presume dowry death unless some cogent evidence is led to rebut the presumption. The fact of the matter is that presumption under section 113B reverse the rule that burden of proof is on the prosecution.\textsuperscript{36} \textit{Thakkan Jha and others v. State of Bihar,}\textsuperscript{37} inapplicability of condition that “soon before” her death the victim was subjected to cruelty or harassment by the accused for or in connection with any demand of dowry. The

\textsuperscript{34} \textit{Ashok v. State of Punjab,} 1987, Cri L J. 1412.
\textsuperscript{35} \textit{Samir Samanta v. State of West Bengal,} (1991) 2 crimes 867.
\textsuperscript{37} (2006) SCC 309.
Court observed that, the said presumption would not be drawn if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty or harassment thereafter. But, mere lapse of some time by itself would not provide the accused a defence, if the course of conduct relating to cruelty or harassment is shown to have existed earlier in time not too late and not too stale before the date of death of the victim. This is so because the expression used in the relevant provision is "soon before". The term "soon before" is not synonymous with the term "immediately before". The said term would normally imply that the interval should not be much between the cruelty and harassment concerned and the death in question i.e., there must be existence of a proximate and live link between the two. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon the facts and circumstances of each case. No straitjacket formula can be laid down by fixing any time-limit in this regard. Once these three circumstances are proved, the offence under Section 304 B of the Penal Code is established. When once there is demand for dowry and harassment against the deceased, and death occurs within seven years after the marriage, the other things automatically follow due to the statutory presumption contemplated under section 113 B of the Evidence Act. But the Supreme Court takes different view in this regard. Accordingly, in T. Aruntperunjothi v. State of Pondicherry\(^\text{38}\) the question was whether death of a woman was due to cruelty or harassment by her husband for or in connection with demand for dowry soon

\(^{38}\) 2006 SCC 528.
before her death. The Supreme Court held that, no evidence, direct or indirect, as regards harassment or cruelty by appellant against his wife available. Necessary ingredients of circumstantial evidence for holding appellant guilty not considered by Trial Court as well as High Court. Even if there was misunderstanding between appellant and deceased, that would not automatically lead to the conclusion that appellant committed offence under Section 304 B as law does not raise such a presumption. Trial court took erroneous view that another person had made demands from deceased's parents as messenger of appellant and that insistence revealed that what was demanded by that person was a dowry demand. Such a hypothesis could not be made the basis for conviction of appellant under Section 304 B. The version of defense was that, cause of death was that the deceased had insisted to go to her mother's house but she was not allowed. Having regard to the peculiar features of the case, the Court held that, cruelty or harassment for dowry being the cause for death of the deceased was not established beyond all reasonable doubt.

4.6 Dying declaration of victim

The Dying declaration of a victim is considered as a relevant evidence for the convicting the accused because it is based on the belief that the dying victim shall not tell a lie. However, there is neither rule of law nor of prudence that dying declaration cannot be accepted without corroboration.\textsuperscript{39} If the Court is satisfied that the dying declaration is true and voluntary, it can base conviction on

\textsuperscript{39} Hannu Raja v. State of M.P., 1976 (2) SC 761.
it without corroboration. The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result to tutoring, prompting or imagination. The deceased has opportunity to observe and identify the assailants and was in a fit state to make the declaration.

Where dying declaration is suspicious it should not be acted upon without corroboration. Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. A dying declaration, which suffers from infirmity, can not form the basis of conviction.

Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. Where the prosecution version differs from the versions given in the dying declaration, the said declaration can not be acted upon. It is observed that in dowry cases the citadels of justice including the Supreme Court

