AN ASSESSMENT OF JUDICIAL ATTITUDE

It is often asserted by many women that 'the judges men or women do not seem to be sympathetic to women,' and, most of the victims of rape, cruelty, prostitution and other violence say they seem to be oblivious of the trauma that we, the victims of heinous crimes like rape or sexual violence undergo, and the time it takes to recoup from the horrifying experience.

The criminal justice system, which in many ways is deeply patriarchal in its attitude. This, combined with the inefficiency and corruption in law enforcement, has often resulted in cases not being investigated or prosecuted properly. Insensitivity and gender bias prevalent among the judiciary also result in injustice to the complainants of victims of violence. The study focuses on various judgements of the Supreme Court and High Courts in India, and tries to analyze the manner in which the Courts have dealt with cases in these areas. Both negative judgements, in which, the patriarchal and class/caste bias of the Court becomes apparent, and the positive judgements, in which the Courts have shown their concern against discrimination and for the rights of women. For the purpose of brevity, landmark cases subject to scrutiny by various women's views have been highlighted in this chapter and in the next one, the primary thrust is in

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2 Ibid.
respect of often alleged male bias and insensitivity towards women's cause prevailing in judicial process.

8.1 Gender bias and Judicial Process

Bias has been defined as a particular influential power which ways the judgment and the inclination or propensity of the mind towards a particular object. In judicial parlance, justice requires that the judge should have no bias for or against any individual in making his judicial decision and that this mind should be perfectly free to act as the law requires. Whilst bias may take various forms, when it comes to the judiciary, bias, even on account of a particular gender should have no place in it. Bias in any form is anathema to a Judge. It is, therefore, recognized that where bias is perceived, the general public considers the judicial system as having failed to adhere to the highest standards or impartiality and fairness. The Rule of Law obtains validity or ratification by society because of its commitment to equality for all citizens irrespective of race, colour, creed, sex etc.

Less than twenty years ago terms such as "judicial gender bias" or gender bias in the Courts were unheard of. Today, the systematic discussion of gender bias is not only part of the most national judicial education system, but it has also received national and international recognition and pervasive gender bias in the Courts which was virtually invisible as recently as the 1980 has become apparent and is plainly visible on record and one cannot miss it even with a casual glance. Research conducted into this matter by social scientists and researchers in the legal field have documented judicial gender bias and its profound effect on
judicial fact finding and decision making. Originally, such progressive empirical studies were uncoordinated. In numerous areas of the law, a disquieting picture emerged which shows that gender bias existed in all areas, operating sometimes to the advantage of men and more often and more seriously to the disadvantage of women. If gender bias is identified in all its nuances and hues that would be a large step in dealing with this dilemma. It is not special treatment for women or for men that is called for, because such special treatment is not needed. Instead, what is needed is sensitivity to the ways in which unexamined attitudes about men and women lead to the unintended result of biased decision making. Once this sensitivity is achieved, and it is reinforced by curiosity, analysis and openness, then and only then will the litigants be able to explain their circumstances to a Court that is both willing to learn and to judge to achieve a gender neutrality in judicial system, which is both vital and important to the ultimate achievement of justice in its purest and highest form.

8.1.1 Dowry Trails

The trial in PUDR v. Union of India, demonstrates the disenchantment with the casual manner in which dowry cases were being investigated and dealt with by the police and the subordinate Courts. The deceased Kanchanbala, a 20-year-old graduate from a middle class family was married to Subhash, a salesman in the Bata Shoe Company on 4.5.1978, her in laws are not satisfied with the dowry they got and go on making consistent demand for more dowry.

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4 AIR 1984 p. 84
5 Ibid.
6 1982 (2) SCC 253.
On 18th March 1979, Kanchanbala, found dead, a post-mortem was carried out on the body of the deceased at 3.15 P.M. The clothes worn by the deceased were burnt but there was no smell of kerosene oil on the clothes. There was only smell of kerosene oil on the scalp hair, which was partly burnt. The doctors opined that death was due to shock resulting from 100% burns.

The magistrate took 4½ years to give his orders after registration of a complaint by her mother on 4.10.80. A Special Leave Petition directly to the Supreme Court by women's organisations was filed against the order of the magistrate for recording evidence in which he had adjourned the matter for three months since it was the only way of activating the subordinate Court to expedite the case. The Supreme Court issued notice to the State; the petition became in fructuous because the magistrate by then had begun to hear the case. The Magistrate examined several witnesses before summoning the accused. It took 5 years for him to finally deliver his order on 10/01/1985; He held that there was no case against the sister-in-law and brother-in-law of the deceased. The husband and mother-in-law of the deceased were summoned for abetment to commit suicide punishable under Section 306, Indian Penal Code.

In 1985 the magistrate committed the case to the sessions. A charge under Section 306/34 was framed against the accused and his mother on 8-1.1991. In all these proceedings the complainant could not have made any progress, had the counsel for women's organisations not been in the picture.

Further delays were caused since the accused filed a revision petition in the Delhi High Court against the framing of charges. The High Court has stayed
the proceedings pending before the magistrate, on the ground that, "upon consideration of the matter, I found that section 4 of the Dowry Prohibition Act 1961 do not apply to the present case for the simple reason that the demand was not repeated in consideration of the marriage but was made on the occasion of the arrival of the first child. I, therefore, find no force in this revision petition and is hereby dismissed". It raises serious questions about the bias of the Courts in providing legal aid to the accused and ignoring the claims of vulnerable complainants and victims. Thus the inadequacy of a definition of dowry demand was highlighted.

This decision was rendered before the Dowry Prohibition Act, 1961 was amended in 1983. Section 2 has been replaced. Now "Dowry" includes a demand at any time after the marriage. Had the learned Judge been consistent and realistic he would have held that the demand made was after the marriage and to ensure matrimonial peace i.e., marriage, and he would have arrived at a more valid and just decision and the amendment necessitated by his decision would have been avoided. The judicial responses have been both slow and uncertain. As a result, the definition of dowry was amended in 1983, and Sec 113A was added on the presumption of dowry death in 1986.

Many dowry murder cases have been prosecuted so badly in Court that conviction was hardly likely. The manner, in which judges deal with a case,

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7 Ibid.
often depends on their individual ideology regarding the role of women in the family. *Sudha Goel’s case* for instance, reveals the strong gender bias even amongst some High Court judges. In Sudha Goel appeal was first heard in the High Court in Delhi, and it was the Supreme Court, which overturned the High Court judgement and held the husband guilty. When women’s groups protested against the lower Court judgement and pointed out that the judges of lower Court had not analysed the evidence correctly.

Women’s organizations had not participated during the trial of *Sudha Goel case* but welcomed the conviction. It was thought necessary to watch the case in the High Court and, therefore, permission was sought to intervene on behalf of the *Mahila Dakshata Samiti*. The Court refused intervention but permitted the counsel for the *Mahila Dakshata Samiti* to assist the public prosecutor but not to intervene as a party. No copies of the record of the case were given to the counsel by the Court. Hence counsel was under a major handicap in rendering effective assistance to the Court. However, it was crucial to ensure that the case was effectively monitored. Women’s organizations were low profiled and cautious. Several representatives of women’s organizations sat in Court to keep track of the proceedings.

The judgement of the Court was startling as the accused were acquitted and this led to demonstrations by women’s organizations outside the Court to

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9 *State v. Laxman Kumar*, 1984 D.L.T. 33
10 *Mahila Dakshata Samiti*, a women’s organization
register their protest. This resulted in a petition for contempt being filed in the High Court against women's organizations. A resolution of the Delhi High Court Bar Association was also passed condemning the demonstration held in the premises of the Delhi High Court. Judges Rajinder Sachar and Leila Seth heard the petitions against the women's organizations.

The Court observed that, the respondents have undoubtedly crossed the permissible limit of fair criticism and their action makes them liable for being proceeded against in contempt. But I do not rule out the possibility that the Respondents may have believed genuinely that holding of such demonstrations was within law, and necessary to advance the cause of suffering women in this country. Their motivation, sincerity or purpose is of course unreservedly accepted. The need for improving the status of women is extremely pressing. How unjustly the women are dealt with in various spheres of social life has been highlighted. Accordingly the Court felt that the ends of justice would be met by expressing disapproval of their action and it was hoped that the Respondents would moderate their activities.

(i) Appreciation of evidence

In India, under the law of evidence, there is a pious principle of evidence known as "Dying Declaration". Which has been provided under Section 32 of

12 Sec 32 of Indian Evidence Act, Cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant. Statements, written or verbal, of relevant facts, made by a person who is dead or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured, without an amount of delay or
the Indian Evidence Act 1872. Section 32 of the Evidence Act itself does not contain such term known as "dying declaration". But by way of interpretation of main clause and sub-clause (1) of Section 32, the Judges, jurists and scholars, have developed a world wide known term as "Dying Declaration" which means the statements made by a person at the time of his death or at the expectation of his death about his death or circumstances resulting into his death.

A dying declaration is considered to be the relevant, reliable, admissible and best piece of evidence. It provides a sufficient and enough bases to convict an accused person. The Courts in India and England, favour of dying declaration to the extent that they sometimes consider it as relevant and admissible even without corroboration. When courts become satisfied that the dying declaration is not impregnate or infested with any infirmities affecting its credibility. The obvious reason of this sympathy by the Courts seems to be that since these are made in extremity; when the party is at the point of death, and when every hope of this world is gone. When every motive of falsehood is silenced and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so awful which is considered by the law a creating an obligation equal to that which is imposed by a positive oath administered in a Court of expenses which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts In the following cases:

When it relates to cause of death; when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or not, At the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.
Justice and further it is based on the Latin maxim *Nemo Moriturus Proesmiture mentiri* (a man will not meet his maker with a lie in his mouth).

In a number of decisions, their Lordship of the Supreme Court of India, has further laid down that as soon as the truthfulness of the statements relating to the death of the declarant has been established immediately the Courts can switch off the formality of its corroboration. Judiciary in various cases expressed the most glaring examples of this ideology. The only duty of the Court in considering a dying declaration is, as pointed out by the Supreme Court in *Uka Ram v. State of Rajasthan*, that the Court is obliged to rule out the possibility of the statement being the result of either tutoring, prompting or vindictive or product of imagination. Before relying upon a dying declaration, the Court should be satisfied that the deceased was in a fit state of mind to make the statement. Once the Court is satisfied that the dying declaration was true voluntary and not influenced by any extraneous consideration it can base its conviction without any further corroboration, as rule requiring corroboration is not a rule of law but only a rule of prudence.

However, due to the passage of time, changed social conditions and scenario, the pious institution of dying declaration, too, started loosing its sanctity, reliability, credibility and admissibility as a sole piece of evidence and several other factors like (a) Introduction of fresh matter, (b) tutored dying declaration. (c) remote connection with the facts responsible for death of the

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declarant, (d) various other reasons contributing in the case of death of declarant, (e) Incomplete dying declaration, (f) statements made due to feeling of anger. Jealousy, revenge, and to screen off one's own misconduct, (g) unreliable character of the declarant, (h) non-corroboration from other relevant evidence, (f) extraneous consideration and (j) inconsistent dying declaration, are mainly responsible for dying of the dying declaration.

So, the sole question of analysis and study here is, whether an inconsistent dying declaration should or should not be treated as a relevant piece of evidence? A close study of cases from the year 1872 till the year 2008 reveals a prevalent amazing demarcation of the opinion among the Courts in India. In India, because of the complete dependence of a young married woman on her husband and in-laws, many dowry murder cases indicate that the woman is pressurized to give contradictory dying declarations. If she thinks that she may survive, she gives a statement in favour of her husband, which she then changes when she realizes that death is imminent. It has also been pointed out that burn victims often do not realize that they have suffered severe burns as they feel no pain, and therefore do not believe that they may not survive. Courts have sometimes failed to take this reality into consideration while deciding these cases. There are however cases where Courts have appreciated the 'natural' hesitancy and fear of a young bride in implicating her husband and in-laws. In

15 This was also pointed out in regard to third-degree burns suffered by dowry victims by Ms. Kanwaljeet Deol, Additional Commissioner of Police, Delhi in an interview with Kiran Singh in April 1989.
Sudha Goel case, the Supreme Court reversed the order of the Delhi High Court and convicted both the accused with imprisonment for life. Sudha told the neighbours that her mother-in-law had set her on fire. She repeated this statement to another person (who later became a prosecution witness). Neighbors on hearing Sudha’s screams had rushed to the scene, put out the flames and taken her to hospital. There was evidence that Sudha’s in-laws and husband stood watching.

