MODERN JUDICIAL TRENDS REGARDING DOWRY

"The tendencies of the judges are as varied as the colours of an artist. There are also various approaches and methods of viewing legal problems."

- Mr. Justice M Hidayatullah
CHAPTER 5

Courts in India have been working for promoting and protecting the interests of the weaker sections through shaping the law as an instrument of social reform, social harmony and social change. The Indian Judiciary has not been a silent spectator or a neutral force in vital matters affecting the life and honour of common masses and generally by exposing social evils, social injustices and inequalities it has brought at the door steps of ordinary people, a vision of social justice denied to them for centuries. The new sensitiveness of judges to orient law in the service of the needy and poor has contributed in accelerating the pace of social changes through judicial processes. The current judicial interpretative philosophy and skill relates law to man in society in order to pull him out of abyss of exploitation, injustice and indignity in realization and fulfilment of a new life, new freedom and new society.4

Mr. Justice P N Bhagawati J. (as he was then) reflects the current thrust of judicial view in following words:

“The time has come when the Courts must become the courts of the poor and struggling masses of this country. They must shed their character as upholders of the established order and status-quo. They must be sensitized to the need of doing justice to the large masses of the people to whom justice has been denied by cruel

and heartless society for generations. The realization must come to them that the social justice is the signature tune of Constitution and it is their solemn duty under the Constitution to enforce the basic human rights to poor and vulnerable sections of the community and actively help in the realization of the Constitutional goals. This new change has to come if the judicial system is to become an effective instrument of social justice.\(^2\)

Indian jurists and judges are fully alive to new changes and reforms. The trend of judiciary is now people oriented, social justice oriented, effect oriented and above all human right oriented. Indian jurists and judges remember the fundamental object that law must work in order to deliver much needed results and desired goals. Now the judges are the creators of law, initiator of “change and protection” to weak and oppressed. Courts are bound to evolve, affirm and adopt principles of interpretation which will further and not hinder the goals set out in the Directive Principles of State Policy.\(^3\)

Indeed economic and social justice is the ideal and criterion for adjusting competing claims and interests and these norms are to be followed by the courts while interpreting the Constitution and any other social legislation. Judges have been mouldings the spirit of law according to the changing values and norms of society by giving new meaning and new cast to the letter of law. The tendencies of the judges are as varied as the colours of an artist. There are also various approaches and methods of viewing legal problems.\(^4\)

Our judges have been consciously seeking to mould the law so as to serve the need of the time. They had been architects building for society a system of law which is strong, durable and just.

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2 Mr. Justice Chinnappa Reddy in People’s Union for Democratic Rights v. Union of India, AIR 1982 SC 1473 at p. 1478.
4 Hidayatullah, Mr. Justice M A, “A Judge’s Miscellany (1972) p. 67
The Courts of law have helped and supported the cause of the underprivileged, the old, the women, the prisoners, the helpless labourers and many others.

Indian Courts have also been continuously working and showing their concern for removal of such an evil like dowry system. With the commencement of Dowry Prohibition Act and other penal laws in connection with dowry the Courts have been showing their consciousness for its proper implementation in our society and for the removal of the evil practice of dowry. There is a catena of judgments where Courts have made their efforts towards the advancement of legislative intent behind the enactment of laws in relation to dowry. We can find a series of judgments where Courts had signified their attitude for eradicating the evil practice of dowry through its pronouncements.

The offence named “dowry death” as already held in the foregoing discussion in previous Chapter was unknown to Indian Jurisprudence. Though this new offence requires new type of strategy to shun it but our Judiciary has the capacity to study and counter the problem whether old or new. So we should not be disappointed by such an offence because certain ways to face it have been shown to us by our Courts. Where the death of young wife was caused and police showed utter negligence in maintaining the records and carrying out the investigation promptly of the case against the relatives of the wife, the court paid serious attention pointing out that the entries in the police case diary do not appear to have been entered with the scrupulous completeness and efficiency which the law requires of such a document. The haphazard maintenance of a document of that status not only does no credit to those responsible for maintaining it but defeats the very purpose for which it is required to be maintained. The

