CHAPTER - VII

ROLE OF ENFORCEMENT AGENCIES

The law-enforcement agencies i.e., the police and the judiciary play an important role in the control of crime against women and particularly in bride-burning cases. The law-enforcement is a continuous process from the time crime is reported till the criminal is prosecuted and punished. This is a long process involving various stages such as, investigation, prosecution, trial and judicial decision. The main object of this chapter is to discuss various legal provisions relating to investigation, prosecution, role of lower judiciary relating to the bail and remand, the judicial norms set by higher courts and penal sanctions and sentencing in dowry related crimes.

The primary function of the police is the enforcement and administration of laws. For an effective enforcement of laws, police are vested with numerous statutory powers. The role of the judiciary stands next to the police. It has always been assigned high prestige under the democratic constitutional systems, particularly in view of the challenging tasks entrusted to it.

(A) Police

The police force is the principal agency of the criminal justice for the enforcement of laws. They occupy
a strategic position with reference to crime causation, probably next to the family and other personal groups in importance. Its primary duty is not only to prevent the violation of laws like murder, suicide, rape, arson, grievous hurt, cruelty etc. but to prevent other offences like dowry related crimes. The police select the law to enforce according to their wish. Sometimes, they launch a special drive against a particular crime and enforce the relevant law more vigorously.

In India, the police have to perform all the functions enumerated as in other countries, but their work is exceptionally more burden some due to the peculiarities of the socio-economic life of the community. Prof. Bailay remarked in the following words:

"Crime in India is bewildering in its variety; the police must cope with a range of crime as diverse as any in the world. While people are vicious to one another in India in much the same ways that they are in the West, what distinguishes the Indian scene is the enormous variety of circumstances within which crime becomes manifest. It is the richness of social and geographical conditions that gives to Indian crime its incredible and fascinating heterogeneity."
1. **Preventive Role**

The prime object of every law is to prevent the commission of crime. Very often, it is said that prevention is better than cure. Similarly, it is better to prevent the commission of crime rather than to prosecute the offender. The police are vested with certain powers under different laws to perform this preventive function.

The police are assigned their powers of preventing crime under sections 149, 150 and 151 of the Code of Criminal Procedure (Cr. P.C.) Wide powers are also given to the police under Section 23 of the Police Act, 1861.

Section 149 of the Cr. P.C. provides that a police officer may interpose for the purpose of preventing, and shall, to the best of his ability prevent the commission of any cognizable offence. The word 'interpose' used in Section 149, Cr. P.C connotes active intervention by a police officer to prevent the commission of a cognizable offence. Most of the dowry related crimes under the I.P.C. and the Dowry Prohibition Act are cognizable offence.

Under Section 150 of the Cr. P.C. a police officer may exercise the power to prevent the commission of a

3. Police officer has not been defined in the Cr.P.C., but under the police Act the term 'police' includes all persons enrolled under the Act.
crime if he receives any information regarding the design to commit any cognizable offence. The powers of arrest have been conferred on the police officers under Section 151 Cr. P.C. to arrest a person without a warrant if he knew that the person arrested has a design to commit a cognizable offence. Besides, if it appears to such officer that there is no other way to prevent the arrested person from commission of offence. A person arrested under Section 151 Cr. P.C. cannot be kept in custody for more than twenty-four hours within which time he must be produced before a Magistrate either to demand security from him or to proceed against him.

In exercising the power under this Section, it is the subjective satisfaction of the police officer which determines whether to arrest a person or not, but the Court can intervene where the question is with regard to the proper exercise of discretion by the police. It will be an abuse of power if a police officer arrests an individual without ascertaining that the arrested person has a design to commit an offence.

2. Bringing the Offender to Justice

One important function entrusted to the police force is to apprehend the offender and then to proceed against him according to law. In the process of bringing

the offender to justice two important functions of the police are:

(I) Investigation and
(II) Prosecution.

Sections 154 to 174 contained in Chapter XII of the Code deal with, "Information to the Police and Their Powers to Investigate". These sections have made very elaborate provisions for securing that an investigation does take place into a reported offence and the investigation is carried out within the limits of the law without causing any harassment to the accused and is also completed without unnecessary or undue delay\(^6\).

(a) First Information Report

The first information of a cognizable offence made to the police officer is called the First Information Report (F.I.R.). The term first information is not defined in the Code, but it means information recorded under Section 154 of the Cr. P.C. A first information report means the information, by whomsoever given, to the officer in charge of a police station in relation to the commission of a cognizable offence and which is first in point of time and on the strength of which the investigation into that offence is commenced.\(^7\)

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The F.I.R. should be lodged with the police at the earliest opportunity after the occurrence of a cognizable offence. The object of insisting upon prompt lodging of the report to the police is to obtain early information regarding the circumstances in which the crime was committed. The F.I.R. plays an important role in the investigation of offence. There are two categories of offences viz., cognizable and non-cognizable, under the Code of Criminal Procedure.

Section 154(1) of the Cr. P.C. lays down that information relating to the commission of cognizable offences shall be reduced in writing by the police officer and shall be read over to the informant. According to Section 154(3), if any person is aggrieved by a refusal on the part of the police officer in charge of a police station to record the information, he may send by post the substance of such information in writing to the concerned Superintendent of Police. If the Superintendent is satisfied that the information discloses the commission of a cognizable offence, he shall either investigate the case himself or direct an investigation to be made by a subordinate police officer in the manner provided by the Code. This Section also makes it obligatory that a copy of the F.I.R. is to be given to informant.

The object of F.I.R. is to obtain early information of alleged criminal activity, to record the circumstances

before there is time for them to be forgotten or embellished. The Supreme Court has pointed out the importance and object of the F.I.R. as under:

"The principal object of the F.I.R. from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable step for tracing and bringing to book the guilty party".

Most of women and their parental relatives are not aware that the contents of the F.I.R. are irrevocable. It is an important document and the police officer recording it must read it out to the person filing the F.I.R. Most informants do not know that they must insist upon this.

Statistics indicate that there have been a spurt of dowry complaints and dowry deaths in the last few years. Yet, at the same time the number of cases registered under the various sections related to dowry show an increasing trend. However, the majority of cases go unreported. If they are reported, it is up to the police to interpret, whether it is a case of murder or suicide or abetment to suicide or whether at all it is

11. See Introduction and Chapter IV for detailed discussion.
related to dowry or simply accident.

The F.I.R. can be lodged not only by individuals but also by certain legally recognised organisations. Three All India Women's Organisations viz., the All India Women's Conference, the Mahila Dakshta Samiti and the Guild of Services, have been recognised and authorised to file F.I.Rs. to the Police Stations or complaints to lower courts directly under the Dowry Prohibition (Amendment) Act, 1984\(^\text{12}\). The representatives of these organisations were issued 25 certificates as the password for these social workers to lodge F.I.Rs. to the police stations.

The image of police has deteriorated due to irresponsibility and corrupt as well as unlawful practices. Whenever a woman goes to the police station to lodge her reports against her husband or in-laws, who have assaulted her or subjected her to cruelty, torture, beating or have done some other crime, police do not take any notice.

Police are never taken as a friend of the citizens. How can the women seek the help of the police? When she is mentally upset too much or is physically assaulted and goes to the police who do not care. When a woman reports that she was harassed or beaten by her husband or in-laws, the policeman says, "it is your family affair, why have you come to us? The men are used to beat their wives".

\(^{12}\) Section 7 (b) (ii)
Further, women are not secure in the police station. There are many instances where women went to a police station for help they were mentally and physically harassed. Anyhow, when the women organisations interfere and insist on registering the case, the police do not like it. If a women organisation reports against any police official no action is taken. Somehow, if the case is registered with great difficulty, it is lodged under wrong Section. (13)

Despite the media focus on bride-burning, the police approach on being informed of an unnatural death is to suspect nothing and straightforward proceed on the assumption of suicide, without even investigating, if there could have been abetment to suicide. (14) The police officials have themselves said, (15) that only a foolish policeman will be at pains to register every case and endorse it as a crime, because if the volume of crime cases registered is very high, he will be the first to be transferred from his police station. Neither the local police nor the government stand to pain by registering a high crime rate (16). In a case a North Delhi Police Station House


16. Ibid.
Officer pleaded with the head of a forensic department for a post-mortem, "kar dijiye saab, parliament mein question aa rahe hain", he said, adding", nahi to bari dikkat hogi, do minat lagegi saab", (please do it, it will take two minutes, otherwise there will be questions in Parliament. Added the Inspector who was with him "mera baap bhi marega to mai post-mortem karwaunga," (even if my father dies I will get a post-mortem done). (17)

If bride-burnings are a genuine they need an intelligent and concerned response from the police, not a "I want to save my skin", response. (18) A newspaper report states that when an accident is reported the police do not feel the need to look into the domestic situation. Reading the police reports it seems that there were no domestic problems in the households where the accidents were reported. The victim's history and background are not always recorded. When information of a post-mortem is given, no details of the results are mentioned. So there is no way of knowing what was found. (19)

Ghadially and Kumar observed that when the police was informed that a young woman's life was in danger they refused to intervene in 'family affairs'. This attitude of the policemen is in total disregard of Section 149 of

17. Ninan, Sevanti and Suri, Sanjay, "Behind the Acquittals - Police, Complaints playing safe," The Indian Express, (New Delhi), April, 7, 1984, p. 3.

18. Ibid.

19. Anklesaria, Shahnaz, op. cit.
the Criminal Procedure Code. Police apathy manifested itself in several ways. The police appeared unconcerned, hesitated or refused to register a case. The police registered a case only after intense pressure from either the family of the deceased and/or members of women's organisations. If a case was registered the police refused to take any action after registration. Police indifference is primarily a function of the light view, they and society take of dowry deaths. This seriously deters a woman and her family to report violence in the home(20).

They further observed that the police have also been accused of being partial, of intimidating residents of the husband's neighbourhood not to agitate accepting bribes, tampering with evidence and exerting pressure on witness. In light of this it comes as no surprise that more dowry deaths are dismissed as cases of suicide rather than murder and all official figures will represent a gross under-estimation of the true extent of this crime. (21)

In Delhi the Anti-Dowry Cell was established in 1983 with an object to help the women in distress, but it has failed to secure justice for the women in distress. The job of the cell is to refer the cases to the police, if


21. Ibid.
the crime is committed against women and to provide free legal assistance to all economically weaker victims. The police-officers working in this cell should be specially oriented to deal with the problems of women humanely and with understanding. Instead the officers have a tendency to be rude and they pressurise the victims to reconcile with the husbands.

In fact,, many cases of wife-beating, cruelty, dowry-harassment and dowry death are not reported to the police. If reported, it is not recorded properly by the police officers due to unsympathetic attitude towards women involvement of elite groups, the politicisation of the civil and police service or on any other pretexts.