The defence relied upon a dying declaration, which was alleged to have been taken down in writing by the investigating police officer in the case. Disbelieving the police officer’s testimony the Supreme Court said that the High Court was wrong in relying upon this written dying declaration, as this had not been taken down by the Magistrate. The Supreme Court relied upon the oral testimony of the neighbors and Sudha’s relatives on the argument that they had no reason to lie. Accordingly in Kailash Kaur v. State of Punjab, the Supreme Court fully relied upon a dying declaration in which the deceased had given a clear and vivid account of the pouring of kerosene oil over her body and of her being set on fire. In her declaration, the deceased had also implicated her sister-in-law, Mahinder Kaur, as the one who had held her while her mother-in-law set fire to her. The High Court had acquitted the sister-in-law. Commenting on the High Court's judgment, the Supreme Court held that there was no reason not to rely on the dying declaration and expressed ‘grave doubts about the legality,

\[^{16}\text{Supra note 9,}\]
\[^{17}\text{AIR 1987 SC 1368.}\]
propriety and correctness of the decision of the High Court' in giving the sister-in-law the benefit of the doubt.

The Supreme Court also held that circumstantial evidence led by the prosecution, including a letter by the deceased giving the details of harassment and maltreatment, the testimony of her father, along with the dying declaration made to the Head Constable after questioning by the doctor, was enough to implicate the accused. The difficulties associated with finding evidence in cases of dowry murder, particularly dying declarations, were for instance considered by the Delhi High Court in *Rajpal v. State*, in this case of dowry murder there were six dying declarations, which could be divided into two sets. One set exonerated the accused, and the other implicated him. The trial Court after examining the facts of the case rejected the declarations, which exonerated the husband. The High Court accepted the trial Court's reasoning. This case shows how the Courts can be sensitive to the social reality and the context in which the burn victim makes a dying declaration. Instead of relying on the technicalities of the law, the Court recognized the 'natural' fear and sense of dependency on her husband and in – laws that a married girl reveals by her hesitation in initially stating what actually happened. There are other cases where the Courts have refused to recognize a dying declaration, exonerating the accused when there has been evidence suggesting that the death was caused by violence. But in *Maniram v. State of Madhya Pradesh*, Court wrongly acquitted the accused on

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18 1989 (1) HLR 90.
19 AIR 1994 SCC 211
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 allegation that accused husband poured kerosene oil on deceased wife, set fire and ran away.

Similarly in *State of H.P. v. Nikku Ram*,20 Accused persons alleged to have demanded dowry and treated deceased with cruelty, leading to suicide. The Court observed that, there was no evidence showing deceased has been harassed within the meaning of Section 498A, and presumption under Section 113A of Evidence Act cannot be raised. By and large, in cases of abetment of suicide, the rulings are not uniform; the justification being that each case depends on the facts and the perception of the Courts. In *Bholakumar and another v. State of Madhya Pradesh*,21 the appellant was charged under Section 306 for abetment of suicide of the respondent. The High Court held that the learned Additional District Judge erred in invoking Section 113A of the evidence Act. Though the death was occurred by burn injuries, it was held that the prosecution did not lead any evidence to prove cruelty. Appellant was thus acquitted. He was released on bail as per sec. 439 Cr. P.C. and on a personal bond of rupees 10,000. It was observed that by mere suspicion alone the

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20 AIR 1995 SCW 3721
21 AIR 1995 SC 341
accused couldn’t be convicted. In *Dandu Laxmi Reddy v. State of A.P.*, the Court held that the fact of homicide or suicide of the declarant, is a disastrous fact. And cannot be covered, cured or explained by other evidence because on the fact-situation of a case a judicial mind would tend to wobble between two equally plausible hypothesis was it suicide, or was it homicide. If the dying declaration projected by the prosecution gets credence the alternative hypothesis of suicide can be eliminated justifiably, for that purpose a scrutiny of the dying declaration with mentioned circumspection is called for. It must be sieved through the judicial cull ender and if it passes through the gauzes it can be made the basis of a conviction, otherwise not. It was further held that in view 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 conclus that the dying declaration contained nothing but truth. The same was the position in *Uka Ram v. State of Rajasthan*. Similarly, failure of naming the accused person and non-producing the eyewitnesses, before whom. The deceased made his statements were considered fatal inconsistencies affecting the nature of sole evidence.

Since it is impossible to cover the huge bulk of cases available on this point in India. A close scrutiny of few illustrative cases further reveals that the following inconsistent facts have been held as fatal, material, and of disastrous

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22 AIR 1999 SC 3255; 1999 Cri. L.J, 4287
23 *Supra* note 21.
nature, affecting the credibility, reliability, relevancy and admissibility of the dying declarations.

Hence it can be concluded from the above observations of the Courts that in criminal jurisprudence surmise, presumptions and assumptions are not available. So, it will be unjust to convict a person on the basis of dying declaration too, when it is impregnant with disastrous inconsistencies and these inconsistencies go to the root of the building of law relating to "dying declaration" in India. In all cases of suicide, the onus lies on the prosecution to prove beyond all reasonable doubt. Do we name the laws as dysfunctional impotent or shall we squarely see through the havoc created by subjective interpretations by the judges? The inhuman ways, in which young women are nagged for dowry and pressurized and pushed to the brink, to commit suicide. Is it not abetment? One wonders why only brides, the daughter-in-law commit suicide when they are living with their husbands and in-laws. We hardly and rarely come across daughters ending up their lives in their parental homes. This unending discrimination practiced between daughters and daughter-in-laws has assumed ugly proportions leading to the increasing cases of suicide. Most often the girls are strangled by the husband or his parents and reported as cases of suicide committed by the deceased.

However, apart from the above view, another view, which is also prevailing among Indian Courts, is that since the dying declaration is made at the time of extremity, victim suffering from injuries, fearing his death. And has very short time at his disposal, as well as, normal mental conditions is not expected in such
a situation hence, minor gap inconsistency, lacunas, should not affect the relevancy of the only best evidence available in such a case. The view thus proceeded in some cases was that if the inconsistency is not of vital nature, does not go to the root, and is of repairable and removable nature, and if gaps can be filled or explained by other surrounding or circumstantial evidence, then such a dying declaration should not be discarded, rejected but rather should be relied upon. If the Court has closely scrutinized all the relevant circumstances and found it not infested with any infirmities, it should be considered as relevant as well as admissible. The Supreme Court of India in Tapinder Singh v. State of Punjab\textsuperscript{24} advocated the same view.

(ii) Interpretation of Laws

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 objective has not been realized. Accordingly in Manjushree Sarda v. State of

\textsuperscript{24} AIR 1970 SC 1566.
Maharashtra, the Session's Court, Pune, convicted the husband of murdering his wife by poisoning. But the Supreme Court acquitted the husband on the ground that his 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 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.

In a case under Section 498A IPC, 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, and in the Court's opinion, the prosecution has failed to prove the same in this case. Similarly in another case the same court observed that the offence under Section 498A had not been proved since the evidence did not conclusively established that the deceased had committed suicide. The judge in fact agreed that the deceased, Antkala, had been ill-treated and harassed by her husband 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

25 1986 Cr L J. 453
26 Padmavati v. State of Madhya Pradesh, 1987 Cr. L. J. 1573
28 Kushal v. State of Maharashtra, (1990) (1) HLR 328
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,\textsuperscript{29} 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. The complainant had further alleged that she was subjected to harassment and beating by her husband even there after. The Court however held that this harassment and beating was not sufficient, as she had not conclusively established that the beating and harassment was with a view to forcing her to commit suicide or to fulfill the illegal demands for dowry. This interpretation ignored the fact that legally cruelty could be any conduct, which would be likely to drive a woman to commit suicide, or cause her mental or physical harm, and need not necessarily result in suicide. In fact, the explanation

\textsuperscript{29} Supra note 17 (1) HLR 438.
or Section 498A IPC expressly states that even conduct which would cause grave injury and danger to life, limb or health is an offence.

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*, the Court held that it was not a case of dowry death since the evidence on record did not prove cruelty or harassment in connection with dowry. The trial Court had convicted the in-laws and husband of the deceased under Sec. 304B and Sec. 498A. The Delhi High Court held that the demand for Rs. 10,000-00 and a colour TV did not constitute demand for dowry. Though the Court admitted that there was a demand for Rs. 10,000 for the husband's business, this demand, in the Court's view, did not constitute dowry, and harassment on account of this demand could not be said to be in connection with dowry. In an obviously contradictory judgement, the Court however held that when the parents of the deceased showed their inability to deliver these objects the deceased was subjected to cruel treatment and harassment. The Court held that it was proved that the deceased had left home and told her parents that her mother-in-law had spat in her face, and her husband had not interfered and that because of this she refused to go back to her husband's house. The Court in fact further went on to

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30 1991 (2) HLR 566
surmise that though nobody could determine what exactly had happened, it was clear that the girl had committed suicide.

The judgement obviously proceeded on a completely wrong interpretation as to what constituted dowry, and reached a conclusion that the case was one of suicide, which could not be supported on the evidence. The judgement highlights how judicial bias can operate to negate the purpose of law, and how judges are influenced by traditional and feudal values that conflict with the legal reforms that have been enacted in this area.

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 was left behind in her parent's house. The Bombay High Court acquitted the husband of the charge of murder and harassment under Section 498A and set-aside the order of conviction of the Session's Court. 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.31

(a) Traditional Presents are not considered as dowry

More than a decade long working of provisions related to dowry in various Acts has brought home the fact that the combat for eradicating this evil is much more difficult than expected. It demands a comprehensive approach towards many problems concerning women and girls. The vicious circle comprising birth as a girl child, illiteracy, economic dependability, marriage and dowry death cannot be penetrated without a complete overhauling of the system legal, political as well as social. Whereas in *Madhu Sudhan Malhotra v. K.C. Bhandari*, 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 does not amount 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 deplorable but cannot be construed as dowry to make it a punishable offence. These customary payments of gifts are not dowry. In *V.V. Rao and Others v. Andhra Pradesh* and in *Arjun Dhondiba Kamble v. State of Maharashtra*, it was held that the demand for valuable presents made by appellants on the occasions of festivals like Deepavali is not connected with the wedding or marriage and therefore demands did not constitute dowry within the meaning of the Act. The Dowry

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32 1988 Cri.L.J. 360
33 1992 Cr. L.J. 563
34 1995 Cr. L.J. 273
Prohibition act does not in any way bar the traditional giving of presents at or after the wedding, which may be voluntary and affectionate gifts by parents and relatives to the bride. The traditional giving of presents is an accepted practice, which finds mention in the ancient Hindu scriptures at and even after marriage.

But the real difficulty arises, pointing towards the flaw in the Act, in making a distinction between voluntary and extorted gifts. The coercive element in cases of dowry becomes very difficult to prove because before expecting the voluntary or traditional gift from the parents of the wife, the husband may emotionally exploit the wife to insist her parents to give a gift according to his demand.

In *Savitri Devi v. Ramesh Chand & Ors.*,\(^{35}\) the petitioner's allegations in brief, are that after marriage her in-laws specially her father-in-law and her husband and brother-in-law did not like the dowry articles and expressed unhappiness that they were not given Hero Honda and cash of Rs. 50,000/-. The wife of the elder brother of her husband Mr. Mukesh and the sister of her husband did not like the clothes given to them. Ms. Mukesh represented that if only Sanjay had married her sister, then he would have got more dowry. The main allegation of harassment was against the husband and father-in-law. There were no demands of dowry by other relatives.