of India and other High Courts have ignored the victims dying declaration as not full proof evidence and not necessarily authentic. Accordingly in Ravi Chander and others, deceased made three dying declarations. First dying declaration recorded by the ASI making out a case of accidental death found not acceptable by the court, in view of subsequent two dying declarations. Dying declaration recorded by the Executive, Magistrate tallying substantially with oral dying declaration to her brother. The court observed that, in the circumstances of the case, second and third dying declarations reliable. Genuineness of dying declaration recorded by the Executive Magistrate cannot be doubted on facts merely because delay of about a fortnight in sending the same to the Investigation Officer. Similarly in Shripatrao v. State of Maharashtra, eight dying declarations are found to be consistent. Before the doctor deceased stated that her husband had poured kerosene on her clothes and set her ablaze and the doctor making note of it in the case papers. Special Executive Magistrate, after ascertaining deceased's fitness, recording her dying declaration to the same effect. Thereafter, dying declaration also recorded to the same effect by Sub-Judicial Magistrate. On facts the court convicted the accused on the ground that three dying declarations, apart from the other dying declarations, were reliable and truthful and were rightly relied upon by the court below. But in Kishan Lal v. State of Rajasthan, two dying declarations, which were after two months of the incident, not only giving two conflicting versions but there were also inter se

49 (1998) SCC (Cri.), 1004.
50 (2000) SCC (Cri), 83.
51 (2000) SCC (Cri), 182.
discrepancies in the depositions of the witnesses given in support of the earlier oral dying declaration and in the second dying declaration recorded by Magistrate deceased not naming any of the accused. In the circumstance court, observed that conviction cannot be based on such dying declarations. Dying declarations having been made long after the incident, deceased cannot be said to be expecting imminent death at that time. In this case court did not consider the consequences of the act which is responsible for the death of the accused. Again in *Dandu Lakshmi Reddy v. State of Andhra Pradesh*, the court observed that on the factual situation of a case, a judicial mind would tend to wobble between two equally plausible hypotheses – was it suicide or was it homicide? If the dying declaration projected by the prosecution gets credence, the alternative hypotheses of suicide can be eliminated justifiably. For this purpose, a scrutiny of the dying declaration with meticulous circumspection is called for. It can be made the basis of conviction, otherwise not. It was further observed that in favour of the impossibility of conducting the test on the version in the dying declaration with the touchstone of cross examination, the court has to adopt other tests in order to satisfy its judicial conscience that the dying declaration contained nothing but the truth. In the present case as the dying declaration, which is the sole evidence upon which conviction is based, is not reliable beyond all reasonable doubt, the conviction and sentence of the appellant is not justified.

In another case *Uka Ram v. State of Rajasthan*, Supreme Court of India set

52 1999-(7) SCC 69 – vii (199) SL T 106 (Relied)
aside the judgement of High Court and observed that dying declaration is sole evidence upon which conviction is based, not reliable beyond all reasonable doubt that dying declaration was true, voluntary and not influenced by extraneous consideration. Despite knowing the fact that the deceased was a mental patient investigating agency did not take any precaution to ensure incident was suicidal or homicidal; probability of deceased committing suicide not eliminated. Mental condition of the deceased at the time of making dying declaration doubtful. The medical certificate only states her fit physical condition. Trial court as well as the High Court ignored this aspect of matter while convicting and sentencing the appellant. Similarly in State of Punjab v. Parveen Kumar, there are different versions of the incident in the several dying declarations. The court acquitted the accused and observed that, dying declarations creates doubt about their truthfulness. Mere fact that name of one accused was common in all the dying declarations, not sufficient to convict the accused. Truthfulness of the declarations can be tested on the basis of other reliable corroborative evidence. But, in Bapu v. State of Maharashtra, the Supreme Court observed that, if a dying declaration is found to be reliable then there is no need for corroboration by any witness, and conviction can be sustained on its basis alone

4.7 Unnatural death

A perusal of the provisions of Section 304B shows that one of the essential ingredients that have to be established is that death was otherwise than