A study conducted by Shoma Chatterji of police reports in the form of F.I.Rs. and Daily Diary entries on instances of death by burning in 109 cases in the Delhi region in June-July 1982 reveal that: (i) the reports do not always contain vital information. (ii) they do not specify whether the police suspects foul play or not, and (iii) whether the investigations are in progress or not. In 99 out of the 109 cases, no foul play was suspected though in some of these, the circumstances of the death were suspicious and in some others, there was background of domestic quarrels.  

(b) Investigation

The criminal investigation commences when the police comes to know of the commission of a cognizable offence or where a Magistrate gives an order to a police officer to investigate a non-cognizable offence. The distinction between cognizable and non-cognizable offences also demarcates the powers of the police in respect of criminal investigations.

According to clause (h) of Section 2 of the Cr. P.C. 'investigation' includes all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a magistrate) who is authorised by a magistrate. The Supreme Court in case of H.N. Rishbud v. State of Delhi\(^{23}\) has viewed the investigation of an offence as generally consisting of:

(i) preceding to the spot;
(ii) ascertainment of the facts and circumstances of the case,
(iii) discovery and arrest of the suspected offender;
(iv) collection of evidence relating to the commission of the offence;
(v) formation of the opinion as to whether on the material collected there is a case to place the accused before a magistrate for trial, and if so, taking the necessary steps for the same by the filing of a charge-sheet under Section 173.

\(^{23}\) A.I.R. 1955 SC 196.
Since the F.I.R. is lodged it is obligatory for the police to start the investigation of the offence. In case of cognizable offences, the investigation is initiated by the giving of information under Section 154 Cr. P.C. to a police-officer in-charge of a police-station. But in case of non-cognizable offences, Section 155 (2) of the Code provides that no police officer shall investigate a non-cognizable case without the order of a magistrate having power to try such case or to commit the case for trial. Sub-Section (1) of Section 155 Cr. P.C. lays down that whenever a non-cognizable case is reported in the police-station, the officer in-charge shall record the substance of the information in a book prescribed for this purpose. Further, when a case refers to cognizable as well as non-cognizable offences it is to be recorded as cognizable offence under Section 155 (4) of the Cr. P.C.

Sub-Section (1) of Section 156 Cr. P.C. confers unrestricted powers on the police to investigate a cognizable offence without the order of a magistrate. This Section lays down that the investigation is to be done by the officer -in-charge of the police station. This statutory right of the police to investigate cannot be interfered with or controlled by the judiciary\(^{24}\). Sub-Section (2) of Section 156 makes it clear that an irregularity in investigation does not vitiate proceedings or trials.

The procedure for investigation is laid down under Section 157 of the Cr. P.C. This Section lays down that when an officer-in-charge of police station has reason to suspect the commission of a cognizable offence, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report. Further, he may proceed in person or shall depute a subordinate officer if the case is not of a serious nature. Sub-Section (1) (b) of Section 157 Cr. P.C. gives wide discretion to police officer not to investigate a case where it appears to him that it is not worth investigating.

Under Section 8 (1) of the Dowry Prohibition (Amendment) Act, 1984, dowry offences are cognizable, (a) for the purposes of investigation of such offences, and (b) for the purposes of matters other than those referred in Section 42 of the Cr. P.C. and the arrest of a person without a warrant or without any order of a Magistrate. Thus, in connection with a dowry offences the police cannot make arrests as in the case of other cognizable offences.

The police officer has the power to investigate any dowry offence, without waiting for a complaint to be filed. If it comes to the conclusion that a dowry offence has been committed, it can approach the Court. But no person can suffer any harassment as he cannot be arrested.
without a warrant or an order of a Magistrate, howsoever involved he may be, in the opinion of the Police in the offence. Similarly, in connection with dowry offences, arrests cannot be made under Section 42 of the Cr. P.C.

The offence under Section 498-A of the I.P.C. is cognizable if information relating to the commission of the offence is given to an officer -in-charge of a police station by the person aggrieved by the offence or by any person related to her by blood, marriage or adoption or if there is no such relative, by any public servant authorised in this behalf by the State Government.

The offence of dowry death under Section 304-B, I.P.C. has been made cognizable by the Dowry Prohibition (Amendment) Act, 1986. The police officer has the power to investigate the offence of dowry death without the order of a Magistrate, if an information is given under Section 154 of the Cr. P.C.

In fact,, the investigations of dowry death are carried out in an extremely casual and unscientific manner. The First Information Reports reflect how incomplete the information is furnished. Post-mortems are not held despite the Home Ministry's directions, and if they are, it is not too difficult to tamper with the reports. Even where the police suspect foul play, they take months and sometimes years to file a charge-sheet by which time the evidence available disappear. The
witnesses either cannot recall or have been so threatened during that period by the accused that they choose not to give evidence. The main hindrance in the success of these cases is the proverbially tardy pace at which the police proceed with their inquiry with the resultant tampering with witness and loss of evidence\(^{(25)}\).

Despite the Union Home Ministry’s direction that all "unnatural deaths" should be investigated by a police officer not below the rank of Deputy Superintendent of Police or senior officials, the cases of bride-burning are investigated by a very junior police officers. The junior police officer who is undertaking to investigate such cases, has many other cases in his hand to investigate. In spite of this, neither they have much time to concentrate in a particular case nor they have inclination, training or aptitude to handle complex issues of human relationship. With numerous and urgent matters needing his attention, it is ridiculous to expect him to deal adequately with such cases. Take the number of cases of alleged suicide or bride-burning, police are not trained to decide whether such death is a case of suicide or accident or bride-burning or what role the husband has had to play in the tragedy\(^{(26)}\).

Despite all these amendments and so much noise about bride-burning, how callous sometimes our investigating authorities was brought to clear relief by the Supreme

Court's decision in *Lichhamadevi v. State of Rajasthan.* In this case the mother-in-law was charged to have burned to death her daughter-in-law. During the course of investigation, she was found to have poured kerosene on her and ignited it. She also admitted that her elder son might have burned her to death. Jagannath Shetty, J. said that there are some disturbing features in this case which we must mention before examining the merits of the matter. The investigation in this case did not proceed as it ought to and there appears to be soft pedalling of the whole case. During investigation the appellant herself has stated that her son, Madan, might have burnt Pushpa, he is the elder brother of Jagdish. Madan was also seen by the neighbours behind the kitchen and running down the stairs at the time when pushpa was inflames inside. The police, however, did not prosecute him. Jagdish the husband of pushpa appears to have no human qualities. He was a silent spectator for all the dastardly attack on his wife. He had not even the courtesy to take his wife to the hospital. He did not make arrangement for securing blood when pushpa was struggling for life. He positively dissociated himself as if he had nothing to do with pushpa. His tacit understanding with those who have perpetrated the crime is so apparent that it could not have been ignored yet he was not charge sheeted. This indifferent attitude of the investigating agency should be deprecated."

Similarly, in **Joint Women's Programme v. State of Rajasthan**\(^{(28)}\), the Supreme Court found that the investigation made by the police in a dowry death case was totally inadequate. It directed the state of Rajasthan and state of Haryana, two states involved in the investigation, to get conducted the investigation by an officer not below the rank of Superintendent of Police.

In a dowry death case the Additional Sessions Judge, Delhi, B.V. Bansal criticised the investigation of the case, he said that, "it shows that the investigating officer was either inexperienced or did not do his job in accordance with the law. There was no proper supervision or guidance of the investigating officer".\(^{(29)}\) In another case, the judge found that in effect, the investigating officer himself had turned hostile. So he granted the accused the benefits of doubt which taking note of "remissness, callousness and dishonestly on the part of the investigating agency".\(^{(30)}\)

Yet, in another case of **Bhagwant Singh v. Police Commissioner of Delhi**\(^{(31)}\), a writ petition was filed by Bhagwant Singh complaining of negligent against police attitude in investigating the dowry death of his daughter, Gurinder Kaur. The Supreme Court observed:

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29. *The Indian Express* (New Delhi), March 15, 1983
30. Ibid.
"Whatever may be the reason, there is no doubt that the investigation of the case suffered from casualness, lack of incisiveness and unreasonable dilatoriness and this is demonstrated most effectively by the manner in which the case was passed from one police official to another, being entrusted successively to Sub-Inspectors and Inspectors each of whom already had his hands full with the investigation of several other cases. There is the admission that these police officers were pre-occupied with numerous other cases in their hands and they were officers who were also required to look after the day to day work of the police station".

(c) Interrogation

Interrogation is one of the important part of criminal investigation. Interrogation means to question a suspect and to find out the truth. The suspect of the crime may be questioned either on the spot or at the police station. The police use the method of 'third degree' in interrogation of suspects and it is an illegal practice.

Section 161 of the Cr. P.C. empowers a police officer making an investigation to examine any person, who is acquainted with the facts and circumstances of the case. Sub-Section (2) of Section 161 Cr. P.C. provides
protection to witnesses against question which have a tendency to expose them to a criminal charge or penalty.

Normally the suspect is kept in the police lock-up and the interrogation is carried on in the local police station. In dowry offences and bride-burning cases also, the suspect woman is called at police station for interrogation. While it is a contravention of wholesome proviso to Section 160 (1) of the Cr. P.C. It has been clearly observed by the Supreme Court in Nandini Satpathy v. P.L. Dhani, (32) that at a higher level police officer, ignorantly insisting on a woman appearing at the police station, in flagrant contravention of the whole some proviso to Section 160 (1) of the Cr. P.C. Such deviance must be visited with prompt punishment since policemen may not be a law unto themselves expecting others to obey the law.

Inspite of the above observation made by the Supreme Court, the women suspected in dowry offences and bride-burning cases are insisted to appear at the police station. Abusive languages are used against them by the police to discover the desired effect. Sometimes, different techniques of interrogation are also employed against them by the police.

(d) Recording of Dying Declaration

Dying declaration is an important piece of evidence. The police has to arrange for recording the

dying declaration whenever it is necessary. Section 32 (1) of the Evidence Act lays down that a statement can be proved when it 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. It, further, provides that such statements are relevant whether the person who made them was or was 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.

Sometimes, the validity of the victim’s dying declaration in bride-burning cases is highly questionable. It loses credibility because of the circumstances in which they were recorded. Usually, the dying declarations are not recorded properly by the Magistrate or doctor. It is recorded by a police officer. In case of Dalip Singh v. State of Punjab(33), the Supreme Court observed:

"Although a dying declaration recorded by a police officer during the course of the investigation is admissible under Section 32 of the Indian Evidence Act in view of the exemption provided by Section 162(2) of the Code of Criminal Procedure, 1973, it is better to leave such dying declarations out of consideration until and unless the prosecution satisfies the Court as to why it was not recorded by a Magistrate or by a doctor".

In another case of *Munnu Raja v. State of Madhya Pradesh* (34), the Supreme Court observed:

"The practice of the investigating officer himself recording a dying declaration during the course of investigation ought not to be encouraged".