The judge S.D. Kapoor while dismissing the petition remarked that non-acceptance of gifts might have hurt her feelings but by no stretch of imagination Sec. 498A or 406 IPC are involved. The judge further commented upon “the misuse of the provisions of Sec. 498A/406 IPC to such an extent that it is hitting

\(^{35}\) 2003 D. L. T. 824.
at the very foundation of marriage itself and has proved to be not so good for the health of the society”.

Justice Kapoor’s Judgement not only appears a sweeping verdict but that almost may mislead people and Courts to disbelieve the validity of Section 498A, IPC. The Hon’ble judge seems to have totally overlooked the socialization and conditioning of girls in the Indian Society. A newly wed young wife is expected not to react and to smile over any pungent remarks made on the gifts she brought to her in-laws home. Hair splitting definitions made by the judge between cruelty and harassment appears very far-fetched. If the young bride has not implicated all others in the in-laws family, it is laudable instead of imputing a motive on her for mentioning only her husband and her father-in-law in her complaint.

(b) 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, 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, and Manas Kumar Dutt v. Alok Dutta, both

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36 Sec.6 of The Dowry Prohibition Act.
37 (1990) Cr L.J. 368 P & H.
Patna High Court and Orissa High Court respectively have observed that, where 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.

(c) Other Source of Bias

The survey conducted by Suteahl, NGO, Delhi in its report Gender and Judges pointed out that Judges attribute the pervasiveness of dowry to a number of reasons like unequal economic condition, weak husband, failure of parents to take back the daughter from situations of dowry harassment. The Judges laid emphasis on changing women rather than altering attitudes, which affect women adversely. Some Judges affirmed that while they would not demand dowry for their son, they would have to provide dowry for their daughter, wherein lies the crux of the problem with gender bias. In *L.V. Jadhav v. Shankaraao Abasahed*, the bridegroom's father demanded Rs.50,000 during pre-marriage negotiations, but the father of the bride rejected the demand. The sum was demanded for payment towards airfare of the bride and father-in-law to join the husband in USA. However, the marriage took place on intervention of a common family friend of both the parties. The bride was not sent to USA to join

39 As quoted in 2004 Cri L.J, p.195
40 Ibid.
her husband for one year after marriage for non-payment of Rs. 50,000 demanded by the father-in-law. In the absence of an agreement to pay this undisputed demand was not construed as dowry by the Bombay High Court, which quashed the complaint against the father-in-law. However, on appeal, the Supreme Court set aside the judgment of Bombay High Court and held that even unilateral demand for dowry would constitute an offence under the Dowry Prohibition Act 1961. In *Shobha Rani v. Madhukar Reddy*\(^\text{42}\) the ground of divorce was cruelty caused by incessant demand of dowry. She produced a letter of her husband, which disclosed as follows: “Now regarding dowry, I still feel that there is nothing wrong in my parents asking for a few thousand of rupees. It is quite a common thing for which my parents are being blamed of harassment”. The trial Court agreed with the husband of Shobha Rani and came to the conclusion that there was nothing wrong on the part of the husband to ask his wife to give money when he was in need of it. The A. P. High Court also agreed with the trial Court by holding that there was nothing wrong and unusual in asking a rich wife to spare some money. Fortunate for being rich, the wife could approach the Apex Court, which differed from the Courts below and reversed the findings of both the High Court and the trial Judge- The sociological understanding of dowry abuses by the Apex Court is reflected in the following words:

> "The Indian woman is brought up and trained in a traditional atmosphere and told that it is better to die in the husband’s home than return to her parents’ home and bring disgrace to them. She finds it very difficult to violate this cardinal

\(^{42}\) AIR 1988 SC 121.
principle and prefers to die at her husband's place. This is the social reality of a woman's life. The legal agents in power need to understand this and be sensitive to it. The message must percolate down the line to the grass root level of judicial in the country".43

Today, "Dowry" is being equated with extortion, even death and destruction. It has lost its cultural values and is, therefore, is now a new and mounting menace and social malignancy and responsible for turning many matrimonial homes into a hell-house and a wreck ultimately affecting not only the spouses but their children as well who would be a future citizen of the country. As a matter of fact society itself has been primarily responsible for giving air to this evil. All this has taken place because of stereotype thinking about the status of women in our society and consequently, there have been prejudice against the women by one and all thus making her status unequal. This has led to serious problems to the health of the society resulting into unnatural deaths- dowry deaths and suicides by young women.

(iii) Sentencing

The researcher and women's activists have tried to establish the undue sympathy shown to dowry culprits with reference to the catena of Supreme Court decisions, wherein death sentence awarded was converted in to the imprisonment for life and reduction of life imprisonment to 7 years imprisonment. Accordingly, in HemChand v. State of Harryana,44 the appellant had married the

43 Ibid.
44 (1994) 6 SCC 727.
deceased and demanded a sum of Rs.25000 as dowry for purchasing a plot. The deceased had come to the matrimonial house with Rs.15000 and a request that her father be allowed to remit the balance within some additional time. Within five years of marriage, the deceased died of strangulation, the trial court held that there was demand for dowry and there was cruelty on the part of the accused and accordingly convicted him under sections 304-B and 498-A of the IPC, awarding a sentence of imprisonment for life. On appeal High Court reduced the sentence to ten years imprisonment. Further, the Supreme Court reduced it to seven years imprisonment and court said that Section 304 B of IPC provides for presumption and lays down that the minimum sentence should be of 7 years, which may extend to a maximum of imprisonment for life. Therefore, it was reasoned that awarding the extreme punishment of imprisonment for life; should be in rare cases and not in every case.

Again in Pawan Kumar v. State of Haryana, one Urmil was married to Pawan Kumar shortly after, there began demands for a scooter and a fridge. The husband and parents-in-laws ill treated her and harassed her. She was subjected to mental cruelty. Though Urmil informed her relatives, she was pacified, and sent back after a visit to Delhi in April 1987 where she stayed with her sister, she was reluctant to return to her matrimonial home, when he came to fetch her on May 17, 1987, there was a quarrel between Urmil and her husband infront of her sister. She however left with her husband and her parting words to her sister indicated that she was not likely to be seen again. On May 18, 1987 Urmil was

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45 1998 3 SCC 309.
found burnt to death on the first floor of her matrimonial home after a neighbor reported about smoke emanating from the house.

The trial court convicted the husband and his parents for offences under sections 304B, 498A and 306 IPC. The High Court confirmed the sentence but reduced the husband sentence from 10 years to seven years. The Supreme Court found that the evidence clearly established that Urmil was tortured and harassed it could clearly construed to be a dowry demand within the meaning of section 304. In the case of Lichhama Devi v. Slate of Rajasthan,\(^{46}\) it was held that death sentence will not be proper since there were two opinions as to the guilt of the accused by the two Courts. The accused was acquitted by the trial Court but the acquittal was reversed by the High Court after a gap of eight years. In State (Delhi Admn.) v. Lakshman. Kumu,\(^{47}\) it was held that in the case of bride-burning death sentence may not be improper, but the Supreme Court in Buchann Smgh v. State of Punjab,\(^{48}\) laid down certain guidelines to be applied to the facts of each case. Hence the death sentence in the case of Lichhama Devi was reduced to imprisonment for life.

Again the Allahabad High Court, in Dev Prasad v. State of UP,\(^{49}\) observed that young girls are killed for dowry as could be seen from the large number of FIRs under Section 303-B, IPC being filed all over the country. We are surprised that while an ordinary murderer can be punished by death sentence under

\(^{46}\) AIR 1988 SC 1785
\(^{47}\) AIR 1986 SC 250
\(^{48}\) AIR 1980 SC 898
\(^{49}\) 2002 Cr.L.J. 4291.
Section 302, IPC, a dowry death, which is a much worse offence and a maximum punishment of life imprisonment appears to be inadequate. A dowry death is not just an ordinary crime. It is a social crime. It outrages the modern conscience; It makes the whole society revert to feudal barbarism. Hence, the court recommended that Parliament may amend the law and to provide for death sentence in dowry death cases.

It is often asserted that in quite a number of dowry cases culprits, particularly husband and in-laws did not receive due punishment and undue sympathy and leniency appears to have been shown to them by the judges. The Supreme Court in Kailash Kaur v. State of Punjab,50 a case of gruesome murder of a young wife by pouring kerosene oil on the body and setting her on fire as a culmination of a long process of physical and mental harassment for extraction of dowry, observed that it is the duty of the court to deal with it in most severe and strict manner and award maximum penalty prescribed by law in order that it may operate as a deterrent to other persons from committing such anti-social crimes.

Similarly, in Paniben v. State of Gujrat,51 it was said that the language of deterrence must speak in that it may be a conscious reminder to the society. Further it was held that undue sympathy would be harmful to the cause of justice. But the court did not award death sentence. However, in State of M.P. v. Manamohan Choubey,52 the Court while awarding death sentence observed that it was a rarest of the case for the award death sentence. That accused had

50 AIR 1987 SC 1368.
51 AIR 1992 SC 1817.
52 1994 (3) Crimes 776.
poured kerosene oil over his wife and had set her ablaze, and when she was spraying that her life should be saved, by catching hold of both the legs of the accused, inspite of this, he showed no sympathy and, on the other hand he arranged in such away that any person form outside should not enter in order to save her and the persons standing outside, watched the burning wife and for this, it was argued, the accused is not entitled to any mercy.

8.1.2 Bias in Rape Trials

It is claimed that, some of the Judges who are the product of patriarchal society seem, by and large, biased against women in rape trials and help perpetuate oppression against them. They exhibit rigid attitudes towards women as they are raised in the supremist tradition. This bias manifested at every stage of trial including appreciation of evidence, interpretation of laws and sentencing the accused. Apart from the above bias may arise on account of socio- economic, political factors including caste religion which influence the decision.

(i) Appreciation of Evidence

Cases at the district Court level, which are not even reported in legal journals and are sometimes highlighted only through the media and the efforts of women's organization, clearly show the gender bias among sections of the lower judiciary. Accordingly, in State of Maharashtra v. Abdul Sattar, The

53 Lina Gonsalves, "Rape: Some reflection on need to amend the existing Laws", (2005) Cri. L.J. p.253
prosecution story, in brief, is that the accused Abdul Sattar is working as a teacher in Ordnance Factory School at Jawaharnagar and is residing in Type 3 Quarter No. 16 at Jawaharnagar along with his family members. The prosecutrix was studying in the said school in VII standard and was also going for tuitions with the accused for English. In this case, though the crime of rape is very heinous and a 58 years old teacher raped this minor girl student, the Hon’ble Judge did not take the prosecution story in correct perspective.

The Judge’s observations were extremely objectionable and clearly bring out his bias. To hold that a young girl, who is a minor, is habituated to sexual intercourse and the accused that is the father of a number of children and is 58 years old is temporarily impotent certainly brings out his bias.

Nothing could be a more conclusive of bias of the Judge than this conclusion he arrives at by simply ignoring all the documentary evidence. He does not bother to explain the evidence – medical or otherwise to arrive at the conclusion that prosecutrix is above the age of 16 years. On the face of all the evidence it is clearly a case of rape but the Judge acquits the accused. In another case State of Maharashtra v. S.S. Thakre. Schoolteacher in school premises raped the victim R. aged about 13 years and that was during school hours. The Judge’s attitude from the very beginning was not only very biased but also bordered on being perverse.

56 Ibid, at p. 84.
This is a clear case of manipulation by the Judge himself. When the teacher is raping the minor girls and there is a clean acquittal, then what more can one say. In this case also, prosecutors have tried to bring forth the evidence. But though he put section IPC 354 for molestation the Judge also ignored it quite arbitrarily. In this case, there was no difficulty in proving the incidence of molestation, because there was no need of medical evidence and enough evidence was produced to the Court. In this case also, the medical report is very deceptive. The doctor said with confidence that this minor girl was habituated to sexual intercourse but the same doctor did not give definite opinion about the rape.

On the basis of the above judgements, it can be asserted with absolute confidence that in rape cases Judges do not deal with relevant evidence, which goes against the accused. Benefit of doubt even where the victim is a minor girl, no effort is made to understand her psychology. It is often well nigh impossible for her to stand in the Court and say that I was raped. Even delay in reporting the rape is taken as a point against her.