6 D S Nakara v. Union of India AIR 1983 SC 139.
8 Veena Sethi, AIR 1984 SC 339.
entries in a police case diary should be made with the promptness, in sufficient detail, mentioning all significant facts, in careful chronological order and with complete objectivity. With this the court concluded that "the death of a young wife must be attributed either to the commission of a crime or to the fact that, mentally tortured by the suffocating circumstances surrounding her, she committed suicide. Young women of education, intelligence and character do not set fire to themselves to welcome the embrace of death unless provoked or compelled to that desperate step by the intolerance of their misery." It is pertinent to note that such cases evidence a deep-seated malady in our social order. The greed for the dowry, and indeed the dowry system as an institution, calls for the severest condemnation. It is evident that the legislative measures such as Dowry Prohibition Act have not met with the success for which they were designed. Perhaps, legislation in itself cannot succeed in stamping out such evil, and the solution must ultimately be found in the conscience and will of the social community and in its active expression through legal and constitutional methods.

Where the death in dowry cases is due to ill treatment of wife's relations the perpetrators of the crime strive their best to escape from the nemesis of the law because of laxity and inadequate investigation on the part of investigating agency. It would be of considerable assistance, if an appropriately high priority was given to the expeditious investigation of such cases, if special magisterial machinery is created for the purpose of the prompt investigation of dowry-death, and efficient investigative techniques and procedures are adopted taking into consideration the peculiar features of such cases. It is suggested by the court that a female police officer of sufficient rank and status in the police force should be associated with the investigation of dowry-death from its very inception. There are evident advantages in that. In a case where a wife dies in suspicious circumstances in the husband's home it is invariably a matter of

10 Bhagawant Singh v. Commissioner of Police, AIR 1983 SC 826.
considerable difficulty to ascertain the precise circumstances in which the incident occurred. As the incident takes place in the home of the husband, the material witnesses are the husband and his parents or other relations of the husband staying with him. Whether it was cooking at the kitchen stove which was responsible for the incident or, according to the inmates of the house, there was an inexplicable urge to suicide or whether indeed the young wife was the victim of a planned murder are matters closely involving the inmate knowledge of a woman’s daily existence.

The considerate view of the court in dowry-death case while recommending the inclusion of female police officer in investigating the cause of death the court put forth reasons saying that where it is possible to record the dying declaration of the victim, it would in our opinion, be more conducive for securing the truth if the victim made the declaration in the presence of a female police officer who can be expected to inspire confidence in the victim. Psychological factors play their parts, and their role cannot be ignored. A young wife cannot be subject of varying psychological pressures, and because that is so the nuances of feminine psychology support the need for including a female police officer as part of the investigation force.¹¹

Expressing concern over the delay in investigation the court suggested that “there is the need to extend the application of the Coroners’ Act, 1871 to other cities besides those where it operates already. The application of the Coroners’ Act will make possible an immediate enquiry into the death of the victim, whether it has been caused by accident, homicide, suicide or suddenly by means unknown. It contains visions which are entirely salutary for the purpose of such enquiry, and we have little doubt that an enquiry under that enactment would be more meaningful and effective and complete in the kind of case connected with dowry.”¹²

¹¹ Ibid.
¹² Ibid.
The court opined that in case death connected with dowry the more appropriate and effective procedure would be that contemplated by the Coroners' Act, which ensures that the enquiry into the death is held by a person of independent standing and enjoying judicial powers, with a status and jurisdiction commensurate with the necessities of such cases and the assistance of an appropriate machinery.\textsuperscript{13}

In the above Judgment from beginning to the end there is nothing but the anxiety, concern and attitude of our court not only in dealing with those cases where death of a woman has occurred otherwise than under normal circumstances but also about the appropriate procedures and methods required in dealing with such cases. The Court has prescribed and suggested certain measures with an object of proper investigation which are necessarily required in such cases.

In another case the Supreme Court not only disagreed with the verdict of the High Court but also showed its deep concern about a case of bride burning. In this case a young lady named Sudha was done to death because the bride people could not meet the dowry demand of the husband and others.