In bride-burning cases also the dying declarations are, generally, recorded by a police. Even it is not recorded in the presence of any victim's relatives. Sometimes, the fitness of the deponent to make a declaration is also doubtful. The Supreme Court in case of *State (Delhi Administration) v. Laxman Kumar* (35) observed:

"The dying declaration of burnt bride was recorded not by a Magistrate nor by a doctor but by the investigating officer without explaining the non-availability of the Magistrate and the doctor. It was not signed by the deponent although literate and not proved to be incapacitated to sign by the burn injuries. The time of the statement was also not indicated in the document. At the time the declaration was recorded none of her relations were present. The fitness of the deponent to make a declaration was also doubtful. The dying declaration was also not recorded in the form of questions and answers".

34. A.I.R. 1976 SC 2199.

(e) Examination of Witnesses

Section 161 of the Cr. P.C. deals with the oral examination of witnesses by the police. According to Section 161 (1), any person supposed to be acquainted with the facts and circumstances of the case can be orally examined by a police officer making an investigation of the case, or on the requisition of such officer, by any police officer not below such rank as the State Government may be order prescribe in this behalf. Sub-Section (2) of Section 161 of the Cr. P.C. provides that where a person is being examined by a police officer under Section 161 (1), he is required to answer truly all question put to him by such officer. He is, however, not bound to answer such questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. No one can be made witness against himself by virtue of Article 20 (3) of the constitution\(^{36}\). Sub-Section (3) of Section 161 lays down that the police officer may reduce into writing any statement made to him in the course of examination of a person and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records. This provision gives wide discretion to a police officer to record or not to record any statement made to him during investigation.

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36. Article 20(3) of the Constitution provides, "No person accused of any offence shall be compelled to be a witness against himself".
During investigation, the statements of witnesses should be recorded as promptly as possible. Unjustified and unexplained long delay on the part of the investigating officer in recording a statement of a material witness during the investigation may render the evidence of such witness unreliable\(^{(37)}\).

In bride-burning cases, the examination of witnesses forms an important part of the evidence. The witnesses are not generally examined promptly by the police officer during the course of investigation. The witnesses either cannot recall or have been so threatened by the accused they choose not to give evidence. Sometimes they turned hostile. The witnesses in bride-burning cases ought to be given due attention and should be handled by the police carefully. Their credibility should not be doubted by the Courts simply on the ground of personal animosity. The reasons have been very clearly described by the Supreme Court in case of *State (Delhi Administration) v. Laxman Kumar*\(^{(38)}\), wherein the Court observed that the witnesses in a bride-burning case, who had not only rushed to the spot but took a leading part in putting out the fire from bride's person and ensured her dispatch for medical assistance at the shortest interval, and as expected of a good neighbour, gave information to the police, made a blanket available, called a taxi and extended human

\[\begin{align*}
37. & \textit{Balakrishna v. State of Orissa} \ 1971 \text{ Cri. L.J. 670.} \\
38. & \textit{A.I.R. 1986 SC 250.}
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sympathy and assistance to the extent possible, could not be said to have animosity towards the accused. One of the curses of modern living, particularly in highly urbanised areas is to have a life cut-off from the community so as to even not to know the neighbours. Indifference to what happens around is the way of life. That being the ordinary behaviour of persons living in the city, if added to it there was animosity, these witnesses would certainly not have behaved in the manner they have.

(f) **Final Report / Charge sheet**

On completion of investigation, the Officer In-charge of a Police Station is required to send a report to the Magistrate competent to take cognizance of the case under Section 173, Cr. P.C. If upon investigation by the officer in-charge of the police station it appears that there is no sufficient evidence against the accused, he will close the investigation and send a report to the competent Magistrate to that effect along with relevant records. Such report is designated as ‘final report.’ On the other hand, if it is the considered opinion of the investigating officer that there are sufficient evidence against the accused, he has to submit the report to the Magistrate to take cognizance of the case. Relevant documents should accompany the report. Such report is called ‘charge-sheet’ or ‘challan’.

The formation of the opinion of the officer-in-
charge of the police station whether on the materials collected there is or there is not a case to place the accused for trial before a Magistrate is the last of the several stages involved in the investigation by the police. The police have full control over the proceeding of this investigation and neither the Magistrate nor the High Court has any power to interfere with such proceeding.

The Magistrate receiving the report has no power to direct the police to submit a particular kind of report. If he considers the conclusion reached by the police officer as incorrect, he may direct the police officer to make further investigation under Section 156 (3), he may or may not take cognizance of the offence disagreeing with the police, but he cannot compel the police officer to submit a charge sheet so as to accord with his opinion.

(g) Inquiry Into Unnatural Death

Section 174 of the Cr. P.C. empowers an officer in charge of a police station to make an investigation into the cases of suicides and other unnatural or suspicious deaths. A new sub-Section (3) to Section 174 Cr. P.C. has been inserted which lays down the following:

41. Inserted by the Criminal Law (Second Amendment) Act, No. 46 of 1983.
when,

(i) the case involves suicide by a woman within seven years of her marriage; or

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

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

(iv) there is any doubt regarding the cause of death; or

(v) the police officer for any other reason considers it expedient so to do, he shall forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government.

Section 174 (3) gives discretion to the police officer not to send the body for post-mortem examination only in a case, where there can be no doubt as to the cause of the death. But in a number of bride-burning cases, the post-mortem is not carried out by the police. No foul play is suspected. In some cases, the victim’s in-laws cremated the dead body of the victims without giving any information to the victim’s parents and police.

Section 174(4) empowers the Magistrate to hold such
an inquiry when a woman dies while living with her husband and in-laws or other relations of the husband during the first seven years of her marriage.

The object of the proceedings under Section 174 is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death.

Doubts have often been expressed by general public and expert bodies on the competence, integrity and impartiality of the police in discharging their role freely and fairly. The National Police Commission,\(^\text{42}\) felt that the police in the public estimate, appear as an agency more to realise objects of the ruling party than an impartial and independent agency for enforcing laws. Justice Krishna Iyer went to the extent of saying, 'Policing as done today is an illusion',\(^\text{43}\).

In view of the above difficulties in the successful prevention and investigation of dowry related offences as highlighted above, it is obvious that the role of the police is of an important nature than in other normal cases. The police must accord highest priority to these cases. They must undergo transformation, especially, in cases of bride-burning and must be equipped, motivated and experienced enough to handle this problem. The Government


should make its police force a competent investigating agency by attending the needs of police force and saving its from functional suffocation.

(h) Prosecution

Prosecution is an important area of criminal justice system. After the completion of the investigation and the submission of the a charge sheet there arises the need for criminal prosecution to establish the guilt of the accused. In the conduct of prosecution the duty of the police is to place all the relevant material before the Court. It is not their duty to seek conviction only, but to see that justice is done. Sections 24 and 25 of the Cr. P.C. lays down that the state shall appoint the Public Prosecutors and Assistant Public Prosecutors to plead the cases before the courts under his charge. The prosecution set-up envisaged by the Code consists of Public Prosecutors (including additional Public Prosecutors and special Public Prosecutors), and Assistant Public Prosecutors. While the former are to conduct prosecutions and other criminal proceedings on behalf of the state in the Courts of Session and the High Courts, the later are to conduct prosecutions on behalf of the state in the courts of Magistrates.

(i) Cognizance of Offence by the Court

After investigation of a case the next process of prosecution begins with a Magistrate taking cognizance of
the case. This is done under Section 190 (1) which provides that, subject to the provisions of sections 195 to 199, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf, may take cognizance of any offence -

(a) upon receiving a complaint of facts which constitute such offence;
(b) upon a police report of such facts;
(c) upon information received from any person other than a police officer or upon his own knowledge, that such offence has been committed.

Sub-Section (2) of Section 190 lays down that the Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-Section (1) of such offences as are within his competence to inquire into or try.

Section 193 of the Cr. P.C. provides that, except as otherwise provided by the Code or by any other law, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.

When an offence is exclusively triable by a Court of Session according to Section 26 of the Cr. P.C. read with First Schedule the Magistrate taking cognizance of such offence is required to commit the case for trial to the
Court of Session after completing certain preliminary formalities.

Section 190 Cr. P.C. confers power upon Magistrate to take cognizance of all offences including such offences which involve dowry as an issue or as a motive for committing such offence. However, some exceptions and limitations have been put in the laws to take away few dowry related offences from the general application of Section 190.

A new Section 198-A of the Act(44) lays down that no Court shall take cognizance of an offence punishable under Section 498-A of the I.P.C. except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister, or by her father's or mother's brother or sister or, with the leave of the Court by any other person related to her by marriage, blood or adoption.

This provision is enacted to ensure that the husband and the in-laws of the married woman are not harassed by a complaint lodged by a person who is enemical to them, and is not really concerned with the death of the married woman but motivated by an ulterior purpose.

Section 7 of the Dowry Prohibition (Amendment) Act, 1984, deals with the cognizance of dowry offences. Sub-

44. Inserted by the Criminal Law (Second Amendment) Act, No. 46 of 1983.
Section (1) (a) of Section 7 of the Act provides that no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act. No other Court is competent to try these offences.

Cognizance of a dowry offence can be taken by the Court:

(i) on the basis of its own knowledge, or a police report of the facts which constitute such offence, or

(ii) on the basis of a complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any recognised welfare institution or organisation.

In dowry offence the aggrieved person is regarded the bride or the bridegroom on whose behalf dowry is given or agreed to be given. It is interesting to note here that in most of the cases of dowry, the demand for dowry is made by the parent or guardian or the other party and in most of the cases where dowry is actually paid, the maker of the payment is the guardian or parent of the other party.

Yet, the aggrieved party is not considered to be the parent or guardian of the bride or bridegroom, as the case may be, but the bride or bridegroom.

45. Section 7 (1) (b).
Section 7 (a) of the Dowry Prohibition Act, 1961, laid down that a complaint of a dowry offence must be made within one year from the date of the offence. But under the amended Act the bar of limitation of one year has been done away. There is no limitation whatever. Since the opening words of the Section are "Notwithstanding anything contained in the Code of Criminal Procedure, 1973", Section 468 of the Code will not apply.

In fact, the nature of dowry harassment and cruelty does not permit the victim or her parents to file a complaint before the Court of law as its nature is so sensitive that it brings prestige of family immediately at stake. In most of the cases, the offence is hushed up in the name of the family privacy or by the reluctant attitude of the victims themselves. The victim's fear of further humiliation and harassment, if they courage to file a complaint against her husband and in-laws. In most cases, the lengthy judicial procedure and ineffective laws do not promise justice.

Three All India Women's Organisations have been recognised and authorised to file complaints under the Dowry Prohibition (Amendment) Act, 1984, to lower courts directly or at police stations. The complaints will be treated as F.I.R. to prevent the tampering of evidence. The organisations recognised are the All-India Women's Conference, the Mahila Dakshta Samiti and the

46. Section 7 (b) (ii).
Guild of Services. The representatives of these institutions were given identity cards for the Courts to take cognizance of their complaints. However, none of the organisations have yet availed of the facility. Only in few cases, the complaints were filed by these organisations.