In most of rape cases there is no direct evidence of the eyewitnesses; except for the evidence of the prosecutrix such cases depend entirely on circumstantial evidence. There is always the danger of suspicion or conjecture taking the place of legal proof. It should not be allowed. In Jawaharlal Das v. State of Orissa,57 the Supreme Court asserted that the Court must satisfy itself that the various circumstances in the chain of evidence must be established

clearly and the completed chain must be such as to rule out reasonable likelihood of the innocence of the accused. When the main link in the chain gets snapped and the other circumstances cannot in any manner establish the guilt beyond reasonable doubt then the Court has to be watchful and avoid the danger of allowing suspicion to take the place of legal proof. There is a long distance between ‘may be true’ ‘must be true’ and the same divides conjecture from sure conclusions. In this case there was a reasonable doubt about the guilt of the accused so the benefit of doubt must go to him.

According to the prosecution the accused was a friend of the father of the deceased who had taken his daughter for shopping. When the girl did not return and father could not trace her out he lodged a police report. The accused was found. He made an extra judicial confession accepting rape and murder. He was taken into custody and a FIR lodged.

The medical examination revealed that there was injury in the vagina of the victim. Bloodstains were also found on the dhoti of the accused but they were explained to be due to bleedings gums. He pleaded not guilty; the extra judicial confession was rejected. The accused has attempted to flee. He also had given a false explanation regarding the whereabouts of the girl. He had told her father that the girl was sent back in a truck, but later on, her dead body was recovered at the instance of the accused.

The trial Court and the High Court had convicted the accused on the ‘last seen’ theory. The Supreme Court reversed the decision holding that the fact of the recovery of the body at the instance of the accused was not mentioned in the
inquest report, and the crime was not proved. The Court asserted 'even if the
offence is shocking, the gravity of the offence by itself cannot overweight as far
as legal proof is concerned'. Invariably in such cases when a person is seen with
a victim unless otherwise there are circumstances exonerating him, he would be
the prime suspect but in the ultimate judicial adjudication, suspicion however,
strong cannot be allowed to take place of proof.

Relying on its earlier decisions⁵⁸ the Court held that criminal trials which
depend on circumstantial evidence 'last seen together' is an important link in the
chain of circumstances, but it should be backed by legal proof and should not be
relied upon on mere suspicion. All inculcating circumstances must be cogently
established and taken cumulatively. They should form a chain so complete that
there is no escape from the conclusion that within all human probability no one
else committed the crime but the accused.

In this case we are conscious that a grave and heinous crime has been
committed, but then there is no satisfactory proof of guilt, we have no other
option but to give benefit of doubt to accused. Our hands are tied under the law
of circumstantial evidence. Key links in the chain of evidence are missing.

This judgment of the apex Court completely ignores the living reality of the
village life. It reflects the deep – rooted gender bias, which has prevented the
bench from appreciating the evidence in the proper perspective. A number of
Women's Association requested the Chief Justice to rectify the grave errors of
this judgment and take whatever steps are necessary to review the judgment.

⁵⁸ Indian Express, Magazine Section, December 17, 1988, p.1
In another case taken up by a women's organization from Haryana, a schoolgirl was gang raped by three persons. In this case, the three rapists had decided to take revenge against the victim's family because the daughter of one of the rapists had eloped with the victim's brother.

The victim was forcibly taken to the family home of the girl who had eloped, by the latter's father and mother, and was raped by three men. Even though the judge believed that the girl had been kidnapped and confined in one of the rapist's house, he refused to believe that she had been gang raped. The girl was medically examined. In a judgement, which is extraordinarily reminiscent of the *Mathura case* of 1979, the district judge held that rape could not be proved because the victim's body showed no signs of violence. It is clear that though the Mathura rape case catalyzed a change in the law, judicial attitudes can continue to be biased against the victims of the most violent rapes. The judgement implied that the girl was used to sexual intercourse because her hymen was broken and fingers could be easily inserted into her vagina. This was in spite of the fact that the prosecution had proved that the underclothes and pants of the prosecutrix had semen stains and the underclothes of the accused also had semen stains. The Court held that there was no evidence to show that the semen on the prosecutrix's clothes was the accused. The judge then held that it was possible that the prosecutrix might have 'enjoyed sex with some other person'. Holding that the law requires conclusive evidence, the Court held that

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59 *State v. Biramath and Others*, in the Court of Shri V.P. Sishtnoi, A.D.J. II, Jind, Rajasthan and decided on 7-6-96
since no independent witness from the locality had been examined in support of
the statement of the prosecutrix, the evidence was not sufficient. This was
obviously contrary to the established law declared by the Supreme Court.

In another instance, where the allegiance paid by the investigating agency
to the influential parent of the accused, assisted the accused becoming scot-free
is much talked about case of Priyadarshini Mattoo. This case dealt a fatal blow
to the public faith in our criminal justice system. The judge, in no uncertain words
observed that there was no fanciful doubt that it was the CBI, which was
responsible for such an end. In this case the investigating agency tampered with
the evidence and our justice system once again played like putty in the hands
of the lawbreakers. Consequently, despite observing that he had no doubt as to
the guilt of the accused, the judge acquitted him giving him the benefit of doubt.
This was just one amongst a plethora of instances where law and justice stood
by and benevolently allowed the criminals to expose the charade of our justice
system.

(ii) Interpretation of law

It is often alleged that the courts interpret the provisions of the law
relating to consent, absence of injuries, submission to intercourse, easy virtue of
the woman, significance of the age of the victim and marital exemption infavour
of those accused of rape.

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52 2004 Cr. L.J. p. 86.
53 The eyewitness, who saw the murderer entering and leaving Priyadarshini's house, was
never produced in the case.
(a) Consent:

A man is said to have committed rape on a women when he has sexual intercourse with her without her consent and the consent on the part of the woman is a defence to an allegation of rape. The absence of a precise definition of the term consent led to different interpretations. Therefore, in a rape trial it is extremely difficult for a woman to prove that she did not consent beyond all reasonable doubt. Further, in rape trials when consent was given or not must be inferred by the conduct of victim and the culprit. Accordingly, in Lalu Kanuimal v. State,\textsuperscript{61} it was observed that consent can be inferred from non-resistance.

The similar reasoning of consent being inferred from nonresistance was used by the Supreme Court in the case Mathura v. State of Maharashtra,\textsuperscript{62} in which an 18 year old girl. Mathura. Was allegedly raped by constables at a police station. She was called to the police station on an abduction report filed by her brother. When she and some other relatives were about to leave the police station. Mathura was retained at the police station by the constables and was allegedly raped by one of them. The Sessions Judge acquitted the accused on the ground of tacit consent. Though the High Court found the accused guilty and differentiated between consent and submission, the Supreme Court reversed the finding of the High Court. The Court observed that Matura was subjected to no fear of death or hurt. Which may have led her to submit: to the act and that there were no marks of injury on her person. This showed that the whole affair was a

\textsuperscript{61} AIR 1953 Ajmer.
\textsuperscript{62} Supra note 49.
peaceful one and that Matura's story of stiff resistance being put up by her was a totally false one it was further observed by the Court that Mathura was not alone when the constable ordered her to stay and she could have resisted and appealed to her brother; her conduct of meekly following Ganpat (the constable) and allowing him to have his way with her to the extent of satisfying his lust showed that she had consented.

The cardinal principle has been followed almost in all cases of rape and by and large, courts have failed to take notice of the situation through which a victim must have passed or that she may not have been able to muster sufficient strength to repel the act or the state of shock and fear may have completely ruined her. A woman normally finds it difficult to assault a man because of his dominant and her subordinate position in the society. Many a time she is rendered helpless before commission of the crime and there may be no marks of injury on her body. There is little appreciation of this situation by some judges. The result is that the positive 'resistance' becomes an essential ingredient in a trial and the absence of any proof thereof gets equat4d to 'consent'. The courts insist on proof of physical injury in the medical examination report and, in the absence of it, the presumption drawn is that the complainant must have been a consenting party.

The judgment triggered off a campaign for changes in rape laws. Redefining consent in a rape trial was one of the major thrust of the campaign. The Mathura judgment had highlighted the fact that in a rape trial it is extremely difficult for a woman to prove that she did not consent beyond all reasonable
doubt was required under the criminal law. The major demand was that once sexual intercourse is proved, if the woman states that it was without her consent, and then the court must presume that she did not consent. The burden of proving that she had consented should be on the accused.

(b) Submission

Every act of consent involves a submission but the converse does not follow and a mere act of submission does not involve consent. Consent implies the exercise of a free and untrammelled right to forbid or withhold what is being consented to: it always is a voluntary and conscious acceptance of what is proposed to be done by another and concurred by the former. And consent requires voluntary participation after having freely exercised a choice between resistance and assent. Submission does not involve the exercise of free choice but is a forced or induced 'consent'. Consent must be free consent and if it is induced by fear is no consent at all but is a mere submission.

One important aspect of rape law is that a consent given on the basis of a false promise of marriage is not free consent.

In Jayanti Rana Panda v. State, the prosecutrix had alleged in a complaint against the accused, a teacher of the local village school of having committed rape on her. According to the complainant, the accused used to visit her residence and one day, during the absence of the complainant's parents, told

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64 Idan Singh v. State of Rajasthan, 1977 Cr.L.J.556
66 1984, Cr. L.J. 1535
her that he was in love with her and that he wanted to marry her. The complainant wanted the marriage to be solemnized - the accused was alleged to have promised that he would do so after obtaining the consent of her parents. Acting on such assurance the girl developed sexual relationship with the accused and eventually she conceived. When the girl insisted that the marriage should be performed as early as possible, the accused proposed abortion of the child and agreed to marry the complainant after sometime. The complainant not having agreed to the abortion, the accused ultimately disowned her and stopped visiting her house. On these allegations, a complaint of rape was filed. The trial Court convicted the accused under Section 376. I. P. C. but the High Court reversing the Judgment of the trial Court, held that "if a full grown girl consented to the act of sexual intercourse on a promise of marriage and continued to indulge in such activity until she became pregnant, it was then an act of promiscuity and not an act induced by misconception of fact. Section 90. I.P.C. could not be called in aid in such a case to pardon the act of the girl and fasten criminal liability on another unless the court should be assured that from the very inception the accused never really intended to marry her.

Relying upon the above judgment, the Calcutta High Court in another case of Hari Majhi v. State,\textsuperscript{67} in which the facts and circumstances were almost similar, set aside the conviction of the accused by the trial Court and held that the prosecution charge that the prosecutrix agreed to sexual intercourse because the

\textsuperscript{67} 1990 Cri .L.J. 650
accused promised to marry her and his subsequent denial in this regard, cannot be a ground to bring in the charge of rape.

In *M. C. Prasannam v. State*, the accused, a class teacher used to commit sexual intercourse with the victim, a student, with the assurance of marrying her. He refused to perform his promise when the girl became pregnant. The matter was reported to police and the accused was prosecuted and convicted under S. 376 of I. P. C. Calcutta High Court. However, acquitted the accused observing inter alia that the victim willfully and with full consent had sexual intercourse.

This view has been reiterated in the latest decision of the Ranchi Bench of Patna High Court in the case of *Baldharl Ohdar v. State of Bihar*, the victim was sexually assaulted by the accused against her will. She wanted to raise alarm but she desisted when he gave an assurance to marry her and counseled her not to disclose this fact to anyone else. Thereafter, he had sexual intercourse with her on many occasions and kept assuring her that he will marry her. Ultimately, when the girl conceived, the accused assaulted and threatened her saying that he would not marry her. Consequently, the girl lodged the complaint. The trial Court convicted the accused under S. 376 of I. P. C. for the offence of rape but on appeal, the High Court set aside the conviction. The court held that even if the accused had made a false promise to marry the victim and whereupon she had consented to sexual intercourse with him, it would not vitiate her consent for the

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68 1999 Cri .L.J. 998
69 2001 Cri .L.J. 883 (Pat.)
sexual intercourse. The court mainly relied upon the judgment of the Calcutta High Court in the case of *Jayanti Rana Panda v. State*, though the accused was acquitted, the Court made a notable remark, the conduct of the accused, in betraying the prosecutrix after making her pregnant and leaving the child abandoned, no doubt is highly reprehensible, yet with anguish it must be held that such conduct by itself does not become a ground for holding the accused guilty of the charge of rape under Section 376. I. P. C. These judgments illustrate the reluctance of the courts in rendering a positive interpretation of 'consent' in rape trials that was expected to progress after the amendments.