54 (2006) SCC (cri), 146.
55 (2007) 2 SCC (cri), 545.
in normal circumstances. In the case of Akula Ravinder v. State of Andhra Pradesh, the other circumstances namely that the death occurred within seven years of the marriage and that before her death they have harassed her for demand of dowry are established. Coming to the other ingredient, the prosecution miserably failed to establish that death was otherwise than in normal circumstances. It was however submitted that the deceased was young and the death was not due to natural neither cause nor it was due to an accident and the only inference that can be drawn is that it was otherwise than under normal circumstances. In a case of this nature, the court acquitted the accused on the ground, the prosecution also failed to establish that it was unnatural death it can not be surmised that death must be due to unnatural circumstances. But in Santosh Rani Jain and Another v. State of W. B., unnatural death within four months of the marriage. Concurrent findings of the courts below regarding demand of dowry, harassment and beating. Accused persons mercilessly beating the deceased and throwing her body on the pavement outside their residential building. Version of the defence was that, the deceased committed suicide by jumping from the terrace was not acceptable. The Supreme Court observed that, in the circumstances, High Court rightly observed that death of the deceased was caused in furtherance of common intention of mother-in-law and husband of the deceased and upheld acquittal of brother-in-law of the deceased. Similarly in

56 AIR 1991 SC 1142.
Anand Mohan Sen and another v. State of W.B., deceased found dead early morning in the verandah of her matrimonial home. Evidence proving physical and mental cruelty meted out to her and accidental consumption of poison ruled out on facts, because in case had it been so accused would not have fled the house and an attempt would have been made to take the deceased to hospital. The Supreme Court observed that, death by itself may not lead to an inference that cruelty was meted out to the deceased, but in the instant case there were specific allegations which were proved.

4.8 Offences under the Dowry Prohibition Act

The practice of dowry has emerged as a major social evil in contemporary India. In early days the idea behind giving dowry to girls at the time of marriage was to provide them with some financial security at the time of need. This custom, which had its origins in sublime sentiments, has now become a curse. The disconcerting aspect of the problem is that higher education and economic stability of young men, instead of serving to reduce the problem, seems to have aggravated it. The educated section shamelessly contribute to its perpetuation by demanding higher amounts or costly articles as dowry as of right. Here the offence has taken the garb of an inalienable right of the groom's family. This evil practice has slowly started spreading to other religious groups like Christians and Muslims also. The Dowry Prohibition Act, 1961 was enacted to provide an effective check to dowry deaths which were continuing despite the then

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58 (2007) 3 SCC (cri.), 678.
prevailing laws. Its object was to prohibit the evil practice of giving and taking dowry.

The 1961 Act was so full of loopholes that no successful prosecutions could be carried out under this Act. The ineffectiveness of the Act was manifested at different levels. First, there were hardly any cases filed under this Act and there were less than half a dozen convictions in the period between the enactment and the amendment. So the purpose of the enactment as a deterrent factor was totally lost. The Act defined dowry as 'property given in consideration of marriage.' This definition posed it would have to be proved that the article had been given as a motive or reason or reward for the marriage. Secondly, presents given at the time of marriage were specifically excluded from the definition, and the accused could always take the plea that the dowry item was in fact a present. Accordingly in Vinod Kumar Sethi v. State, that a voluntary and affectionate giving of dowry and traditional presents would be plainly outside the ambit of the definition under the Act and, once that is so, the rest of the provisions of the act would be inapplicable. Similarly in Kunju Moideen v. Sayed Mohamad, it was held that the amount paid by Mohammedan in connection with a daughter's marriage, to the prospective bridegroom for purchase of property in joint names of daughter and son-in-law is not dowry. Thirdly, even though the giving and taking of dowry was not only at the time of marriage but on

59 Sec. 2 of Dowry Prohibition Act before amendment.
60 Inder Sen v. State, 1981, Cr. ... L.J, 1116.
61 AIR 1982 P&H 388.
62 AIR 1986 Ker. 48.
numerous occasions thereafter, anything given after the marriage was not considered to be dowry. In fact, in the case quoted above it was held that 'after the marriage, giving of property of valuable security by the parents of the bride cannot constitute a consideration for marriage unless it was agreed at the time of or before the marriage that such property... would be given in future.' The Bombay High Court in Shankar Rao v. L.V. Jadhav, held that a demand for Rs. 50,000 from the girl's parents to send the couple abroad did not constitute dowry. The judgement held that since the girl's parents had not agreed to give the amount demanded at the time of marriage, it would not be deemed as consideration for marriage. Anything given after the marriage would be dowry if only it was agreed or promised to be given as consideration for the marriage. The absurd interpretation was in total contrast to the spirit of the Act and defeated the very purpose for which it was enacted. But in S.Gopal v. State of A.P., the Supreme Court held that the demand made even before the marriage amounts to offence under the Act. Apart from this, Section 3 of the 1961 Act made the giver and taker of dowry equally responsible. This obviously prevented the dowry victim's family from prosecuting a complaint.