(B) Role of Lower Judiciary

The lower judiciary performs an important function in the prosecution of offences. After the investigation is complete, the police is bound to submit a report under Section 173 (2) of the Cr. P.C. On receiving the police report the Court may take cognizance of the offence under sections 190 (1) (b) and 193 of the Cr. P.C. and straightway issue process. Sections 207 and 208 of the Code require the Magistrate taking cognizance of the offence to supply to the accused copies of certain documents like police report, F.I.R., statements recorded by police or Magistrate during investigation. Similarly, the Court of Session would, at the commencement of the trial, satisfy itself that copies of documents have been furnished to the accused as required by sections 207 and 208 of the Code. The lower judiciary exercises their control over the police in the exercise of their statutory functions, like granting bail and remand.

1. Bail

The rules for granting bail to the accused are laid
down in the Code of Criminal Procedure. Bail is basically release from restraint, more particularly, release from the custody of police. An order of bail gives back to the accused freedom of his movement on condition that he will appear to take his trial. Personal recognizance, surety bonds and such other modalities are the means by which an assurance is secured for his presence at the trial.\(^{47}\) The Supreme Court in case of Moti Ram v. State of M.P.\(^{48}\) held that bail covers both release on one's own bond, with or without sureties.

The Supreme Court has provided the guidelines for exercise on judicial expression while granting bail. It is clear from the observation of the Supreme Court in State of Maharashtra v. Anand Chintaman Dighe\(^{49}\), as under:

"There are no hard and fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court. Where the offence is of serious nature, the Court has to decide the question of grant of bail in the light of such considerations as the nature and seriousness of offence, character of evidence, circumstances which are peculiar to the accused, a

\(^{48}\) A.I.R. 1978 SC 1594.
\(^{49}\) A.I.R. 1990 SC 625.
reasonable possibility of presence of the accused not being secured at the trial and the reasonable apprehension of witness being tampered with, the larger interest of the public or such other similar considerations".

The Code has classified all offences into bailable and non-bailable. In bailable offence, the accused has a right to be released on bail. In non-bailable offence, bail cannot be claimed as a matter of right, but at the discretion of the Court.

Section 436 of the Cr. P.C. provides that if a person accused of a bailable offence is arrested or detained without warrant he has a right to be released on bail. Section 437 of the Code provides that a person accused of non-bailable offence is arrested or detained without warrant he may be released on bail. But in such a case bail is not a matter of right, but only a privilege to be granted at the discretion of the Court. Section 439 (1) of the Code gives very wide discretion to the High Court and the Court of Session in the matter of granting bail.

In State v. Captain Jagjit Singh\(^{(50)}\), it was clarified by the Supreme Court that where an offence is bailable, bail has to be granted under Section 436, Cr. P.C. but when the offence is not bailable, further

considerations arise and the Court has to decide the question of grant of bail in the light of those further considerations. It was specifically pointed out that where there are reasonable grounds for believing that the accused has been guilty of an offence punishable with death or imprisonment for life, the Court should exercise its power in favour of granting bail not as a general rule but only in exceptional cases. It is, therefore, the duty of the Court to review the whole material before it and to come to its own conclusion while exercising the discretion under this provision. It was perhaps for this reason that it was held by the Delhi High Court in Sant Ram v. Kalicharan\(^{51}\), that where a Sessions Judge does not take into consideration the various factors which are required to be considered while granting bail in non-bailable cases and does not keep in view the nature of the offence of which the respondents are accused, falls into an error in forming a prima facie opinion to grant bail. Similarly, in Gurcharan Singh v. State (Delhi Administration\(^{52}\), it was observed by the Supreme Court that where the Sessions Judge did not consider gravity of offence, status of accused and influence they wielded over the witness before granting the bail, he committed a mistake in exercise of jurisdiction under this provision.

Under Section 8 (2) of the Dowry Prohibition (Amendment) Act, 1986, the dowry offences are made non-

\(^{51}\) 1977 Cri. L.J. 486 (Delhi HC).

\(^{52}\) A.I.R. 1978 SC 179.
bailable offences. The offences of cruelty and dowry deaths under Sections 498-A, I.P.C. and 304-B, I.P.C. are non-bailable offences.

Inspite of these provisions, the most distressing aspect of dowry harassment, cruelty and dowry death is that the accused get away on bail. In many cases, the culprits are released on bail without any thought given either to the condition of the victim or the gravity of the offence. The courts are too lenient towards the accused in granting the bail in dowry harassment and dowry-death cases. In some cases, the main accused have been granted bail even when victims were lying in hospital struggling for life. Instances have also been reported where on being released on bail the accused threaten the parents of the victim and witnesses.

In Amarnath Gupta v. State of M.P., the Sessions Judge granted bail to the accused but it was severely criticised by the Madhya Pradesh High Court. The Court observed that if lawyers who are not only trained in law but also officers of the Court, adopt lawlessness as their creed, not only individuals affected thereby but the rule of law itself would be endangered. Officers of the Court are expected to share the judicial destiny any help in honestly and efficiently administering justice. The Inspection Report in the instant case noticed that though the kerosene oil was found on the floor, it was not found

under the body of deceased indicating that there was no body movement at the time of burning. The evidence on record indicated the demand of dowry and also that there was previous history of cruelty against the deceased which was also prima facie proved by the presence of confusions on the person of the deceased at the time of her death. In this view of the matter, the bail order was unjustified.

In case of Samunder Singh v. State of Rajasthan (54), the Supreme Court condemned the widespread belief that the dowry death is even now treated with casualness at all levels in the judiciary and held that, "it was neither prudent nor proper for the High Court to have granted anticipatory bail".

In view of the easy bails in the lower courts, the Delhi Administration has now decided to monitor bail orders and initiate proceedings in High Court for cancelling bails found to be blatantly unjust and unfair. (55)

2. Remand

Remand is the custody of an accused given to the police beyond twenty four hours. The police are empowered to keep the accused under custody till the investigation


55. Kusum, "Harassed and Hounded", The Hindustan Times, (Sunday Magazine), Delhi, September 11, 1994, p. 5.
is complete but they cannot detain any person in their custody for more than twenty-four hours.

Section 167 of the Cr. P.C. lays down that whenever an accused person is arrested and detained in custody by the police and it appears that the investigation cannot be completed within twenty-four hours as fixed by Section 57, the accused person must be forwarded to a Judicial Magistrate. The Magistrate to whom the accused is forwarded may from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding 15 days in the whole. However, there is no obligation on the part of the Magistrate to grant remand as a matter of course. If further detention of the accused becomes necessary for the completion of the investigation, the Magistrate may authorise the detention of the accused person otherwise than in custody of the police. But the total period of detention in such case shall not exceed ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years. Such period of detention shall not exceed sixty days, where the investigation relates to any other offence. On expiry of said period of ninety days or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail. The Magistrate cannot pass remand orders unless the accused is produced before him. The Magistrate shall
record the reasons for granting remand under this Section.

(C) Judicial Norms Set By Higher Courts

. The judiciary can play an important role in the course of social justice. Recently, the judiciary is increasingly faced with grave situations of incidents of bride-burning for the sake of dowry or any other reason. There have been a small number of progressive judgments regarding women's issues particularly in bride-burning cases. In regard to Court's action Desai and Patel state that, "we do not have any convincing evidence to suggest that judges in lower courts, in High Courts or in Supreme Court are favourable to women's cause since at various times different judges have proclaimed path-breaking judgments (56)."

The attitude of the judiciary and the anxiety of the judges have remained absolutely aloof from the realities of the day to day life. However, over the past decade, the members of the judiciary have displayed contradictory attitudes towards women's issue. While some have passed path-breaking judgments, other have sought to maintain the status quo and acquitted the accused on technicalities and inadequacies of law.

State (Delhi Administration) v. Laxman Kumar (57) is an illustrative case in the sense that all the three Courts, viz., trial Court, High Court and Supreme Court

adopted a different attitude. In this case, the deceased Sudha was burnt to death by sprinkling of kerosene oil over her body. She was expecting to deliver a child. The three accused mother-in-law, her husband and her brother-in-law were tried for the offence of murder under Section 302, I.P.C.. The trial Court sentenced all the accused to death and referred the matter to the High Court for confirmation of death sentence. The High Court acquitted all the accused.

The Delhi High Court differed from the trial judge on almost every aspect. The High Court observed:

"The sentence of death awarded to three persons including a woman in a wife burning case was given wide publicity both by the national and international news media. The verdict of acquittal which we are about to deliver is bound to cause flutter in the public mind more particularly amongst women's social bodies and organisations. We are performing our constitutional duty. Judges have no special means of finding out the truth. We entirely depend on the evidence produced on record and do our best to discover the truth within the limitations laid down by law. Judges are human beings and can err. The satisfying factor is that we are not the final Court and there is a Court above us and if our judgment is wrong it shall be set right"."
The Supreme Court observed that, "the learned trial Judge had thought it proper to impose the punishment of death. Acquittal intervened and almost two years have elapsed since the respondents were acquitted and set at liberty by the High Court. In a suitable case of bride burning, death sentence may not be improper. But in the facts of the case and particularly on account of the situation following the acquittal at the hands of the High Court and the time lag, we do not think it would be proper to restore the death sentence as a necessary corollary to the finding of guilt. The Court accordingly allowed the appeals partly and directed that the two respondents, Smt. Shakuntala (mother-in-law) and Laxman Kumar (husband) shall be sentenced to imprisonment for life. Appeal against Subhas (brother-in-law) stand dismissed and his acquittal is upheld".

Two cases recently decided, show how difficult it is under existing laws to bring to book "bride-burners". Of course, allegation is not proved and a Court’s decision is made on the basis of all the facts and circumstances of the case. The stress is here on the nature of our laws and how they get interpreted by the courts.

In a recent case of *Om Prakash v. State of Punjab* (58), the deceased Rita was burnt to death by sprinkling of kerosene oil by her husband, father-in-law, mother-in-law and two sisters-in-law. The trial Court

convicted only the husband Om Prakash and other accused persons were acquitted. However, on an appeal filed on behalf of the State of Punjab before the High Court the order of acquittal against these accused was set aside and they were convicted under Section 302, I.P.C. read with Section 34, I.P.C..

Three appellants made a criminal appeal before the Supreme Court. The Court dismissed the appeal and restored the order passed by the High Court. The Supreme Court observed:

"It is the duty of the Court, in a case of dowry death because of torture and demands for dowry, to examine the circumstances of each case and evidence adduced on behalf of the parties, for recording a finding on the question as to how the death has taken place. While judging the evidence and the circumstances of the case, the Court has to be conscious of the fact that a death connected with dowry takes place inside the house, where outsiders who can be said to be independent witnesses in the traditional sense, are not expected to be present. The finding of guilt on the charge of murder has to be recorded on the basis of circumstances of each case and the evidence adduced before the Court.".