It is evident that the decision of Calcutta High Court in the case of *Jayanti Rana Panda v. State*,70 was relied upon in subsequent cases. It is submitted that there lies a contradiction in later cases. The High Court observed that the accused could not be held criminally liable for his act: unless the court could be assured that from the very inception, the accused never really intended to marry the complainant.71 It can be, thus. Inferred that the accused could have been held criminally liable for his act if it could be proved that from the very inception the accused did not have the intention to marry. On the contrary in the other cases this observation has been completely overlooked. In the case of *Baldhari Ohdar v. State of Bihar*,72 the Court, though relying upon the decision in *Jayant Rana Panda v. State*,73 observed that 'even if the accused had made a false

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70 Supra note 83.
71 Ibid.
72 2000, Cri. L.J. 883 (Pat.)
73 Supra note 83.
promise to marry, and whereby the prosecutrix had consented to sexual intercourse with him, it would not vitiate her consent. It manifests the Court's presupposition that a false promise of marriage can never be a ground to vitiate consent under S. 90, I. P. C. This view is contradictory to the view expressed by the Calcutta High Court in the case of Jayanti Rana Panda v. State itself.\(^74\)

(c) Absence of injury

Injury on the body of the prosecutrix is the usual evidence that is looked for to prove resistance. Hence, where a person is charged with the offence of having committed rape, the question for determination is whether the woman was or was not a consenting party, and in this connection her testimony without any independent evidence in support thereof that she was not a consenting party is insufficient for conviction\(^75\). The first and foremost circumstance that is looked for in cases of this kind is the evidence of resistance which is expected from a woman unwilling to yield to sexual intercourse forced upon her, and such a resistance may lead to the tearing of clothes or infliction of personal injuries.\(^76\) In Valliappa Harijan v. State of Goa,\(^77\) court observed that absence of injuries on

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\(^{74}\) Ibid.


\(^{76}\) Ibid.

\(^{77}\) 1997, Cri. L.J. 1484. The prosecutrix narrated the incident thus: "I was forcibly thrown down and he (the accused) made me lie on the towel. He then sat on my thighs and tied both my hands on either side and raped me". The Court's response to this statement was that "One cannot understand how this action of the accused could be humanly possible particularly when a woman exerts resistance. Any woman of character and modesty would have put some amount of resistance when she is being raped. The doctor stated that there were no injuries on the private part of the prosecutrix. It can be inferred that sexual intercourse. If at all is occurred, was only with the consent of the prosecutrix,"
the body of the prosecutrix established that no resistance had been offered and hence her consent could be inferred from this.

However, the opposite has also been held i.e. that it cannot be said that whenever resistance is offered there must be some injury on the body of the victim.\textsuperscript{78} In a number of cases, rape was held to be proved even in the absence of injuries on the body of the prosecutrix such as in \textit{State of Rajasthan v. N. K.}\textsuperscript{79} However, it has been said that as a general proposition in some cases, that is in the case of an adult woman in possession of her faculties, it is essential for establishing the crime that the woman has resisted to her utmost and it would not amount to rape if the woman after half hearted resistance gave consent.\textsuperscript{80}

However, resistance by the victim is not always the correct criterion to establish whether there was consent or not because the main concern of the victim being raped is to protect herself from harm and to prevent any more injury from being inflicted to her than what is already being done through the act of forcible sexual intercourse. Failure to resist may be due to extreme youth, being overpowered by the actual force used, want of strength or attack by a number of men indicating resistance useless, unconsciousness and other such

\textsuperscript{78} \textit{Balavant Singh v. State of Punjab.} AIR 1987 SC 1080; (1987 Cri. L.J. 971) The accused were four in number and the prosecutrix was a girl of 19/20 years of age. The Court held that she was not expected to offer such resistance as would cause injuries to her body. The absence of any injury on any part of her body does not falsify the case of rape by the appellants on her.

\textsuperscript{79} 2000, \textit{Cri.L. J 2205: (AIR 2000 SC 1812),} The Court held that absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of the allegation; 

\textsuperscript{80} \textit{Supra} note 68, p. 19.
circumstances. Hence it cannot be expected that the victim will always resist to the utmost.

The Courts have recognised this problem and hence have distinguished between submission and consent to show that submission without resistance does not necessarily amount to consent.

(d) Easy virtue of the women

The evidence law provided that past sexual history and character of the victim are relevant for diminishing the credit of her evidence. According to Sec. 54, of evidence Act previous bad character of accused is irrelevant in criminal proceedings.

Hence very common allegation flung around in most rape cases is the easy virtue of the woman in question. It suits the common sex offender to transfer the blame for his crime squarely on the shoulders of the victim as an excuse for which there is no legal sanction but the accused is assisted by the reactionary society and the traditional judiciary because the character of the victim can legally be questioned. That is what the Supreme Court did in Mathura's case, "Mathura is a 'shocking liar' whose testimony is riddled with

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81 Ibid.
82 Sec.155 of Indian Evidence Act. Impeaching credit of witness – The credit of a witness may be impeached in the following ways by the adverse party, or, with he consent of the courts, by the party who calls him, sub clause (4) when a man is prosecuted for rape or an attempt to ravish, it be show that the prosecutrix was of generally immoral character.
83 Sec.54 of Indian Evidence Act, Previous and bad character not relevant except in reply- In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.
84 Hindustan Times, April 15, 1992 p.5.
85 Supra note 60.
falsehood and improbabilities. The most that one could conclude was that Mathura had sexual intercourse with Ganpat, but there is a word of difference between sexual intercourse and rape”.

Following the fur ore over this decision the Supreme Court in *State of Haryana v. Premchand*,”88 asserted that factors like character and reputation of the victim are wholly alien to the scope and object of Section 376 IPC. It was clarified in its judgment delivered in *Suman Rani case*.87 The court has used the expression conduct in its lexicographical meaning, for the limited purpose of showing as to how the victim had behaved or conducted herself in not telling anyone for about 5 days about the sexual assault perpetrated on her and committed that “the peculiar facts and circumstance of the case coupled with the conduct of the victim girl do not call for the minimum sentence under Section 376 IPC. There is no doubt that an offence of this nature has to be viewed very seriously”.

Accordingly, in *Maharashtra v. Madhukar Narain Mardika*,88 the Supreme Court observed that even a prostitute has a right to privacy and that past history of the woman is irrelevant in deciding a rape case. In *State of Andhra Pradesh v. Gangula Sathya Murthy*,89 the High Court extricated the accused from the indictment of rape on the assumption that it (rape) could have been a consented copulation. Therefore, the High Court, after considering the medical evidence

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87 Ibid.
88 AIR 1991 SC 207.
89 AIR 1997 SC 1588.
while dealing with the question of rape, inferred: "There is no direct evidence to show that the accused alone had sexual intercourse with her, the deceased was aged of 16 years". In appeal, the Supreme Court observed that, "we are rather distressed on this comment. By using the word 'alone', the High Court almost cast a stigma on the prosecutrix, as if apart from the appellant, there were other persons also who had sexual intercourse with her. There is no basis at all for such an assumption. There was no warrant for recording such a finding and, if we may say so, with respect, the finding is an irresponsible finding. We express our strong disapproval of the approach of the High Court and it's casting a stigma on the character of the deceased, prosecutrix. Even if the Court formed an opinion, from the absence of hymen that the victim had sexual intercourse prior to the time when she was subjected to rape by the appellant, she had every right to refuse to submit herself to sexual intercourse by the appellant as she certainly was not a vulnerable object of rape for being sexually assaulted by any one.90

The Apex court has, on a number of occasions, clearly stated that the antecedents of victims are not relevant and that the courts are expected to show greater responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. Although what the court holds is the law of the land and High Courts and subordinate courts should follow the law so laid down, it is unfortunate that the subordinate courts continue to refer to those provisions of law of evidence, which are used as means for attacking the credibility of the victim.

90 Ibid. at p.1593
(e) Significance of age in case of child rape

It is asserted that in some cases, where the age of the minor was difficult to establish, as is normally the case with village children, and the offender was a youth of 18 or 20 years, courts have rigorously acquitted the accused giving him the benefit of the doubt or awarded an insufficient punishment because it was "not in the interest of justice to enhance the sentence" although the child victim was a tender age. The judiciary appears too eager to acquit an accused for want of 'conclusive evidence' in any case what evidence can one expect from an innocent child?

In a country like India, there are numerous borderline cases of victims whose age cannot be established conclusively. The Punjab and Haryana High Court in *Hardip Singh v. State of Punjab*,\(^91\) was dealing with the report of a radiologist indicating the age of the prosecutrix between 14 and 16 years. The court held that in the absence of direct evidence such as the birth entry, conclusion could not be based simply on the opinion of the radiologist who conducted the ossification test and estimated her age between 14 and 16 years. The benefit of doubt was given to the accused as the court held that it was not proved that the prosecutrix was, in fact, below the age of consent when the incident occurred. But what about the victim the culprit having been let loose, her whole life and future were at stake. In *Govinder Singh v. State of Punjab*,\(^92\) a girl allegedly below 16 years was raped. Ossification test put her age between

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\(^91\) 1981 CLR 279.
\(^92\) 1984 (2) Crimes 696.
12 ½ and 15 years. No other evidence was available. The court held that it was not a sure test. Age was variable by two years on either side. It could not, therefore, be said with certainty that the age was below 16. The proof of age would need stronger corroboration.

Hence the culprit by default, fall below the prescribed age even by a few months, with the 'benefit of the doubt' theory and consent presumed, the law fails to protect the poor victim and the culprit is set at liberty, more experienced and confident than even before to freely indulge in criminal activities and get away from the clutches of law with impunity.

(iii) Sentencing and male bias

One important features of the sentencing policy appears to be to shows leniency to young offenders and such a show of leniency in rape cases may lead to denial of justice to victims. Accordingly in Phul Singh v. State of Haryana, a 22-year-old married man raped his cousin, aged 24, who was living in his neighbourhood. The matter ultimately reached the Supreme Court, which observed that: the accused was in his early twenties, and he was not a “habitual offender. He is a youth, barely 22, with no criminal antecedents save this offence. He has a young wife and a family to look after. A man like the appellant has a reasonable prospect of shaping into a balanced person, given propitious social environs, curative and congenial work and techniques of internal stress release or reformatory self – expression”. In this background, the court regarded “a four year term of rigorous imprisonment more hardening than rehabilitative, 93

93 AIR 1980 SC 249.
even though we deplore the sex violence the young appellant has inflicted on his cousin.\(^{94}\)

Nowhere did the court take into account the torture suffered and the psychological trauma of the victim who had been abused by her own family member. It also ignored the utter ruination of the future prospects of the complainant. It failed to consider that in the tradition bound non-permissive society of India, a premium is placed on the virginity of a prospective bride and that the incident of rape had narrowed her chances to secure an alliance with a respectable family. Ignoring all these facets, the Court displayed a soft attitude towards the male accused who, in spite of having a young wife at home and a family to look after, had committed an act of violence against his own cousin—sister shattering her life, dignity and self—respect to pieces. The bias against the female species is writ large in such judicial attitudes, which, needless to say, require a demolition of the old male domination followed by a corrective approach and orientation to a new mindset. Some time courts show leniency towards accused, thus in *Bhaisingh v. State of Haryana*,\(^{95}\) the appeal to the High Court to enhance the sentence was dismissed on the following ground: Although rape warrants a more severe sentence, considering that the accused was only 18 years of age, it would not be in the interest of justice to enhance the sentence of five years imposed by the trial court. In the case discussed above, the High Courts had shown leniency towards youth offender. But in *Mrattal v. State of*

\(^{94}\) *Ibid*, at 250.