In this case the aspects of proper punishment were considered by the Supreme Court whereas the learned trial judge had thought it proper to impose the punishment of death but acquittal intervened and almost two years had elapsed since the respondents were acquitted and set at liberty by the High Court. The court observed – “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

\textsuperscript{13} Ibid.
time lag, we do not think it would be proper to restore the death sentence as a necessary corollary to the finding of guilt.\textsuperscript{14}

Accordingly court allowed both the appeals partly and directed that the both the respondents, Smt. Shakuntala and Laxman Kumar shall be sentenced to imprisonment for life. Further the court directed that steps shall be taken by the trial judge to give effect to this judgment as promptly as feasible.

The Apex Court disturbed with the fact that the High Court took notice of the publicity through the news media and indicated its apprehension of flutter in the public mind.

The Court said – "It is the obligation of every court to find out the truth and act according to law once the truth is discovered. In that search for the truth obviously the Court has to function within the bound set by law and act on the evidence placed before it. What happens outside the Court room when the Court is busy in its process of adjudication is indeed irrelevant and unless a proper cushion is provided to keep the proceedings within the Court room dissociated from the heat generated outside the court room either through the news media or through flutter in the public mind, the cause of justice is bound to suffer. Mankind has shifted from the state of nature towards a civilized society and it is no longer the physical power of litigating individual, the might of the ruler or even the opinion of the majority that takes away the liberty of a citizen by convicting him and making him suffer a sentence of imprisonment. Award of punishment following conviction at a trial in a system wedded to rule of law is the outcome of cool deliberation in the court room after adequate hearing is afforded to the parties, accusations are brought against the accused, the prosecutor is given an opportunity of supporting the charge and the accused is equally given an opportunity of meeting the accusations by

\textsuperscript{14} State (Delhi Administration) v. Laxman Kumar & other, AIR 1986 SC 250; (1985) 4 SCC 476; 1986 Cr.L.J. 155.
establishing his innocence. If the cushion is lost and the court room is allowed to vibrate with the heat generated outside it, the adjudicatory process suffers and the search for the truth is shifted.”

In this case the Court appreciated the anxiety displayed by some of the women organizations on cases of wife burning crime to be condemned by one and all and if proved deserving severest sentence. The evil of dowry is equally a matter of concern for the society as a whole and should be looked upon contumuously both on the giver and the taker. The social and economic conditions are the main enemy of women’s desperation sometimes compelling her to commit suicide. “Once economic independence comes in women the evil of dowry will die a natural death. Without education economic independence cannot be achieved and, therefore, education at all levels of society, upper class, middle classes, and lower classes is a must. We hear of no wife burning case in western countries, obviously because women there are economically independent.”

The view of judiciary is that “every one in the country whether one individual or an organization should contribute to social metabolism and the court has the obligation within reasonable limits and justifying bounds to provide food for thoughts, which may help generate the proper social order to hold the community in an even form.”

In the olden days in the Hindu community dowry in the modern sense was totally unknown. Man and woman enjoyed equality of status and society looked upon women as living Goddesses. Where ladies live in peace harmony and with dignity and status Gods were believed to be roaming in human form. When a bride was brought in the family it was considered to be a great event and it was looked upon

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15 Ibid.
16 Ibid.
17 Ibid.
bringing fortune into the family not by way of dowry but on account of the grace the young lady carried with and around her.

The view expressed by the Court on what is a message, needs especial mention here. The Court opined that "very marriage ordinarily involves a transplant. A girl born and brought up in her natural family, when given in marriage, has to leave the natural setting and come into a new family. When a tender plant is shifted from the place of origin to a new setting, great care is taken to ensure that the new soil is suitable and not far different from the soil where the plant had hitherto growing; care is taken to ensure that there is not much of variation of temperature, watering facility is assured and congeniality is attempted to be provided. When a girl is transplanted from her natural setting into an alien family, the care expected is bound to be more than in the case of a plant. Plant has life but the girl has a more developed one. Human emotions are unknown to the plant life. In the growing years in the natural setting the girl now a bride has formed her own habits, gathered her own impressions, developed her own aptitudes and got used to a way of life. In new setting some of these have to be accepted and some she has to surrender. This process of adaptation is not and cannot be one-sided".  