In case of Harbans Lal v. State of Haryana, two

59. Ibid. at p. 141.

60. A.I.R. 1993 SC 819.
accused, the deceased's husband and her mother-in-law were jointly tried by the Sessions Court, Ambala, for the offence under Section 302, I.P.C. read with Section 34, I.P.C. for causing the death of the victim and her baby child aged about 9 months by sprinkling of kerosene oil and setting fire. The Sessions Court acquitted both the accused. The State of Haryana preferred an appeal against the said order of acquittal. The High Court of Punjab and Maryana convicted both the appellants under Section 302 read with Section 34, I.P.C. The two appellants made an appeal before the Supreme Court.

The Court observed that the High Court has rightly set aside the order of acquittal as there is only one view possible namely that the accused and accused alone caused the death of the two deceased. The Court held that the plea of accused was that deceased committed suicide in room bolted from inside. No evidence was produced regarding the same. It was further held that if the deceased had committed suicide, she, as a mother, would be the last person not to save her daughter of tender age. The fact that the child also received burns and died would positively go to show that both of them were burnt to death at the hands of some others who can be none else than the two accused. This is a very telling circumstance and it completely rules out the theory of suicide .... and as such the accused are liable to be convicted under Sections 302 and 34 of I.P.C.
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The judiciary is quite sensitive to this social evil (dowry death) and this is projected in their judgments. The Supreme Court in case of Brij Lal v. Prem Chand\(^{(61)}\) observed:

"The degradation of society due to the pernicious system of dowry and the unconscionable demands made by greedy and unscrupulous husbands and their parents and relatives resulting in an alarming number of suicidal and dowry deaths by women has shocked the legislature to such an extent that the legislature decided to provide additional provisions of law..."

Similarly, in State of U.P. v. Ashok Kumar\(^{(62)}\), the Supreme Court observed:

"A number of circumstances have been pointed out by the trial Judge which taken together leave no room for doubt that the three accused persons were the joint authors of the crime. We have no hesitation, whatever, in concluding that the approach of the High Court was wholly against the weight of evidence and it is impossible to approve the same." The Court, further observed, "ordinarily, in an acquittal this Court is slow to interfere while exercising power under Article 136 of the

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Constitution but here we find that the approach of the High Court has resulted in gross miscarriage of justice. It is not possible for this Court to refuse to interfere when a gruesome crime is committed which has resulted in the extinction of a young mother to be."

True each of the above cases taken in their entirety consisted of a complexity of factors that the judges had to consider in arriving at a decision. These have shaken public confidence in the ability of the judicial system to deliver justice in such cases.

In Mulakh Raj v. Satish Kumar\(^\text{63}\), a beautiful young lady of 20 years met with a homicidal death in her matrimonial home. The motive was demand of more dowry. The accused contended that the deceased poured kerosene on herself and set fire to herself and committed suicide. The accused was convicted by the trial Court under sections 302 and 201, I.P.C. but was acquitted by the Punjab and Haryana High Court. The Supreme Court set aside the order of acquittal of the accused, Satish Kumar and restored the sentence passed by the trial Court. The Supreme Court observed:

"The death took place in the bed-room of the spouse and the attempt to destroy the evidence of murder by burning the dead body, the unnatural conduct of

\(^{63}\) A.I.R. 1992 SC 1175.
satish Kumar, immediately after the occurrence, the false pleas of suicide and absence from house are telling material relevant circumstances which would complete the chain of circumstantial evidence leading to only one conclusion that Satish Kumar alone committed the ghastly offence of murder of his wife, Sashi Bala".

In another case of State of Punjab v. Iqbal Singh, the deceased Mohinder Kaur set herself and her three children ablaze at the residence of her husband Iqbal Singh because of harassment and persistent dowry demands. The trial Court convicted all the three accused, deceased’s husband, mother-in-law and sister-in-law under Section 306, I.P.C. The High Court of Punjab and Haryana on reappreciation of the evidence acquitted all the three accused.

The Supreme Court observed that an atmosphere of terror was created to push her into taking the extreme step. It would seem it was a carefully chalked out strategy to provoke her into taking the extreme step to kill herself and her children as she apprehended that they will be much more miserable after she is dead and gone. In the peculiar facts and circumstances of the case, the trial Court had rightly convicted the husband under Section 306, I.P.C. The High Court committed an error in reversing the conviction.

64. A.I.R. 1991 SC 1532.
It is apparent from the above cases that accused persons are acquitted due to the lack of evidence. The judges would mostly be looking for the missing evidence which would be taken as a loophole in the prosecution story. The prevailing social atmosphere and the violence inflicted upon the young woman victim has no place in their consideration of the case. The sole criteria for deciding a case is the lack of evidence and not the evidence that is available before the Court. This faraway approach of the judiciary is the main reason of almost acquittals in bride-burning cases.

In the present criminal justice system, there is no such specific responsibility laid on the judiciary to ensure that justice is done. There is no legal liability of the judge binding him to do justice and he is not strictly answerable for passing a wrong judgment. A large number of judgments of lower courts are reversed by the higher courts. Due to the different attitudes of the different courts, the accused persons go scot free from punishment. The judiciary must realise its social and moral responsibility to make positive efforts to ensure justice to the victims.

(D) Penal Sanctions and Sentencing in Dowry Related Crimes

Penal sanctions against offenders involved in dowry related offences are provided in the Indian Penal Code, 1860, and the Dowry Prohibition Act, 1961. A study of
these statutes indicates that courts are duly armed with the conventional penal sanctions for such crimes. The Indian Penal Code provides the following types of legal sanctions:

(i) Sentence of death;
(ii) Sentence of imprisonment for life;
(iii) Imprisonment for a term which may be rigorous or simple, and
(iv) Fine.

The Dowry Prohibition Act provides for only two types of penal sanctions namely:

(i) Imprisonment for a term, and
(ii) Fine

Both the two laws contain provisions for a minimum sentence of imprisonment in relation to dowry offences. The power of the courts in relation to imposition of penal sanctions is controlled and regulated by various provisions of the Code of Criminal Procedure, 1973. These provisions determine the jurisdiction of the criminal courts, the power to impose various sentences and limitation on such powers. The Cr. P. Code also confers power to pass alternative and additional sanctions.

It is intended, here, to discuss the philosophy of punishment, the nature of sentencing structure and the

65. Section 53 of the Indian Penal Code also provides for forfeiture of property but this sanction is not available under the Code for any of the dowry related offence.
judicial discretion in sentencing of offenders in dowry related crimes.

1. Penal Philosophy

The penal philosophy of law is largely determined by the judicial attitudes and practices in the matter of sentencing. The penal laws in India which the courts administer do not contain any explicit provision as to the objective of sentencing. Our Penal Code reflects the philosophy of the past century. Its basic structure is founded on retribution, deterrent and preventive doctrines. With growing awareness towards crime and criminal, the rigour of the penal laws has been mitigating by introducing reformative legislations. It would be appropriate to discuss these theories in detail.

(a) Deterrent Theory

According to this theory, a punishment is primarily deterrent, and the chief end of the penal law is to make the evil-doer an example and a warning to all who may be tempted to commit crimes.

According to Johannes Andenaes, "punishment imposed on those who commit crimes has the effect of warning others and diverting them from the paths of temptation when inviting criminal opportunities present themselves either in the real world or in the imagination".\(^{66}\) He,

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further, argues that prescription of punishments by the legislator as well as sentences passed by the judge are morally sound when they are based on considerations of general deterrence\(^{(67)}\).

The actual imposition of punishment creates fear in the offender that if he repeats his act, he will be punished again. To deter an offender from repeating his actions, a penalty should be severe enough to outweigh in his mind the benefits of the crime\(^{(68)}\). As far as its effect on general public is concerned it cannot be denied that it has proved insufficient to check the crime to the desired extent. Deterrent as an aim of punishment, though it has lost much of its former importance, cannot be said to be entirely eliminated from the policy of modern Court of criminal jurisprudence.\(^{(69)}\) Bentham also agrees that general prevention ought to be the chief object of punishment and its real justification.\(^{(70)}\)

The deterrent theory of punishment finds expression in demand for more stringent measures against offenders.

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67. Ibid.


70. Bentham, Jeremy, op. cit.
involved in dowry death and other dowry offences. The legislative changes brought about in the laws reflect the deterrent ideology. It would be interesting to discuss the judicial attitude in relation to the dowry offences and bride-burning.

In bride-burning cases, those who have found the evidence sufficient to warrant the conviction have expressed the desire to award a sentence that would act as a deterrent punishment. The Supreme Court in Virbhan Singh v. State of U.P.,(71) observed that instances of bride killing are alarming on the increase. If society should be rid of this growing evil, it is imperative that whenever distastefully crimes of this nature are detected the offence brought home to the accused, the courts must deal with the offender most ruthlessly and impose deterrent punishment.

In another case of Kailash Kaur v. State of Punjab(72), the Supreme Court observed that whenever a case of gruesome murder of a young wife by the barbaric process of pouring kerosene oil on the body and setting her on fire as the culmination of a long process of physical and mental harassment for extraction of dowry comes before the Court and the offence is brought home to the accused beyond reasonable doubt, it is the duty of the Court to deal with it in most severe and strict manner and

72. 1987 Cri. L.J. 1127.
award the maximum penalty prescribed by the law in order that it may *operate as a deterrent* to other persons from committing such anti-social crimes.

Yet, in another case of *Smt. Paniben v. State of Gujarat* (73), the Supreme Court observed that it would be a travesty of justice if sympathy is shown when cruel act like bride-burning is committed. It is rather strange that the mother-in-law who herself is a woman should resort to killing another woman... The language *deterrence* must speak in that it may be a conscious reminder to the society. Undue sympathy would be harmful to the cause of justice. It may even undermine the confidence in the efficacy of law. Mere fact that the accused, mother-in-law, has spent more than a decade in jail, cannot be a ground to show any leniency.

The Allahabad High Court in *Vinod Kumar v. State of U.P.* (74) observed that, "the killings of brides by their husbands are the *rarest of the rare cases* in which extreme penalty of death appears to be the normal sentence in order to bring about *deterrent effect* on persons who are potential danger to their brides. Judges must play their role by giving deterrent and exemplary sentence to the accused in such cases, otherwise the human society may collapse..."

74. *1986 ALL. L.J. 1438 (All. HC).*
Retributive Theory

Retributive theory is based on the idea of revenge against the wrongdoer. In all healthy communities, any crime or injustice stirs up the retributive indignation of the people at large. According to this theory, the offender should receive as much pain and suffering as inflicted by him on his victim to assuage the angry sentiments of the victims and the community.

In retributive theory, practices of punishment are justified because society should render harm to wrongdoer; only those who are guilty of the wrongdoing should be punished; and the severity of punishment should be proportional to the degree of wrongdoing. (75)

Dr. H.C. Gour agreeing with Plato observes that both personal and public sentiments demand that the person who has made others to suffer unjustly should himself be made to suffer. (76) Whatever may be the merit or demerit of the theory of vengeance or retribution as the purpose of punishment there can be no doubt that revenge is sweet even to modern man. (77)


77. Oppenheimer, Heinrich, op. cit. p. 29.
According to Hirsch, severity of punishment should be commensurate with the seriousness of the wrong. This principle has variously been called a principle of "just deserts".