\(^{95}\) 1984 Cr.L.J. 786.
Madhya Pradesh, the courts express a contrary view and concern over such leniency in sentencing. For example, in a rape of a 10 year old girl, the High Court commented on the lower court’s sentence as follow: Imposing a sentence of three years is like sending the accused to a picnic. The judge erred in his duty in not imposing a deterrent punishment.

Again in Vinod Kumar v. State of Madhya Pradesh, an 11-year-old girl was raped by a youth while another gagged her with her sari. The Session Court convicted the accused and sentenced him with five years imprisonment. In appeal, the Madhya Pradesh High Court stated: “Increasing cases of personal violence and crime rate cannot justify a severe sentence on young offenders.98

The above judgements have set an unhealthy gender biased trend for which defence counsels are equally responsible. In order to have lesser punishment meted out to the accused, their clients, they lose out on their sense of justice to the women victims.

It has been said that the seriousness with which a judge views a crime is reflected in the sentence he award to the culprit. Even after the amendments to the rape laws in 1983, when punishments were increased to a minimum of 7 years ‘in ordinary’ rape cases, and 10 years in cases of ‘custodial’ rape, most of the punishments meted out were awarded were cases in which sexual assault and murder of young rape victims was involved.

96 1987 Cr.L.J. 557
97 1987 Cr. L.J. 1541.
98 Ibid, at 1545
The amendment gave the court the discretion to lower the sentences for adequate and special reasons given in writing. Often the reasons cited for giving a relatively short sentence of imprisonment show that popular feudal and patriarchal myths about the rapist and the reason why he committed the crime influence the judges reasoning. In *Raju v. State of Karnataka*, a case criticized by five women's organisations a 21-year-old girl was raped by two men whom she knew and agreed to share a room with. The Supreme Court categorized the crime as an act of passion and the criminals as 'victims of sexual lust'. This kind of reasoning reinforces the idea that rapists are not responsible for their acts. The judgement in question also cited the youth of the rapists as an exonerating factor, and the fact that the case had taken 15 years to reach the Supreme Court, as a ground to lessen the sentence from the statutory minimum of seven years to three years. Since the delay in courts is often the result of delaying tactics employed by the accused, this reasoning is questionable. The judgement also implied that in some sense the victim was to blame as 'she agreed to share the room with the two men'. The victim is perceived here as a 'temptress' who had invited rape.

The fact that courts view rape as a sex crime that occurs because of the 'uncontrollable natural lust' of men therefore show leniency in sentencing.

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99 AIR 1995 SC 222
100 Letter dated 27.10.93 to the Chief Justice of India by CWDS, Joint Women's Programme, National Federation of Indian Women, YWCA and AIDWA.
101 *State of Rajasthan v. Shri Narayan*, (1992) 3 SCC 615, the Court has repeatedly referred to the behaviour of the accused as 'lust ridden' and that 'he had lost control over himself when she saw her'.

However 'this is not so, it is a common mistake to view rape as a sex crime. This myth is reinforced by certain stereotypes about male sexuality such as men’s alleged inability to control them if they are aroused. These are however false images. Rape is very often an act of violence that uses sex as a weapon. Recent research in the field have established that rape is motivated by aggression and by the desire to exert power and humiliate'. It is further said that the rapist ‘is not, as is believed, succumbing to uncontrollable lust, but is proving his own masculinity by degrading the victim’. In a reported case a 14 years old girl who was under the legal age of sexual consent worked as an agricultural labourer in a village, and was raped by two men while a third immobilized her. The Supreme Court while convicting the rapists allowed the sentence of three years rigorous imprisonment given by the trial court to remain, even though it held that the sentence was inadequate. In *State of Punjab v. Gurmeet Singh*, the court held that because the gang rape had occurred more than 11 years before the judgement and the rapist had not committed any other crime during the intervening period, and all the parties had probably got married, a sentence of five years rigorous imprisonment was appropriate. In another case where it was held that a policeman had raped a woman labourer in village, the court awarded a sentence of rigorous imprisonment for three years. Ten years had passed by the time the case was finally decided. In *State of

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103 *Narayanamma (Kum) v. State of Karnataka and Ors*, 1994 SCC (Cri) 1573
104 Under the Present law, i.e. Sec. 375 IPC, the age of consent is 16 years.
105 1996 (2) SCC 272.
Maharashtra v. Chandraprakash Kewalchand Jain,\textsuperscript{107} the court awarded five years rigorous imprisonment. This case also involved the rape of a young woman by a policeman who had deliberately plotted the crime by implicating the girl's husband in a false case.

In the \textit{Suman Rani case}\textsuperscript{108} the doctor who had conducted the medical examination testified that the girl was used to sexual intercourse. The court reduced the sentence for the three policemen who had raped her to five years instead of the statutory minimum of 10 years. When a women's group and others filed a review petition\textsuperscript{109}, the court justified the reduction in sentence by saying that when they spoke of conduct of the victim, they meant her conduct in not lodging the FIR till five days after the event. This reasoning was untenable as the delay in lodging the report of rape could only have been relevant to proving the case, as it could have been construed to suggest that the victim was not telling the truth. This could not be a valid factor in the reduction of sentence since; in this case the rape itself had been proved.

Given the limits of discretion of sentencing by the legislature, the Courts have to decide the quantum of punishment to be inflicted in each case. The constitutional Courts i.e. the High Courts and Supreme Court have the responsibility of laying down the policy guidelines to be followed by the Courts below in exercising the discretion. So far as the offence of rape is concerned, a minimum of seven years imprisonment and a maximum of ten years

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\textsuperscript{107} AIR 1990 SC 660.  \\
\textsuperscript{108} Premchand and another v. State of Haryana, AIR 1989 SC 937.  \\
\textsuperscript{109} State of Haryana v. Premchand and Others, AIR 1990 SC 538.
\end{flushleft}
Imprisonment or imprisonment for life has been the punishment prescribed by Section 376 (1). For aggravated forms of rape, rigorous imprisonment for ten years is the minimum punishment prescribed by Section 376 (2). The Courts are however empowered to award a lesser sentence than minimum prescribed for special reasons to be recorded in writing.

In practice, in almost every rape case, less than minimum sentence is awarded and some of the reasons that have been recorded for awarding lesser sentences are; (a) old age\textsuperscript{110}; (b) victim forgave the criminal and that they were relatives\textsuperscript{111} (c) very young age and incident took place long back, mental agony and disrepute suffered during the course of proceedings, offence committed in fit of passion\textsuperscript{112} d) the humiliation suffered by the accused in the society, the prospects of his daughter getting suitable match marred, the stigma in the wake of finding of guilt recorded against him, offence occurring 6-7 years back.\textsuperscript{113} However, the recent trend of Supreme Court has been to prefer deterrent approach to therapeutic or reformative approach.\textsuperscript{114}

The judicial approach in cases involving rape and murder of infant or minor girl is laudable and praiseworthy. Subject to few exceptions, the judicial approach is clear and consistent. The emerging inference is that if a girl child is raped and murdered, the probability of death sentence is highest.

\textsuperscript{111} Phul Singh v. State of Haryana, AIR 1980 SC 249: 1980 Cri. L.J. 8
\textsuperscript{113} Bharwada Bhogin Bhal v. State of Gujarat. AIR 1983 SC 753: 1983 Cri L.J.1096
Generally in such cases, conviction rests on circumstantial evidence and there is nothing wrong to rely upon this kind of evidence. The facts so established must be consistent only with the hypothesis of the guilt of the accused and its guilt must not be explainable on the basis of any other hypothesis. The circumstances should be conclusive in nature and there must be chain of evidence so complete as not leaving any reasonable ground for conclusion consistent with the innocence of the accused.

There can be no cut and dry formula for the exercise of judicial discretion in such murder cases. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and society at large in awarding appropriate punishment. The guidelines laid down in *Bachan Singh*, and *Machhi Singh*, has invariably been followed in bringing the case within 'rarest of rare cases'.

The courts have generally used epithets and strong expressions for the application of the doctrine of rarest of rare cases. For example, "diabolical planning", "brutal execution", "calculated and brutal murder/rape", "the faith of society totally shaken", "shocking to judicial conscience", "savage nature of crime" etc. Where the trial court and the High Court are not unanimous in the award of death penalty, the Supreme Court is inclined to favour life imprisonment, which also appears to be a sound approach. The application of "rarest of rare cases" also depends upon the existence of aggravating

circumstances and absence of mitigating circumstances, however, Satish \(^{117}\) and Surendra Pai, \(^{118}\) if taken together make the application of the doctrine of rarest of rare cases a little uncertain.

(iv) Other source of bias

The case which was taken up by several women's organizations because of its blatantly biased judgement was the case popularly known as Bhanwari Devi case \(^{119}\). Bhanwari Devi was engaged as a village social worker in the State of Rajasthan in 1992; Bhanwari Devi became involved in campaigning against and preventing child marriages. As a result, she and her husband were harassed and threatened by the upper caste Gujjar community in the village. Bhanwari Devi intervened and prevented the marriage of a one-year-old girl. Enraged by this, and to take revenge against Bhanwari Devi, the child's father along with four others gang raped her in the presence of her husband.

In a judgement, which strongly reflects caste bias, the court held that the rapists were middle aged and respectable citizens who could not commit rape. In effect the court held that since the offenders were upper caste men and Bhanwari Devi was from a lower caste, the rape could not have taken place. It refused to believe Bhanwari Devi's testimony and made several unwarranted

\(^{117}\) State of U.P. v. Satish, (2005) 3 SCC 114:2005 SCC (Cri.) 642 The Bench consisted of Arijit Pasayat and S.H. Kapadia, JJ. And the judgment of the Court was delivered by Arijit Pasayat J.

\(^{118}\) Surenra Pai Shivbalakpal v. State of Gujarat, (2005) 3 SCC 127: 2005 SCC (Cri) 663 the Bench consisted of K.G. Balakrishnan and Dr. A R Lakshmanan, JJ.

\(^{119}\) Dr. Poomima Advani, 'A Rape a Legal Study', (New Delhi, National Commission for Women, 2000), p. 33. (Decided on 15th November 1994, by the Session and District Court, Jaipur.
remarks about her character by suggesting that she was a liar and that she might have had sex with another person.

The judge also refused to pay any attention to Bhanwari Devi's husband's testimony by the comment how an Indian man whose role is to protect his wife, stand by and watch his wife being raped. The court completely overlooked the fact that there were five offenders, some of who had assaulted Bhanwari Devi's husband. Bhanwari Devi was medically examined only 52 hours after the rape as she was denied a medical examination in the absence of a Magistrate's order. This order came only 48 hours after the rape. The court went on to decide that there was no explanation why Bhanwari Devi had not filed the case on the same night at the police station, even though the police station was 5 km away, and Bhanwari Devi could not have been expected to go there in the middle of the night. This case is a glaring instance of the complete distortion of the criminal trial procedures against the victims of violence.

8.2 Insensitivity towards women's cause

The judicial system is insensitive to the precarious status of women. The complexities and technicalities of law and the conservative attitude of the judiciary are the greatest hurdles in getting justice.120

8.2.1 Trial of dowry culprits

There were several judges whose socio-legal values leave much to be desired. They decided cases of scirms against women in the most conservative

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manner. Divergent and clashing social orientation of the Supreme Court was alarming. Cases showing insensitivity of the judges to rape and dowry victims were distressing.\textsuperscript{121} In \textit{Kundula Bala Subrahmaniyam and another v. State of A.P.},\textsuperscript{122} the apex court, addressing a dowry death case stated that the role of courts assumes great importance and it is expected that they will deal with such cases more realistically and not allow the criminals to escape on account of procedural technicalities or insignificant lacunae in the evidence. In short, the courts are expected to be sensitive in cases involving crimes against women.

### 8.2.2 Insensitivity in rape cases

In \textit{State of Karnataka v. Sureshbabu Puk Raj Porral},\textsuperscript{123} where victim alleged to be below 16 years was raped by the accused. Evidence regarding age, was not very convincing, statement of victim before Police as well as during cross-examination that accused did something to her, which he ought not to have done. What exactly accused did, could not be elicited. There was no other evidence to corroborate her testimony. The court observed that, it couldn't be inferred that the accused had intercourse with her. The Court has not realized that reservation by the girl not to repeat what was done to her. In most rape cases, the victims are subjected to forget the unfortunate incident, the crime of rape. The Courts need to be sensitive in understanding the minor's predicament.