The norms that are to be observed for a happy married life by the bride and bridegroom are that give and take, live and let live, are the way of life and when the bride is received in the new family she must have feeling of welcome and by the fond bonds of love and affection, grace and generosity, attachment and consideration that she may receive in the family of the husband, she will get into new mould; the mould which would last for her life. She has to get used to a new set of relationship – one type with the husband, another with her parents-in-law, a different one with other superiors and yet a different one with the younger ones in the family. For this she would require loving guidance.

18 Ibid.
The elders in the family including the mother-in-law are expected to show her the way. The husband has to stand as mountain of support ready to protect her and espouse her cause where she is on right and equally ready to cover her either by pulling her up or protecting her willingly taking the responsibility on to himself when she is at fault. The process as to be natural one and there has to be exhibition of cooperation and willingness from every side. Otherwise how the transplant succeed?

On the applicability of the amended provision of Evidence Act, the judicial opinion van be gathered from the judgment wherein the Court considered the question of retrospective operation of Section 113-A when the question was whether section 113-A of the Evidence Act applies to a case of suicide occurring before 25-12-1983 (the date of insertion) which has been tried or is being tried after the said date. Though the learned counsel of appellant contended that the provision had a substantive character and could not be made to apply retrospectively. He asserted that the conduct amounting of abetment in the pre-amendment times was being viewed differently but after the amendment it is creating almost a new offence in garb of a presumption. The learned counsel for the state maintained that the provision was procedural in nature and the view of the legislature now formulated in a presumption was not altogether alien to the concept of abetment as known to Law.

But the Court said that – “It is universally recognised as a principal of law that procedure of a trial civil or criminal, governed by the rules of the forum and the law of evidence is part of the law of procedure. It is termed in Anglo-American language as *Lex fori*. Taking it to be law of procedure, it results in practical convenience. It has been taken as established that the law of evidence is a branch of adjective law and, therefore, all question of evidence must be decided according to the law of forum in which the action is tried. And being part of the law
of procedure, changes in the Evidence Act like in other rules of procedure are retrospective in nature. Now here the legislature has channelised and focused the attention of the Court that it can raise a presumption of abetment against the person named therein if it is shown that a woman had committed suicide within the period of seven years from the date of her marriage when proved that they had subjected her to cruelty of the kind mentioned in section 498-A of Penal Code. Even without raising the presumption in the pre-amendment period the Court was not absolved in putting parties to proof and arrive at a conclusion that a woman committed suicide which was abetted by her husband or her husband's relatives.19

Thus by introduction of the aforesaid provision, the Court has been facilitated to raise a presumption, though rebuttable. Finally the Court put its firm view that “Section 113-A of the Evidence Act is applicable to the instant trial and that the presumption is drawable if there is of her husband having subjected her to cruelty of the kind defined in section 498-A of Penal Code.”20

Again the Supreme Court expressed its deep concern against the crime against the newly married young bride and in unequivocal terms commended death sentence to the perpetrators of gruesome murder of a young wife, as the culmination of a long process of physical and mental harassment and torture for extraction of dowry.21

Notwithstanding the consistent concern of the Supreme Court to award deterrent punishment to such bride killers, in the instant case, the Sessions Court as well as the High Court preferred life imprisonment to the accused mother-in-law of the deceased victim. Though the fact of the case called for the extreme penalty, in the circumstances of the case the Supreme Court had to confirm the sentence of life imprisonment. While delivering the judgment the Court

20 Ibid.
emphasized on the socio-legal obligation of the Sessions Courts and the High Courts of the country to award capital punishment in such cases of bride burning so as to produce deterrent effect in consonance with its mandate.