Sir James Stephen observed that the criminal law stands to the passion of revenge in much the same relation as marriage to sexual appetite.

The punishment based on retribution have also been sought to be defended on the ground that punishment reflects denunciation of the criminal and his act by the society. Lord Denning, before the Royal Commission 1949-53, observed:

"The ultimate justification of any punishment is not that it is a deterrent, but that it is the emphatic denunciation by the community of a crime".

It appears that retributive theory in its purest form, which provides, that the penal system should be designed to ensure that offenders atone by suffering for their offences and their suffering should be of the same magnitude as that of their victims. Retribution is rarely responded in the decisions of the Higher Courts. In fact it is rejected when a sentence appears to be

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vindicative.\(^{(80)}\) Often this principle of vindication appears in the judicial pronouncement as well. The Rajasthan High Court in *Kodu v. Banmali*\(^{(81)}\) quoting Paton on jurisprudence said:

"The retributive theory is not, of course, the narrow theory of vengeance but rather the doctrine that the wrong done by the prisoner can be negated only by the infliction of the appropriate punishment."

In dowry offences and bride-burning cases, the judicial pronouncements exclusively based on the theory of retribution are lacking. The attitude of the Court represents an admixture of retributive cum deterrent philosophy. In many cases the Supreme Court has noted with indignation the shocking nature of this form of criminality. In a recent decision in *Smt. Paniben v. State of Gujarat*\(^{(82)}\), the Supreme Court observed that, "every time a case relating to dowry death comes up, it causes ripples in the pool of the conscience of this Court. Nothing could be more barbarous, nothing could be more heinous than this sort of crime ...."

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80. No sentence should ever appear to be vindicative. An excessive sentence defeats its own object and tends to further undermine the respect of the law*. *Dulla v. State* A.I.R., 1958 All. 198.

81. 1969 Cr. L.J. 201.

(c) Preventive Theory

The third theory is generally described as preventive theory. According to this, the punishment is provided for the purpose of disabling or preventing the offender from committing the offence again. In olden days the offender was prevented from committing the offence again by disabling him permanently. The death punishment was the most effective mode of preventing the offences by an offender.

Another aspect of preventive theory is incapacitation of the offender. Incapacitation is the effect of isolating and identified offender from the larger society and thereby preventing him or her from committing crimes in that society.\(^\text{83}\) Interestingly, theory of the incapacitation also produces same effects as deterrence does. But the imprisoning offender involved in offences will reduce crime even in the absence of any deterrent effect. In dowry related offences the system of minimum sentence reflects the policy of prevention as well as incapacitation. The theory of prevention and incapacitation also finds expression in such devices as debarring a youth from marrying another woman if he was convicted in dowry related offences. So that he is prevented from committing similar offences in future.

Thus, the Supreme Court in Ashok Kumar v. State of

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\(^{83}\) Gross, Hyman and Hirsch, Andrew Von (Ed.), op. cit., p. 228.
Rajasthan\textsuperscript{(84)} observed that "... social reformist and legal jurists may evolve a machinery for debarring such a boy from remarriage irrespective of the member of the family who committed the crime and in violation penalise the whole family including those who participate in it. That is social ostracism is needed to curtail increasing malady of bride-burning".

This ban would disable the offenders at least for sometime for repeating the same offence.

(d) Reformative Theory

This theory is of recent origin. It makes a study of the psychology of the criminal and takes punishment as a means to a social end. This theory puts more emphasis upon the personality of the offender and considers him to be a patient who should be given a proper treatment.

The penal theory takes the offender into consideration and insists that treatment be related to the offender according to his own psychological and sociological needs. The punishment must fit the criminal.\textsuperscript{(85)} Protection of society against the criminal and the rehabilitation of individual offender are the watch words of this approach.\textsuperscript{(86)}

\begin{itemize}
\item \textsuperscript{84} A.I.R. 1990 SC 2134.
\end{itemize}
In spite of ambiguity in penal laws, the trend in modern penology has been in the direction of positivism as reflected in such innovation as the indeterminate sentence, probation, parole and good time laws.\(^{(87)}\) The theory of reformation made great advance in the treatment of juvenile offenders particularly in the field of Court movement. The success of juvenile courts and services is being used as an argument for placing emphasis on the reformation and rehabilitation of the offender as an objective of sentencing policy.\(^{(88)}\)

In modern times, the Indian courts are ready to recognise and approve new approach in sentencing of offenders. The Supreme Court in case of Indo-China Steam Navigation Co. Ltd. v. Jasjit Singh\(^{(89)}\) observed:

"It is true that modern criminology does not encourage the imposition of severe or savage sentences against criminals, because the deterrent or punitive aspect of punishment is no longer treated as a valid consideration in the administration of criminal law...."

The theory of reformation and rehabilitation seems to be out of place in so far as cases of bride-burning and


\(^{89}\) A.I.R. 1964 SC 1140.
dowry harassment are concerned. There is hardly any reported case on bride-burning in which the Court has ever propounded a reformatory approach. However, where a several members of the family including young one are involved the Court may take a lenient view towards young offender but where the young offender happens to be the principal culprits, the Court may refuse to take a lenient view. This was the attitude of the Allahabad High Court in case of Vinod Kumar v. State of U.P.\(^{90}\) In this case the Court observed that the age of 25 years of the accused is not at all an extenuating circumstances for awarding lesser sentence of life imprisonment in such cases as a person is a full-grown man at the age of 25 years and his mental faculties are completely developed to understand the nature and consequence of his act.

2. Sentencing Structure

The purpose of a criminal trial is to determine the guilty of the offence of the accused to which he is charged. The law confers a considerably wide discretion on the judge and provides few criteria that should guide him in his sentencing function. The exercise of judicial discretion in sentence determination depends upon several legal factors which include the organisation and the hierarchy of the courts, nature of offences, availability of different sentencing measures, mandatory sentences and

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90. 1986 ALL. L.J. 1438 (All. HC).
the age of the offenders. (91)

In dowry related offences the sentencing structure is determined by the Indian Penal Code, 1860, and the Dowry Prohibition Act, 1961. Different sentencing structure is provided in penal provisions of these laws. It would be desirable to discuss these provisions at this stage.

Section 302, I.P.C., provides punishment for murder. That Section provides that, "whosoever commits murder shall be punished with death, or imprisonment for life and shall also be liable to fine.

The offence of dowry death is punishable with minimum sentence under Section 304-B, I.P.C., which provides that a person shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

The offence of abetment of suicide, under Section 306, I.P.C., is punishable with imprisonment upto ten years and fine.

Under Section 498-A, I.P.C., the offence of cruelty by the husband or his relatives has been made punishable with imprisonment upto three years and fine.

The offence of dowry death, under Section 304-B I.P.C., has been made punishable only with imprisonment and a fine has not been added to this offence.

The Dowry Prohibition Act lays down a number of punitive provisions relating to the dowry offences. Under Section 3 of the Act, a minimum of five years imprisonment and a minimum fine of fifteen thousand rupees or the value of dowry whichever is more, is prescribed for giving or taking or abetting the giving or taking of dowry. The Court may, however, for adequate and special reasons may impose a sentence of imprisonment less than five years. (92)

Under Section 4 of the Act, the offence of demanding dowry is punishable with imprisonment for a term not less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees. The offence of offer of dowry, in one form or the other, through an advertisement is punishable with six months to five years imprisonment and a fine upto fifteen thousand rupees under Section 4-A of the Act.

Section 6 provides that the dowry received by a person, other than the woman in connection with whose marriage it is given, is to be transferred to the woman or her heirs within a period of three months, failing which

92. Proviso to Section 3 of the Act says that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years.
imprisonment from six months to two years and a fine from five thousand to ten thousand rupees can be imposed upon the offenders.

3. **Sentencing in Dowry Related Crimes**

A study of the sentencing structure discloses the availability of sentence of death, sentence of life imprisonment as an alternative to death, sentence of imprisonment for a term with or without fine. The law confers a wide range of judicial discretion in imposition of penal sanctions. In cases of conviction under Section 302, I.P.C., the Court has to exercise discretion as to the choice between life and death. The law gives the judge broad discretion to make the sentence fit the offence and the offender. The role of the Court is not only to carry out the prescriptions of the law but also to exercise its own judgment. (93)

Any determination of what is a correct sentence must be tempered by the knowledge that it depends on once point of view. That is, it depends on position taken concerning the aims of sentencing which involves morals judgment as well as facts. (94)

The discretion of the courts, thus, plays an important role in sentencing the offenders in cases of


dowry offences and bride-burnings. There is a considerable disparity among various trial courts and High Courts in sentencing of offenders involved in these crimes. Even in the Supreme Court, there is a disparity of sentence awarded by different judges.

(i) Penal Dilemma in Choosing Between Sentence of Death and Sentence of Life.

There has been demand for death sentence in dowry related murders. The sentencing courts are faced with the penal dilemma between humanistic approach and a retributive cum deterrent approach.

The object of death sentence may be two fold. Firstly, by sentencing the offender to death, it may instil fear in the minds of others and make a lesson to others. Secondly, if the offender is an incorrigible one, by sentencing him to death, it prevents the repetition of the crime. Therefore, it is not based on the reformative object of punishment.

The sentence of death stands at apex of the categories of punishment under our penal system. It is sanctioned under the I.P.C. for seven offences with the alternative of imprisonment for life, but it becomes

95. The Capital Punishment is confined by the Code to seven principal offences, namely:
(i) Treason e.g. Waging war against the Government of India (Section 121);
(ii) Abetment of mutiny (Section 132);
(iii) Perjury resulting in conviction and death of an innocent person (Section 194);
mandatory under Section 303, I.P.C. When murder has been committed by a person under sentence of imprisonment for life. But in case of Mithu v. State of Punjab\(^{(96)}\), the Constitution Bench of the Supreme Court observed that Section 303, I.P.C. was unconstitutional and there shall be no mandatory sentence of death for the offence of murder by life convict. Hereinafter, all murder cases would fall under Section 302, I.P.C., which deal with punishment for murder.

Mr. Justice A.P. Sen in his dissenting judgment in case of Rajendra Prasad v. State of U.P.\(^{(97)}\), observed:

"The humanistic approach should not obscure our sense of realities. When a man commits a crime against the society, by committing a diabolical, cold blooded, pre-planned murder, of an innocent person, the brutality of which shocks the conscience of the Court, he must face the consequences of his act. Such a person forfeits his right to life".\(^{(98)}\)

(iv) Murder (Section 302);
(v) Abetment of suicide of a minor or insane person (Section 305);
(vi) Attempted murder by a life convict (Section 307); and
(vii) Dacoity with murder (Section 396).

98. Ibid. at 945.
In bride-burning cases also death sentence has been suggested only in few cases. The Supreme Court in case of State (Delhi Administration) v. Laxman Kumar\(^{99}\), observed that in a suitable case of bride-burning, death sentence may not be improper. But in the facts of the case and particularly on account of the situation following the acquittal at the hands of the High Court and the time lag, it would not be proper to restore the death sentence as a necessary corollary to the finding of guilt.