This is a case short of rape but in no way less than outraging her modesty and using, 'criminal force'. In case of this nature where the accused could not

\textsuperscript{121} Ibid, p. 356.
\textsuperscript{122} (1993) 2 SCC 684
\textsuperscript{123} 1994 AIR SCW 1026.
succeed in his full intentions cannot be absolved of the crime. The interconnectedness of various stages of attempt to rape per se have to be looked into in totality.

Yet in another case, the court showed extreme insensitivity in a case of child sexual abuse, quashing a prosecution by the State against the father on the mother's complaint that the father had sexually abused his daughter. The Supreme Court quashed the FIR and did not allow the prosecution to proceed, completely immunizing the father from judicial scrutiny. The allegations were described as 'eerie' and 'incredulous ex facie', the inference being that a father could never sexually abuse his own child. The court displayed scant respect for social reality and even less for the mother and the child. The Court fell into the usual stereotyping of women who dare to bring a charge against their husband by giving credence to the theory that she had made the charge to 'wreak vengeance' on her husband. The learned judges went to the extent of entertaining a suggestion by the father that the mother may have mutilated the child's genitals, presumably to extract money from the father. The case will act as a major deterrent to women bringing charges of child sexual abuse. One might almost argue that the court let down the interest of the child and was blinded by a matrimonial dispute, which had arisen in the first place over the child and her right to safe home. Perhaps this time the Court did not want the entry of criminal law into the matrimonial home.

(a) Delay in dispensing justice

If the primary objective of the criminal justice system is to protect society from crime by bringing offenders to justice and preventing offences by the deterrent value of criminal sanctions, this system should also ensure the protection of the individual from unjustified harassment or punishment. However, efforts, to ensure that no innocent person is punished may not only create loopholes through which guilty persons can escape, but what is more important, may be responsible for a degree of delay which tends to defeat the primary objective of the system itself.

The guilty accused is, naturally, inclined to take full advantage of everything that can delay the investigation and trial as this may directly assist him in several ways. Delay may also allow for danger of abuse, e.g., opportunities to suborn witnesses, to cause material evidence to disappear or to create defence evidence by way of an alibi or otherwise. A further advantage may result from lapses of memory of witnesses. Sometimes it may even happen that in cases of undue delay the interest in continuing with the case is lost. On the other hand, the introduction of cautionary provisions against miscarriage of justice may prolong the distress of the innocent accused by delaying the disposal of his case.

The concept of delay cannot be easily explained or exemplified. It is to be assumed that the processes of investigation and trial must necessarily take some time. The desideratum, therefore, is that these processes should be carried out with the utmost expedition; subject only to such precautions as may be
necessary to prevent a miscarriage of justice\textsuperscript{125}. The problem of delay in decisions in the courts is not a secret; the courts are conscious of this problem. The Supreme Court has expressed strongly against delays.

In \textit{Bharwada Bhoginbhai Hirjibhai v. State of Gujarat},\textsuperscript{126} the Supreme Court was influenced to give light punishment to the offender because of delay. The offender who was found guilty of the offence of attempt to commit rape was left with a sentence of rigorous imprisonment for 15 months only because of delay. In many cases the accused have earned acquittals because of delay in trial. A Bench of the Supreme Court in \textit{T. V. Vatheswaram case},\textsuperscript{127} went to the extent of holding that delay over two years in execution of sentence of death should be considered sufficient to entitle a person under sentence of death to invoke Article 21 of the Constitution for demanding the quashing of the death sentence.

The major factor contributory for \textit{Jessicalal case} is the delayed trial process\textsuperscript{128} without any system of protection for the witnesses as a result of which accused who are on bail often harass or coerce them. A protracted trial is often very fatiguing and requires the witness to relive the experience over and over again. To add to this cross-examination can often be rude and humiliating. That is why even those witnesses who have lost a family member and have directly been affected by the crime fall a prey to coercion threats and inducement.

\textsuperscript{126} AIR 1983 SC 752.
\textsuperscript{127} AIR 1983 SC 361.
\textsuperscript{128} The News item in \textit{The New Sunday Express}, March 5, 2006, p. 5
(b) Harassment and humiliation at the time of cross-examination

There has been lately, lot of criticism of the treatment of the victims of sexual assault in the court during their cross-examination. The provision of Evidence Act regarding relevancy of facts notwithstanding, some defence counsels adopt the strategy of continual questioning of the prosecutrix as to the rape. The victim is required to repeat again and again the details of the rape incident not so much as to bring out the fact on record or to test her credibility but to test her story for inconsistencies with a view to attempt to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations. The court, therefore, should not sit as a silent spectator while the victim of crime is being cross-examined by the defence. It must effectively control the recording of evidence in the court. While every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination, the court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime.

Sexual violence apart from being a dehumanising act is an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity – it degrades and humiliates the victim and where the victim is a helpless innocent child, it leaves behind a traumatic experience. The Courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely.
The victim of rape often traumatised by the cross-examination that she is subjected to during a rape trial. In fact, in a Supreme Court judgement in which four tribal domestic helps were raped and assaulted by army personnel on a train\textsuperscript{129} the court held that 'the defects in the present system are; firstly complaints are handled roughly and are not given such attention as is warranted. The police humiliate the victims more often than not. The victims have invariably found rape trials a traumatic experience. The experience of giving evidence in court has been negative and destructive. The victims often say they considered the ordeal to be even worse than the rape itself. Undoubtedly the court proceedings added to and prolonged the psychological stress they had to suffer as a result of the rape itself'.

In the case of child rape, the child is often not able to explain what happened to her. In one case\textsuperscript{130} where a 9 year old school girl was raped, the Supreme Court observed that since the prosecutrix was an inexperienced girl, 'she seems to have been toyed with by the cross examiner'. It further stated that it could not be said that the child was fully aware or cognizant of the sex act as she was speaking about something she did not fully understand. In spite of this observation the court held that rape had not been proved. In \textit{Gurmeet Singh v. State of Punjab},\textsuperscript{131} the Supreme Court held that the trial court should not sit as a silent spectator during the cross-examination of a witness. Rather, the court must ensure that the cross – examination is not made a means of harassment

\textsuperscript{129} \textit{Delhi Domestic Working Women's Forum v. Union of India and Ors}, 1985 SCC 14
\textsuperscript{131} 996 (2) SCC 272.
and humiliation for the victim. Pointing out the amendment to Section 327 of the Code of Criminal Procedure, the Supreme Court reiterated that rape trials must be conducted in camera to protect the victim.

It is important to note that just having an in-camera trial may not be beneficial for the rape victim. The victim is often scared to depose in front of the rapist and is traumatized by his mere presence. It is therefore necessary to evolve procedures for the examination and cross-examination of a rape victim in an environment where they do not have to face the accused. In-camera trials also often isolate the victim and stop her from being with people her trusts and needs to be with during the trial.

(c) Too much technicality or formalities

Justice Mathew observed that the court of law, a legacy of British rulers get themselves lost in the thick jungle of rules of construction and other formalities of a like nature, that they have build around themselves and the judgment are delivered after a long period. It is also called that when justice delayed justice denied. In *Lekh Raj’s case* the Supreme Court felt that the High Court has adopted a technical approach in dealing with the appeal of the accused person who was convicted by the trial court, and observed as under.

“A criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the courts are required to

132 Dr. Gokulesh Sharma *Crime Justice and People of India* 'Defects of present Indian Legal System', (New Delhi: Indian Publisher Association, 1990), p. 133
133 "Increasing Crimes Against Women" (2000) 13 *Central India Law Quarterly.*
adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witness. The hyper-technicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstance keeping in view the peculiar facts of the case, the social position on the victim and the accused and the larger interests of the society particularly the law and order problem and degrading values of life inherent in the present system. The realities of the life have to be kept in mind while appreciating the evidence for arriving the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hyper technical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. Criminal Jurisprudence cannot be considered to be a utopian though but have to be considered as part and parcel of human civilization and the realities of life, the courts cannot ignore the erosion of values in life, which are a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and mankind. This should sent healthy signals in the society that the courts are concerned about crimes against women. We must therefore search elsewhere to find reasons of large-scale acquittals in cases relating to crimes against women.

8.3 Bias In investigation and prosecution

A survey of rape and sexual assault landmark cases and judgements shows many reasons why the majority of accused persons in a rape or sexual
assault trial gets acquitted or receives a relatively minor sentence. One of the major obstacles to justice in these cases is the poor quality of police investigation. The reasons behind this inadequacy range from gender bias and corruption and the general inefficiency of the police force.

The investigation of a cognizable offence in India usually commences with the lodging of a first information report (FIR) with the police,134 under the Code of Criminal Procedure, 1973. After lodging the FIR and noting down the information regarding the offence, the police are supposed to investigate the crime and finally send the case to court under section 170 of the Criminal Procedure Code, or make a petition that the case be closed if no case is made out, and the evidence is deficient.

The problem in many instances arises at the stage of lodging the FIR. Women's organizations and victims have in many cases reported that the police have refused to even lodge the FIR of the crime. Sometimes, after lodging the FIR, the police refuse to give a copy of the report to the complainant, even though they are bound to do so under the law. Often the FIR is lodged in a very haphazard and incomplete manner, and does not record all the information given to the police. Seven women's organizations in Delhi have pointed out that instead of accurately lodging the FIR, explaining to the woman victim her rights

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134 Sec. 154, (1), of the Criminal Procedure Code (1973), (Cr.P.C): ‘Information in cognizable cases – (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. Sec. 154(2) of the Cr.P.C.: ‘A copy of the information as recorded under subsection (1), shall be given forthwith, free of cost to the informant’. 
under the law, and taking her for a prompt medical examination, the police in fact act as a major obstacle to justice\textsuperscript{135}.

The factors, which are responsible for this, are the callous and indifferent attitude of large sections of the police towards women, the fact that they are sympathetic to men and the inefficiency with which the police investigate the offence. The police not only take their own time to investigate the cases, but the investigation itself is carried out in a casual manner that it becomes very difficult to prove the case against the accused. Important items of evidence are not collected in time. The police do not take statements of all the witnesses. In a large number of rape cases the medical evidence is inadequate because the rape victim is examined several hours after the rape. The doctor's report may also be scrappy, apart from being in several instances, biased against the rape victim.

Large sections of Indian society believe that the criminal justice system is biased in favour of those in positions of power, higher economic status, and those belonging to the higher caste/class/categories. Oral testimonies of victims and women's groups are replete with examples of how the accused have been able to exert influence on the police, and sometimes on the judiciary. The cases discussed in the following paragraphs, are just a few examples, and they show the manner in which the police have dealt with certain cases and the kinds of

\footnote{\textit{Alternative report for Beijing by All India Women's Conference, N.F.I.W., Mahila Dakshi Samiti, Joint Women's programme, YWCA, and AIDWA, Delhi, 1993.}}
obstacles they have placed in the way of women obtaining justice through the legal system.

Trial courts have often commented on the defects in the investigation procedures. In a report by women's organization, a case has been mentioned in which the session's judge has passed strictures against the Delhi Police. An 18 years old girl had been gang raped, and the police had not produced witnesses in the court. The report quotes the trial judge as saying, 'it is most unfortunate that dreaded criminals go cot free in the most heinous crime of gang rape, simply because of police apathy and indifference. Unless the investigation officers and station house officers are made accountable for production of witnesses in the court, this sorry state of affairs is bound to prevail. In another case the appellant who took the woman to another room raped a poor labourer working in a factory along with another co-worker. Immediately after the incident, the complainant reported the rape a co-labourer she met outside the room. She then searched for her husband, and lodged the FIR. The police did not document the statements of either of the co-workers. For reasons best known to the police, the investigating officer did not rely upon the undergarment of the accused, which had been recovered and had semen-like stains, in his oral evidence. After laying down that the court has to consider whether the evidence on record establishes guilt and would therefore have to be careful, the court stated that it would not be right to acquit the accused solely on this ground, as

136 Ibid.
this would mean playing into the hands of the investigating officer. The court said that the investigating officer should have recorded the statements of the two witnesses and drawn a proper seizure menu with regard to the underwear. The court held that the loopholes in the investigation were left to help the accused at the cost of the prosecutrix in the case, a poor labourer. Though any defect in the investigation is a matter that assists the defence the court refused to acquit the accused on this ground in this instance as it held it would 'add insult to injury'.