Another disturbing feature in this case was the acquittal of the abettor of the dastardly crime viz., the sister-in-law of the deceased who according to the dying declaration had caught hold of the deceased while the appellant mother-in-law poured kerosene oil on her and set her on fire. Though the trial court convicted her under section 302 IPC, the High Court acquitted her on the ground of benefit of doubt. The Supreme Court expressed its grave doubt about the legality, propriety and correctness of the decision of the High Court in this regard but it was helpless since the State did not prefer any appeal against the order of acquittal. And thus an abettor of a serious crime escaped punishment due to sheer laxity on the part of the state Administration. Since no appeal was taken against the acquittal of the husband by the trial court, the Apex Court said – “In the instant case the prosecution failed to use the required efforts for the implementation of criminal law. This way the trend has been of awarding the maximum penalty in case of gruesome murder of young wife connected with dowry.

It was Ashok Kumar v. State of Rajasthan\(^{22} \) where the Supreme Court had again to face a problem related with bride burning in connection with dowry. It was a case where a bride named Asha Rani was done to death for a mere sum of Rs. 5000/- or an Auto rickshaw which her father, of seven daughters, could not afford even though he suffered the ignominy of her being beaten in his presence by her in-laws at his own house.

The Court observed: “Bride burning is a shame in our society. Poor never resort to it; Rich do not need it. Obviously, because

\(^{22}\) AIR 1990 SC 2134; 1991 SCC (Cri.) 126; 1990 Cr.L.J.2276.
it is basically an economic problem of a class which suffers from ego and complex both. Unfortunately, the high price rise and ever increasing cost of living coupled with enormous growth of consumer goods effacing difference between luxury and essential goods appears to be luring even the new generation of the youth, of the best service, to be as part of dowry menace as their parents and resulted events flowing out of it. How to curb and control this evil? Dowry killing is a crime of its own kind where elimination of daughter-in-law becomes immediate necessity if she or her parents are no more able to satiate the greed and avarice of her husband and their family members, to make the boys available, once again in the marriage market. Eliminate it and much may stand resolved automatically. Social reformist and legal jurists may evolve machinery for debarring such a boy from remarriage irrespective of the member of family who committed the crime and in violation penalise the whole family including those who participate in it. That is social ostracisation is needed to curtail increasing malady of bride burning."

In State v. Iqbal Singh\textsuperscript{23} their Lordship of Supreme Court while considering the scope of the provisions of Sections 113-A and 113-B of the Evidence Act as added by the Criminal Law (Second Amendment) Act, 1983 and the Dowry Prohibition Amendment Act, 1986 expressed the following view that – “Legislature intent is to curb the menace of dowry deaths with firm hand. We must keep in mind this legislative intent. It must be remembered that since crime generally committed in the privacy of residential homes and in secrecy, independent and direct evidence is not easy to get. That is why the legislature has by introducing Sections 113-A and 113-B in the Evidence Act tried to strengthen the prosecution hands by permitting a presumption to be raised if certain foundational facts are established and the unfortunate event has taken place within seven years of marriage. This period of seven years is considered to be turbulent one

\textsuperscript{23} AIR 1991 SC 1532; 1991 Cr.L.J. 1897.
after which the legislature assumes that the couple would have settled down in life. If a married woman is subjected to cruelty or harassment by her husband or by his family members, S. 498-A IPC would be attracted. If such cruelty or harassment was inflicted by her husband or his relative for or in connection with any demand for dowry immediately preceding death by burns or bodily injury or in abnormal circumstances within seven years of marriage, such husband or relative is deemed to have caused her death and is liable to be punished under section 304-B of IPC.”

In a series of judgments24 Supreme Court after considering the intent of legislature behind laws for containing crime of dowry-death has directed that before Section 304-B I.P.C. may apply, the following must be satisfied:

1. The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances.

2. Such death must have occurred within seven years of marriage.

3. Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband.