The Allahabad High Court in Vinod Kumar v. State of U.P.,\(^{100}\) observed that, "killing of brides by their husbands are the 'rarest of the rare cases'\(^{101}\) in which extreme penalty of death appears to be the normal sentence in order to bring about deterrent effect on persons who are potential danger to their brides...."

It seems from the above decisions of the courts that there is a penal dilemma in choosing between sentence of death and sentence of life imprisonment. The study of the reported cases discloses that it is only in an exceptional circumstances that a sentence of death is imposed on an offender involved in dowry related murder. In majority of the cases, the Court would like to impose merely sentence of life imprisonment. Much depends on the moral judgments

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100. 1986 ALL. L.J. 1438 (All. HC).

101 The doctrine of *rarest of the rare cases* was propounded by the Supreme Court in case of Bachan Singh v. State of Punjab, A.I.R. 1980 SC 898.
of the judges. The controversy about sentencing probably never will be resolved to the satisfaction of all. There has been a demand for the sentence of death by various women's organisations in bride-burning cases. They have raised their voices against the lesser sentence passed by the courts or acquitted by the courts.

(ii) Nature of Life Imprisonment

The sentence of life imprisonment is prescribed as an alternative to death sentence under Section 302, I.P.C. and it is also an alternative to sentence of imprisonment for a minimum term of seven years under Section 304-B, I.P.C. The sentence of life stands next only in its rigour to sentence of death. A sentence of life is one sentence and is indivisible. It has been observed by the Supreme Court in Vinayak Godse v. State of Maharashtra\(^\text{(102)}\) that imprisonment for life means a liability to serve sentence for the rest of the natural life.

There appears to be a controversy whether imprisonment for life is sentence for rigorous imprisonment or it is a simple imprisonment.\(^\text{(103)}\) The State of Uttar Pradesh amended the Prison Act in 1962 so as to lay down that the sentence of imprisonment for life shall be regarded as sentence of rigorous imprisonment.

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In a bride-burning case of Smt. Lichhamadevi v. State of Rajasthan\(^{(104)}\), the accused was awarded death sentence by the Rajasthan High Court but the Supreme Court on reappreciation of evidence altered the death sentence to imprisonment for life. The Supreme Court observed that when there are two opinions as to the guilt of the accused by the two courts, ordinarily the proper sentence would not be death but imprisonment for life.\(^{(105)}\)

In State of U.P. v. Dr. V.K. Saxena\(^{(106)}\), the Supreme Court observed that presumably, the death sentence so justifiably imposed by the learned Sessions Judge on Dr. Saxena was reduced to life imprisonment for the reason that the two learned judges differed on the question as to the guilt of Dr. Saxena. If the High Court were to uphold the sentence of death, we would not have interfered with that sentence.\(^{(107)}\)

\(^{104}\) A.I.R. 1988 SC 1785.

\(^{105}\) In this case the accused (mother-in-law) Smt. Lichhamadevi was tried under Section 302, I.P.C. for the murder of her daughter-in-law. She was acquitted by the trial Court but the High Court reversed her acquittal and awarded death sentence.

\(^{106}\) A.I.R. 1984 SC 49.

\(^{107}\) The learned Sessions Judge, Hardoi, convicted Dr. Saxena under sections 120-B, 302 and 201, I.P.C. and awarded the sentence of death for the offence of murder of his wife and a nurse Bhagwati Singh was convicted under Section 120-B, I.P.C. and was sentenced to life imprisonment. The appeals filed by the two accused and the confirmation proceedings came up for hearing in the Allahabad High Court before Hari Swarup and M. Murtaza Husain JJ. Hari Swarup J. did not agree with the trial Court's
(iii) **Imprisonment**

Sentence of imprisonment is sanctioned for the majority of offences under the I.P.C. and various special statutes. Section 53 of I.P.C. provides imprisonment, which is of two kinds: (a) rigorous, and (b) simple.

In rigorous imprisonment, the convicted person is subjected to hard labour which involves a liability to undergo work and job assignment by the prison authorities. Any refusal to work may lead to disciplinary action under the jail rules.

But in case of simple imprisonment, the prisoner cannot be compelled to any kind of work or labour. There are a number of sections under the I.P.C. where the sentence prescribed is only simple imprisonment. Wherever the word imprisonment is used in a statute, the Court invariably impose a sentence of simple imprisonment.

The courts possess enormous discretion as regards the term to which an offender may be sentenced. The only limitation is that the Court cannot go beyond the statutory maxima nor the Court can ignore mandatory findings but Murtaza Hussain J. differed from Hari Swarup J. and held that Dr. Saxena had committed the murder of his wife. By reason of the difference of views between two learned Judges, the proceedings were placed before S. Malik J. who agreed with Murtaza Husain J. and he upheld the conviction of Dr. Saxena under Section 302 and 201, I.P.C. but reduced the sentence of death to imprisonment for life. The nurse Bhagwati Singh was acquitted.
sentence of imprisonment. Placing the convicted offender at an appropriate scale of sentence of imprisonment is one of the difficult problems of sentencing. The Courts usually impose a sentence which is a mid point of the maxima, reduce it if extenuating circumstances exist and increase it if aggravating circumstances are present.

(a) Minimum Sentence Alternative With Life Imprisonment

Section 304-B, I.P.C., provides a minimum sentence of seven years and a maximum to life imprisonment for the offence of dowry death. It is at the discretion of the Court to award a sentence of minimum imprisonment of seven years or a sentence of maximum imprisonment for life to the offender.

In case of Smt. Shanti v. State of Haryana(108), two accused, mother-in-law and wife of the deceased’s husband’s brother, were convicted by the trial Court under Section 304-B, I.P.C. and sentenced to life imprisonment for causing the death of a young lady for dowry. The appeal preferred to the High Court was dismissed. The Supreme Court confirmed the convictions but reduced the sentence of life to seven years rigorous imprisonment. The Court observed that both the appellants were women. Under these circumstances, a minimum sentence of seven years rigorous imprisonment would serve the ends of justice.

It is noticeable that sections 306, I.P.C. and 498-A, I.P.C. do not provide a minimum sentence but it provides a maximum punishment. Andhra Pradesh High Court in case of Vadde Rama Rao v. State of A.P.\(^{(109)}\), observed that no doubt there were provisions, sections 306 and 498-A I.P.C., but neither of them provide a minimum sentence so as to view dowry deaths with justifiable rigour, and hence followed Section 304-B, I.P.C. prescribing a minimum sentence of seven years for such dowry death and Section 113-B of the Evidence Act permitting a legal presumption that it was a dowry death if it is shown that soon before the death such a woman was subjected to cruelty or harassment for or in connection with any demand for dowry. When the legislation brought it to curb the social evil viz. demand for dowry, the interpretation of the provisions must be in consonance with the modern needs.

It appears that the courts have accepted the philosophy of minimum sentences. They would like such sentences to be prescribed for all dowry related offences.

The punishment of imprisonment, if properly used, may serve the three objects of the punishment in dowry related crimes. It may be deterrent because it makes an example of the offenders to others. It may be preventive because it disables the offenders at least for some time for repeating the offence and it might give opportunities for reforming the character of the offender.

(b) Imprisonment in Default of Payment of Fine

Section 64 of the I.P.C. confers general power on the courts to award the sentence of imprisonment in default of fine. When the offence is punishable with imprisonment as well as fine, the sentence in default of fine shall not exceed one-fourth of the maximum punishment provided for the offence.\(^{(110)}\) The imprisonment which the Court imposes in default of fine may be simple or rigorous.\(^{(111)}\)

The power of the Courts of Magistrates in respect to the sentence of imprisonment in default of payment of fine is regulated by Section 30 of the Cr. P.C. which provides two limitations, namely:

1. the term is not in excess of the powers of the Magistrate under Section 29 of the Cr. P.C.,
2. Where a substantive term of imprisonment has been awarded the sentence in default shall not exceed one fourth of the Magistrate's sentencing power.

In cases of bride-burning and dowry offences, the courts have awarded the sentence of imprisonment in default of fine in accordance with the scale provided in the I.P.C. In case of *Om Prakash v. State of Punjab*\(^{(112)}\), the accused was acquitted by the trial Court for causing

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110. Section 65, I.P.C..
111. Section 66, I.P.C..
death of his young wife under Section 302 I.P.C. The High Court of Punjab and Haryana convicted the accused and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/- in default thereof to undergo rigorous imprisonment for two years. The Supreme Court confirmed the conviction and sentence passed by the High Court.

In another case of Vasanta Tulshiram Bhoyar v. State of Maharashtra, the accused was convicted by the trial Court under Section 306, I.P.C. and sentenced to two years rigorous imprisonment and a fine of Rs. 200/- in default rigorous imprisonment for one month. Further, he was convicted under Section 498-A, I.P.C. and sentenced to one year rigorous imprisonment and a fine of Rs. 100/- in default rigorous imprisonment for 15 days. The conviction and sentence was confirmed by the High Court.

The two decisions referred to above are indicative of fact that Courts do not observe a systematic scheme of default sentence. There appears to be wide variation in this area.

(iv) Fine Under Various Laws

The sentence of fine is least spectacular of all penal measures. It is numerically the most important and costs little to the Government. Fine is indeed forfeiture of a sum of money by way of penalty.

113. 1987 Cri. L.J. 901 (Bom. HC).
Fine is not an exclusive punishment in dowry related offences except those which involve wife-battering (hurt-Sections 323, 324, assault Section 352). Section 304-B, I.P.C. provides only imprisonment and does not speak of fine. But in bride-burning cases under Section 302, I.P.C. imprisonment as well as fine has been imposed on the offender.

In case of Jaspal Singh v. State of Punjab, the accused was convicted under Section 302, I.P.C. by the trial Court and sentenced to imprisonment for life and directed to pay a fine of Rs. 10,000/-. The High Court of Punjab and Haryana confirmed the conviction and enhanced the fine to Rs. 50,000/-. The Court said that the trial Court has directed the payment of Rs. 10,000/- only as a fine, which in the circumstances of the case is quite inadequate and not commensurate with the heinous nature of the crime. The accused has put an end to an innocent life merely on account of his greed for obtaining a motor cycle at the cost of his in-laws. In such a situation, a heavier sentence of fine was required to be imposed.

In another case of Om Prakash v. State of Punjab, the accused was convicted and sentenced to life imprisonment under Section 302, I.P.C. for causing the death of his wife. The High Court of Punjab and Haryana in addition imposed a fine of Rs. 5000/- which was

confirmed by the Supreme Court.

The Court while exercising the discretion in fixing the amount of fine will take into consideration several circumstances including the financial position of the accused person.