The offence of demanding dowry is committed the moment demand is made should now be treated as law. Accordingly, in Daulat Man Singh v. C.R.

64 Supra note, 60.
65 (1983), 4 SCC 231.
66 1964 SCC 596.
Banssi, where demand of dowry was made through the elder brother of the accused who was the son-in-law of the complainant. It was held that it is not necessary that the demand of dowry has been made at or near about the date of marriage. If demand for dowry has been made earlier when the parties were negotiating marriage, it would nonetheless constitute the offence of demanding dowry, even if negotiation broke down and no engagement of marriage took place.

Under the unamended section there was some controversy among different High Courts as to whether mere demand of dowry constitute an offence or whether to constitute the offence demand should have been accepted. Accordingly, in Indrsen v. State of Bihar, and Kashi Prasad v. State of Bihar, the Patna High Court expressed the view that mere demand for dowry would not constitute an offence under the section unless it was shown that the other party consented to pay it.

Fourthly, in total defiance of the Act, the custom of dowry had percolated down the social scale and communities which had hitherto practiced the custom of bride price are now resorting to dowry. Lastly, all the violence faced by women in their husband’s home is being attributed to dowry and the term ‘dowry death’ had become synonymous with suicides and wife murders. Since the objective of eliminating dowry death could not be achieved, drastic amendments...
were brought in by amending various provisions of the 1961 Act and the related provisions under the Indian Penal Code and the Evidence Act.

4.8.1 The Dowry Prohibition Act 1986

The Dowry Prohibition Act was amended twice thereafter, in 1984 and 1986, and significant changes were made in the act to make it much stronger and to give it depth. In order to remove the major loopholes existing in the Dowry Prohibition Act, 1961, an amendment was brought replacing the word consideration in 1985 Act inserting the word 'in connection' with the marriage. As a result of this amendment, now any money or valuable security paid before or after or at the time of the marriage, it amounts to dowry. Hence, even if the demand is made long after the marriage, the same could constitute a dowry, if the other requirements of the sections are satisfied. The definition now states that anything given in connection with a marriage and given either before, at the time of, or after the marriage would be dowry. However, customary and traditional presents are excluded from the definition provided their value is not beyond the financial status of the person who gives them. The Joint Select Committee of Parliament and women's organizations have suggested that a

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71 Sec. 2 of the Dowry Prohibition Act: ‘Definition of Dowry – In this Act, ‘dowry’ means and property or valuable security given or agreed to be given either directly indirectly: a) by one part to a marriage to the other party to the marriage; or b) by the parents of either party to a marriage’.

72 Proviso to Sec. 3(2) of the Dowry Prohibition Act: ‘Provided that such presents are entered in a list maintained in accordance with the rule made under this Act, Provided further that were such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.'
definite ceiling be put on the money that could be spent on presents, but this was not accepted by the government.

The punishment for giving and taking dowry was increased to a minimum period of imprisonment for five years and a fine of not less than RS. 15,000 or the equivalent of the value of such dowry, whichever was more. The demanding of dowry was also made punishable for a period of not less than six months, which could be extended to two years and a fine. Dowry was made a cognizable and non-bailable offence. This means that the police were bound to investigate all offences relating to dowry under the Act, once they came to know about it. Unlike the previous Act, there was no limitation on the period within which a dowry complaint could be filed. An important provision in the Act was that it shifted the burden of proof from the complainant to the person being prosecuted for dowry. This meant that once the case started, the person who was accused would have to prove that he had not taken dowry.