The Supreme Court of India has also often commented on the loopholes left by the police during the investigation of an offence. The *Gudalure nun case* was a classic example of deliberate police inaction where the inadequacies in the investigation procedure were the subject of scrutiny by the Supreme Court. The case involved the rape of two young nuns at around 2 AM in a convent in Gadalure (a small town in the State of Uttar Pradesh). After the incident took place, the nuns contacted the police at dawn. Though the police arrived early in the morning, they did not bother to take fingerprints or check for footprints. They also did not take into custody the underclothes and other clothes of the victims, and the sheet of the bed where the rape took place. Thereafter, when the victims were taken to the primary health centre, the doctor, though he noted the injuries on the bodies of the victims, referred the victims for a gynecological examination in a town about 30 miles away. The gynecologist made a customary medical examination, but refused to accept the underclothes, which the nuns offered to give her. Though one of the victims also told the doctor refused to examine her.

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The doctor also refused to take a vaginal swab and asked the victims to sign a blank sheet of paper. The medical report, which the victims obtained with great difficulty, was a vague and cursorily written document, which did not reflect any of the injuries the two nuns, had. Although the doctor at the primary health center, who had first examined the victims, had referred to the fact that there was severe pain in both breasts and watery discharge from the vagina and injuries on the upper thighs alone with bleeding, the medical report did not mention these injuries. The medical test in this case had been done after 12 hours. On the other hand, the conclusions drawn by the doctor in her medical report were perverse. In the case of one victim, the doctor had concluded that the victim was used to intercourse as the hymen was torn. In the second case also, where violent assault was clearly indicated by the nature of injuries in the primary health report, the doctor concluded by saying that as the hymen was intact, no rape had taken place, in spite of the fact that the should have been aware that mere penetration may not lead to rupture of the hymen.

In spite of the protests and pressure from the other nuns, a women's organisation and the assurances of the Central and State governments to take speedy action, nothing was done. The investigation was handed over from one police personnel to another. A special branch of police called the CID was also involved in the probe and took statements from the nuns. Finally, about, 2 months after the incident when the nuns were taken to identify the culprits, they were shocked to find that none of the prisoners were the culprits in the case, and

139 All India Democratic Women's Association.
none of their belongings, which had been stolen from them after the rape, had been recovered.

However, the Supreme Court ordered a Central Bureau of Investigation (CBI) inquiry into the entire case. This inquiry clearly showed that the police had deliberately apprehended and arrested the wrong persons, and had deliberately not conducted a proper investigation in the case. The Supreme Court in a writ petition under Article 32 of the Constitution, awarded punitive damages against the Uttar Pradesh State government for not conducting the investigation properly, and ordered that a sum of Rs.600,000 be paid as compensation to the nuns.

Another case, which came up before the Supreme Court had highlighted police brutality and complicity, was a child rape case. A 13 years old girl named Anita\(^{140}\) was abducted by two men and taken from her village Samalkha in Haryana to a town called Jokhabad in UP, where she was raped for two days. Thereafter, one of the accused forced the girl to sign a paper saying that she had ran away from her mother who was involved in prostitution. The girl was then produced in front of a Magistrate in Panipat, Haryana, and sent to the city police station from where she was told she would be sent to the Nari Niketan (a shelter). Fortunately, the Child's mother came, and took her back to her village, but she was made to take the child to the local police station so that she could make a proper statement.

\(^{140}\) Anita v. State of Haryana, Criminal Writ Petition 82-84, 1994, in the Supreme Court of India.
Anita's mother accompanied by about six people took her to the village police station. The police took the child to a room on the first floor in the police station, where they shouted at and hit the child a number of times. In fact the child was harassed the whole night to force her to say that she had voluntarily left her mother's house. The two policemen also beat her with a leather whip while she was abused. She was not given any food while she was confined in the police station. The child's mother being illiterate and uneducated about the law kept asking for the child's release not knowing that the child's detention itself was illegal. The child, Anita, was kept in the police station till about 6 PM the next evening, and even at that time she was released because the mother went to the station with a large group of people. The police, when releasing the child, shouted at the mother and said that she was responsible for her daughter running away. The mother was shocked by the child's condition, as her eyes, face and hands were swollen and she had whip marks all over her body. However, when Anita's mother took her to the government hospital in Panipat, the doctors refused to treat her unless the police were present, as they said it was a medico-legal case.

The police meanwhile refused to register any case of rape. Finally, the petitioner's mother met higher police officials and complained against the Station House Officer. Still the case was registered only about a month after the incident. It was then that the medical examination was performed.

AIDWA, (All India Democratic Women's Association) a women's organization, took up the case and after trying to get justice by meeting various
police officials, they filed a criminal writ petition under Art. 32 of the Constitution of India, in the Supreme Court asking for punishment of the guilty police officers, and for laying down certain directions about how a child and woman victims of rape and witnesses should be treated by the police.

The Supreme Court instituted an inquiry into the incident. This inquiry upheld all the allegation made by AIDWA in their writ petition, and stated that the police should take appropriate action against the culprits. It is pertinent to mention that even after the case had been filed in the Supreme Court, the police in Samalkha registered false case for theft and do city against the rape victim's mother to terrorise the victim, and pressurize her to withdraw the case. Besides, the Superintendent of Police held a press conference to publicise the false and fabricated case. A Magistrate who also connived with the police had registered this false case against the mother on a holiday. The victim's mother was forced to apply for bail and both the victim and her mother had to leave their home and seek shelter elsewhere. The police also conducted raids on the houses of all the persons who had supported the victim, and openly questioned the police action. They further publicized a letter in which seven women from the village were supposed to have complained about the victim's mother's bad character. On inquiring, AIDWA representatives found that all the seven signatures had been forged. It was only because of the intervention by the women's organization and the case in the Supreme Court that the police were eventually forced to withdraw the false case and complaint.
Jessica Lal’s case\(^{141}\) is just another example of such cases. Though the case was at a crucial stage, the charge sheet was almost ready to presented to the Court yet its key investigator, Mr. Surendra Sharma SHO was posted out. Mr. Sharma was the only person who had been on the case from day one, and had full knowledge of the case. His transfer could seriously dilute the case. Some people including the father of the deceased were taken a back by the news of the transfer. They asserted that this transfer was totally uncalled for. In police and civilian circle, there was a very strong perception that Jessica Lal’s case was deliberately being goofed up. The probe was in its final stages but the murder weapon was yet to be recovered and all the evidence that the police had collected was mostly circumstantial. It would certainly be extremely difficult for the police to establish the guilt of the accused in the absence of Scientific proofs. Normally it is very difficult to find a witness who is willing to testify against the accused in a Court of law. Most of the witnesses shy away because of the tardy legal process, the harassment involved in such ventures and the frequent adjournments of the cases.

Above cases show how the rule of law can be completely undermined and ignored by the police. Anita’s case is just the tip of the iceberg. When women’s groups, or other groups do not intervene, it seems possible that there is widespread harassment and torture of victims of sexual assault.

The trial procedures and judicial attitudes often present an obstacle to women receiving justice through the legal system. The cases discussed in the

\(^{141}\) 2000 Cr. L.J. 33
following pages reveal how difficult it is to obtain a conviction. Judicial activism and gender sensitivity seem to be of critical importance if the court procedures are to be used properly in the administration of justice.

In *Shri. Bhagwan Singh v. Commissioner of Delhi*, the Supreme Court of India found reason to censure the police for not carrying out an investigation properly. The case involved a young girl who was found burnt to death in her husband's home. The girl, Gurinder Kaur, had in fact signed a pledge in favour of the anti-dowry movement. Her father, Bhagwant Singh, was also against the dowry system, and had arranged the marriage of his daughter to a friend's son, on the express stipulation that no dowry would be given. After the marriage, however, the girl's mother-in-law started hinting that she wanted gifts of money and jewellery. The girl's father ignored the demands. Gurinder Kaur was subjected to constant ill-treatment. Her husband also demanded Rs. 50,000 for his business. When this was not given, Gurinder Kaur continued to be treated with scorn, and compelled to live in an atmosphere of hostility.

Ten months after the marriage in early August 1980, Gurinder Kaur was found dead from burn injuries in the bathroom. While her husband's family alleged suicide, Gurinder's father was convinced that it was murder. The police first registered a case of suicide, and then, after protests from the girl's father, they registered a case for demand of dowry. It was in May 1981 that the police eventually registered a case of abetment to suicide under Section 306 of the

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142 *AIR 1983 SC 826.*
143 Sec. 4 of the Dowry Prohibition Act: Penalty for demanding dowry.
Indian Penal Code. Even after this, the police proceeded with the investigation on the basis that this was a case of suicide without abetment.

Bhagwant Singh, the girl's father, contended in the Supreme Court that the investigating agency in this case had not carried out its statutory duties in a bonafide manner. He stated that they had 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. He alleged that the police had wrongly stated that the girl was not fit to make a statement before she died while in hospital. He pointed out that Gurinder's father-in-law had himself admitted that 'Bhagwant Singh and others had visited the hospital and had talked to the girl'. It is relevant to mention that, although the police relied upon the alleged testimony of a domestic helper, the statement was not recorded for several days. The police also did not take into their possession vital pieces of evidence; include the blanket, which was allegedly used to put out the flames. The police in fact failed to take statements from other important witnesses including the taxi driver who had taken the deceased to the hospital, and a neighbor who had given a statement saying that it was he who was instrumental in getting a taxi and not the husband or the in-laws.

The Supreme Court pointed out that the police investigation did not inspire confidence and was dilatory. The court held that it only proceeded at the insistence of the deceased's father that action should be taken. The Supreme Court also pointed out that the entries in the police case diary were haphazard. They emphasized that utmost importance should be given to entries in police
case diaries which should be made promptly, in sufficient detail, mentioning all facts, in careful chronological order and with complete objectivity.

The Supreme Court highlighted the inefficiency of the police in investigation commenting that, the perpetrators of the crime not infrequently escape from the nemesis of the law because of inadequate police investigation'. It advocates that high priority be given to 'expeditious investigation' of dowry cases, since 'the greed for dowry system calls for the severest condemnation'. The Court also recommended that a female police officer of 'sufficient rank and status' be associated with the investigation from its very inception.

The Supreme Court condemned poor police investigation in the case of *Lichhamadevi v. Rajasthan.* In this case, a girl named Pushpin was alleged to have been burnt by her mother-in-law and locked in the kitchen. Neighbours who were the flames and heard Pushpa's cry for help, opened the bolted door from outside and took Pushpa to the hospital. The mother-in-law and Pushpa's husband who were present in the house refused to take Pushpa to the hospital to arrange for blood that she urgently required. Pushpa subsequently died. Before dying, her statement was recorded by the police and attested by two other witnesses. Pushpa had stated that her mother-in-law had poured kerosene on her and set her on fire. She made a similar statement to the doctor and to her father.

Commenting on what it called the disturbing features of the case, the Supreme Court held that 'investigation in the case did not proceed as there

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144 AIR 1988 SC 1785.
appeared to be soft peddling of the whole case by the police. It criticized the police for not prosecuting Pushpa's brother-in-law who was seen running away from the scene of the crime. The Supreme Court also criticized the police for not prosecuting and charge-sheeting Pushpa's husband whose complicity in the crime was obvious as he stood by and let Pushpa burn to death, and refused to rescue her.

It was also pointed out that appointment of public prosecutors was handled politically which affected accountability. Their role and function needed to be defined and their efficiency improved by providing more facilities. Here also the question of values and attitudes was seen to be important. It was suggested that women prosecutors are needed to deal with crimes against women and they need to be suitably sensitized.

\textsuperscript{145} Ibid.