Minimum Sentence of Fine

Under Section 3 of the Dowry Prohibition Act, the minimum punishment of fine shall not be less than fifteen thousand rupees. Section 4 of the Act provides a sentence of fine which may extend to ten thousand rupees. Section 4-A, further, prescribes the fine which may extend to fifteen thousand rupees. Under Section 6 of the Act, a fine has been prescribed which shall not be less than five thousand rupees. There is hardly any reported case in which fining power as prescribed by law was invoked.

4. Compensation to Victim

In dowry related crimes the victim besides physical harassment and injury also suffers monetarily. Repeated dowry demands, some of which are often fulfilled, enrich the taker of dowry unlawfully and unjustly. It is just and reasonable that such offender ought not to retain the gains of crime. They must be made to return any monetary gain which they have illegally obtained.

The function of a criminal Court is to punish the
offender while that of a civil Court is to make the wrongdoer compensate for the loss or injury caused to the aggrieved party. However, if these two procedures can be combined without affecting the criminal and civil process, it would be just and expedient to do so as it would save time and money in seeking remedies in two different courts. Section 357 of Cr. P.C., 1973, incorporates this idea to an extent and empowers the Court to grant compensation to the victim. This provision can be used liberally by the courts in at least some of the dowry related crimes.

Section 357(1) of the Cr. P.C. provides that when a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may order, that the whole or any part of the fine if recovered, may be applied in compensating for any person, any loss or injury caused by the offence when such compensation is recoverable in a civil Court. It, further, provides that in the event of death of the victim the offender or the abettor may be ordered to pay compensation to the legal representatives of such deceased person.

The amount of compensation could in no case exceed the amount of fine; and the quantum of fine would again

116. Only such legal representatives who are described under the Fatal Accident Act, 1855, viz. wife, husband, parent which includes father, mother, grand father and grand mother; and child which includes son, daughter, grandson, grand daughter, stepson and step daughter.
depend upon the limit up to which the fine was awardable by the sentencing Court for the particular offence and also upon the extent to which the sentencing Court had power to impose fine\(^{(117)}\). However, such compensation can be ordered only if the accused is convicted and sentenced.

Sub-Section (3) of Section 357, Cr. P.C. lays down that when a Court imposes a sentence, of which fine does not form a part, the Court may order the accused person to pay, by way of compensation, such amount as may be specified in order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

The object of Section 357 (3) Cr. P.C. is to provide compensation payable to the persons who are entitled to recover damages from the person sentenced even though fine does not form part of the sentence.

In awarding compensation, the sentencing Court should take into account various factors including nature of crime, the injury suffered and the paying capacity of the offender. In \textit{Sarwan Singh v. State of Punjab}\(^{(118)}\), the Supreme Court observed that in awarding compensation, the Court should not just consider what compensation ought to be awarded to the heirs of the deceased and then impose a fine which is higher than the compensation. It is the duty of the Court to take into account the nature of

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the crime, the injury suffered, the justness of the claim for compensation, the capacity of the accused to pay and other relevant circumstances in fixing the amount of fine or compensation.

The sentencing Court is empowered to award a compensation when the offender is sentenced to death. In case of Guruswami v. Sate of Tamil Nadu\textsuperscript{119}, the Court held that in case of murder it is only fair that proper compensation should be provided to the dependents of the deceased.

In bride-burning cases, where the brides are murdered or burnt to death for the want of desired dowry and the accused persons are awarded a sentence of death, the sentencing Court is competent to award compensation to the dependents of the deceased. Section 357(1) of the Cr. P.C. can be used for the purpose of compensating the dependents of the deceased in bride-burning cases.

In view of the above provisions, the compensation can be awarded to the persons who are entitled to recover damages under the Fatal Accidents Act, 1855, from the person sentenced for such death in bride-burning cases.

Bride-burning is a heinous crime and the death of a young wife is caused on account of the greed of the husband and in-laws to get handsome dowry. The innocent life of the young wife is put an end at the alter of

\textsuperscript{119} 1979 Cri. L.J. 704
dowry. The sentencing Court in awarding the compensation to the dependents of the deceased should take into account all these factors and a heavier sentence of fine should be awarded. The attitude of the sentencing Court is reflected somehow in case of Jaspal Singh v. State of Punjab(120), in which the accused was convicted under Section 302, I.P.C. by the trial Court and sentenced to imprisonment for life and a fine of Rs. 10,000/- was imposed. The Punjab and Haryana High Court enhanced the sentence of fine to Rs. 50,000/-. The Court observed that while imposing the sentence of imprisonment under Section 302, I.P.C., the trial Court has directed the payment of Rs. 10,000/- only as fine, which in the circumstances of the case is quite inadequate and not commensurate with the heinous nature of the crime. The appellant has put an end to an innocent life merely on account of his greed for obtaining a motor cycle at the cost of his in-laws. In such a situation, a heavier sentence of fine was required to be imposed. The Court, further, observed that the fine, if recovered shall be paid in equal shares to the parents of the deceased or in case of the death of either of them, to the survivor of the two.

It appears from the above case that a sentencing Court is competent to award a compensation under Section 357(1) of Cr. P.C. to the dependents of the deceased in bride-burning cases falling under Section 302, I.P.C.

120. 1987 Cr. L.J. 691 (P. & H. HC).
But a study of the reported cases shows that in none of the case (except above cited) the Supreme Court or any other Court has directed to pay the compensation to the dependents of the victims in bride-burning cases.

It is interesting to note that in cases of bride-burning falling under Section 302, I.P.C. compensation can be awarded under sub-Section (1) of Section 357, Cr. P.C. But when the bride-burning is covered under Section 304-B I.P.C., Section 357, Cr. P.C. seems to be inapplicable for compensating the person who has suffered any loss or injury. Under Section 304-B, I.P.C., the offence of dowry death is punishable with a minimum imprisonment of seven years and which may extend to imprisonment for life. But this Section does not speak of a fine. Therefore, it does not fall under the restitutive justice of Section 357(1) of Cr. P.C. Sub-Section (3) of Section 357, Cr. P.C. provides that when a Court imposes a sentence, of which fine does not form a part, the Court may order the accused person to pay compensation to the person who has suffered loss or injury by reason of the act for which the accused person has been so sentenced.

This sub-Section provides for compensation to those persons who have suffered loss or injury by another person. In dowry-death cases, the young wife is burnt to death by her husband and in-laws. She has not only suffered loss or injury but she has lost her life. sub-
Section (3) of Section 357, Cr. P.C. restrict the right to claim compensation to the victim alone and not to the dependents.

Thus, the cases of dowry death under Section 304-B, I.P.C. are not covered by sub-Section (1) or (3) of Section 357 Cr. P.C. It would be appropriate to incorporate such a provision in order to provide a compensation to the dependents of the victims in dowry-death cases.

5. Alternative to Imprisonment

Under certain circumstances the courts are empowered to employ certain alternative measures against a violator of criminal law. The purpose of these alternative measures is to provide a substitute for imprisonment. The alternative measures have been sought to be achieved through techniques like probation.

A power to release on probation of good conduct is available to a sentencing Court under Section 360 of the Cr. P.C. and under Section 4 of the Probation of Offenders Act, 1958. Wherever the Act of 1958 applies, Section 360 of the Cr. P.C. becomes inoperative. However, the availability of the probation as a sanction in a criminal case depends upon the nature of the offence.

In has been observed earlier that the courts in cases of dowry-death lean heavily towards a deterrent sentence. They may not be inclined to invoke probation in
such cases. In view of the fact that in some dowry related crimes the offender can usefully be released on probation of good conduct, specially such offenders who are young members of the offender's family and/or jointly held liable. It would, therefore, be appropriate to discuss the philosophy and the practices of probation.

Probation as a Sanction

Probation is one of the important correctional techniques of treating the offenders. It is more effective than any other correctional measure because it does not merely involve custodial programme for inmates but provides for community treatment of offenders. It recognises the fact that not all offenders need the physical control which an institution provides but a great many of them have sufficient internal strength to return to community as a normal member of society.\(^\text{(121)}\)

Probation is a system for implementing the treatment reaction to law-breaking. It does not make the offender to suffer but it prevents him from suffering.\(^\text{(122)}\)

When liberty is granted by a Court prior to the infliction of punishment to test whether in the circumstances of his personality, social situation and the nature of his offence, he should be punished or not, the

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process is known as probation.\(^{(123)}\) According to Donald Taft probation as, "the postponement of final judgment or sentence in a criminal case, giving the offender an opportunity to improve his conduct and to readjust himself to the community, often on condition or conditions imposed by the Court and under guidance and supervision of an officer of the Court.\(^{(124)}\)"

The Probation of Offenders Act of 1958 enables the Courts to release on probation an offender, regardless of his age, sex or habituation to offence, provided he is not guilty of having committed an offence punishable with death or imprisonment for life. Section 4(1) of the Probation of Offenders Act, 1958, provides as under:

"When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to


appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct and in the meantime to keep the peace and be of good behaviour".

It is, further, provided that when an order under Sub-Section (1) is made, the Court may, if it is of opinion that in the interests of the offender and of the public it is expedient to do so, in addition pass a supervisory order directing that the offender shall remain under the supervision of a Probation Officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order, impose such conditions as it deems necessary for the due supervision of the offender.\(^{(125)}\)

This measure cannot be invoked if the offence is punishable with death or imprisonment for life. There is, thus, legal bar to grant probation in cases of bride-burning under Section 302, I.P.C. and in cases of dowry-death under Section 304-B, I.P.C. However, in other cases like cruelty to wife under Section 498-A, I.P.C. and other dowry related offences under the I.P.C., probation is not legally barred. Further, the Dowry Prohibition Act provides minimum sentence of imprisonment for offences involving dowry demands. The Supreme Court in several

\(^{125}\) Section 4(3) of Probation of Offenders Act, 1958.
decisions\(^{126}\) has held that the existence of minimum sentence of imprisonment is not incompatible with the release on probation of good conduct in suitable cases. It appears that the legislators, though recognising dowry demands as a social evil, did not specifically excluded the application of Probation of Offenders Act, 1958, as it has been done in several other socio-economic offences. For example Section 20-A of the Prevention of Food Adulteration Act does not legally allow the benefit of probation to the offenders.

Despite the fact that there is no legal bar in several dowry related offences but in view of the serious nature of the social evil a reformatory approach is not desirable but a deterrent sentence is called for.

**Concluding Remarks:**

The success or failure of implementation of a law is inherent in the system of the enforcement. Without proper enforcement, the law remains only on the pages of the books. The menace of bride-burning continues to adopt monstrous shape. The enforcement of laws relating to dowry harassment, cruelty and bride-burning shows a decreasing trend in a particular area at different times depending on the attitude of police and judicial officers.

Looking behind the ratio of acquittals, we find that the unsympathetic attitude of the police, investigation carried out in an unscientific manner by the police, assumptions made by judges, inadequacies in the law, failures of the prosecution and insufficiently supportive society are all contributing to this serious miscarriage of justice. There is a need for the amendment of the laws for the protection of the young victims. If this is not done the cases of dowry harassment, cruelty and bride-burning will increase day in and day out.