After the Amendment, in some of the cases, courts have also made an attempt to define the term 'Dowry' and what act constitutes Dowry? Dowry means a property or valuable security given or agreed to be given either directly or indirectly by one party to another party to a marriage. Any property given by parents of the bride as consideration to the marriage to the bride groom or his

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73 Report of the Joint Select Committee of the Parliament on Dowry, New Delhi, Govt. of India 1981.
74 Sec. 3 (1) of Dowry Prohibition Act.
75 Sec. 4 of Dowry Prohibition Act.
76 Sec. 8 of Dowry Prohibition Act.
77 Sec. 8 - A of Dowry Prohibition Act.
relatives in connection with the marriage, the same would constitute dowry under the Act.79 Where dowry is demanded at the time of settlement of the marriage by either of the party as a consideration for the marriage, it is attracted by the definition of dowry. This clearly shows that, anything demanded, as a consideration for the settlement of marriage constitutes Dowry. In K.R. Soorachari v. State of Karnataka,80 a demand of dowry through his wife and his nephew’s wife. Finding of Trial Court completely ignored the cogent and reliable evidence on record, which proved the case of prosecution that dowry was demanded and paid. The Supreme Court convicted the accused and held that, such a finding ignoring relevant evidence cannot be sustained even in an appeal against acquittal.

But if the dowry items were not demanded as a part of consideration for the marriage they would not constitute “dowry”,81 likewise, any demand of property or valuables, after the celebration of marriage, which was not demanded at the time of settlement of the marriage as consideration, would constitute dowry.82 Land assigned as a gift as consideration for the marriage also constitutes a part of dowry.83 In Arjun Dhondiba Kamble v. State of Maharashtra,84 it was held that the demand for valuable presents made by appellants on the occasions of festivals like Deepavali is not connected with the

84 1996 Cr. L.J. 273.
wedding or marriage and therefore demands did not constitute dowry with the meaning of the Act. Whereas in Madhu Sudhan Malhotra v. K.C. Bhandari,85 the Supreme Court observed that, furnishing of a life of ornaments and other household articles such as refrigerator, furniture, and electrical appliances etc., at the time of the settlement of the marriage amounts to demand of dowry within the meaning of section 2 of the Dowry Prohibition Act. Recently, the Supreme Court has ruled that demand for money and presents from parents of a married girl at the time of birth of her child or for other ceremonies, as is prevalent in the Indian society, may be depreciable but cannot be construed as dowry to make it a punishable offence.86

4.8.2 Restoration of dowry

After the death of the married women the question arises, who is the custodian of the articles which are given to bride at the time marriage. Accordingly in Rajeev v. Ram Kishan Jaiswal,87 a criminal case came before the Allahabad High Court, it was observed that, when a woman dies issueless, the articles received by her as apart of dowry to be returned to her parents rather than to her husband. This decision seems to be unreasonable as the husband is deprived of rights over the articles received by his own wife. Where as in Prithichan v. Des Raj Bansal,88 and Manas Kumar Dutt v. Alok Dutta,89 both Patna High Court and Orrissa High Court respectively have observed that, where

85 1988 Cri. L.J. 360.
87 Sec. 6 of Dowry Prohibition Act. 1961.
88 (1990), Cr L.J. 368 p & H.
89 (1990), Cr. L.J. 115 (Ori).
the wife dies within less than three months of her marriage, the husband cannot claim the dowry article which were given to his wife and the same is required to be transferred to her parents. This clearly shows that whatever the dowry articles received by the wife are required to be transferred to her parent not to her husband. The same point has been reiterated by the High Court of Orissa in *Pradeep Kumar v. State of Punjab*. In order to protect the interest of both bride and bridegroom, the Dowry Prohibition Rules provide that any genuine presents offered to the bride or to the bridegroom at the time of the marriage, are valid unless the value of such presents should not be excessive compared to the financial status of the parties who are giving such presents. It is to be noted that not all gifts or articles that are given to the bride or the bridegroom at the time of the marriage, which constitutes dowry, but only those articles or gifts given to them on their demand which amounts to dowry with in the meaning of the Act. Further it is also to be noted that when certain procedure are followed in connection with the receipt of gifts or articles, the same would not amount to dowry.

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90 1990, (1), CC cases, 594, (Ori).
91 Ibid.