4. Such cruelty or harassment must be for or in connection with demand for dowry.

5. Such cruelty or harassment is shown to have been meted out to the woman before her death.

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The Supreme Court has dealt with the basic ingredients of section 304-B IPC and Section 113-B of the Evidence Act. In Hemchand v. State of Haryana\textsuperscript{25} and observed as follows:

"A reading of Section 304-B IPC would show that when a question arises whether a person has committed the offence of dowry death of a woman what all that necessary is it should be shown that soon before her unnatural death, which took place within seven years of marriage, the deceased had been subjected by such person, to cruelty or harassment for or in connection with demand of dowry. If that is shown then the Court shall presume that such a person has caused the dowry death. Practically this is the presumption that has been incorporated in Section 304-B IPC also. It can, therefore, be seen that irrespective of the fact whether the accused has any connection with the death or not, he shall be presumed to commit the dowry death provided that the other requirements mentioned above are satisfied."

Thus where at one hand the Court decided about the necessary ingredients to be fulfilled for the application of the offence of causing "dowry death" on another, it emphasized for the fulfilment of legislature intent. Recently Supreme Court held that the concept of deemed dowry death brought by the Criminal law (Second Amendment) Act, 1983, has a role to play and cannot be taken lightly and ignored to shield an accused, otherwise the very purpose of the amendment will be lost.\textsuperscript{26}

The concern of the judges and the Court about the practice of dowry and dowry related crime can be visualized by the step taken by the Court while deciding such cases. Highlighting the level of

\textsuperscript{25} (1994) 6 SCC 727.
\textsuperscript{26} Pawan Kumar v. State of Haryana, AIR 1998 SC 958.
professionalism that is required in handling of these cases, The Karnataka High Court issued certain directions. These are:

(a) A separate record shall be maintained by the police department of all dowry death cases and the department shall ensure that the investigation of every such case is entrusted to a police officer of not less than seven years seniority in the department, who shall report directly to the S.P. or D.C.P. concerned. The superior authority shall supervise the investigation right from the very beginning and shall also ensure that the Senior Public prosecutor is consulted whenever and wherever necessary.

(b) The investigation officer shall ensure that all incriminating evidence such as cloths of the deceased, the weapons or implements used, like stove in burning cases along with all related evidence is seized at the earliest point of time in the presence of the persons of sufficient social status.

(c) Whenever there is necessary of chemical analysis or forensic evidence in respect of medical samples or specimens, these shall be properly preserved and forwarded to the concerned authorities without any loss of time.

(d) The investigation officer shall ensure that the hospital papers are duly preserved and zerox copies of the same duly certified by the authorities shall be maintained in the case papers in order to avoid any attempt of tampering.

(e) Steps shall be taken to ensure that the witnesses and all material evidence are kept ready and produced
before the court and the Director of the Public Prosecutions shall ensure that this class of cases is only entrusted to a Senior Public prosecutor of proven integrity and ability.

(f) Stringent action shall be taken against the prosecutors and police officers where the prosecution has failed due to incompetent or inept handling or due to the deliberate non-production of evidence or if the record indicates collusion with the accused or the defence.27

From number of judgments it is clear that courts have tried to strike a balance between the heinousness of the dowry death cases and the punishment meted out to the accused. In appropriate cases condign punishment is awarded. They have also deprecated the indifferent attitude of the investigating agencies

The Court has also exercised a considerable amount of restraint in granting bail to the persons accused of committing dowry death.28

Where a young bride died within three months of marriage, she was removed to another place in suspicious circumstances and cremated there without intimation to her parents; the accused was refused bail at the stage anterior to filing of challan observing that - “At the moment a young bride of 20, within three months of marriage had died in a circumstances which prima facie subject to further consideration, rule out the possibility of natural death. Obviously, the applicant was very much there with her at this crucial and critical time and, therefore, as per the legislative intent expressed by the Criminal Law, Second Amendment, particularly introduction of Section 113-A, the present one is not an appropriate stage when it can be said that there is no reasonable grounds to believe that the accused committed

27 State v. Pandalik, 1999 Cr.L.J. 4751 (Kar.).
an offence punishable with death or life imprisonment. All that can be said is that at present having heard the counsel for both the parties at length and after examining the investigating agency's record, High Court is not inclined to grant bail under Section 439, Cr.P.C., 1973 but this would not debar the applicant to move and make another attempt immediately after the challan is filed.29

The Supreme Court has also held that a High Court should as a rule not interfere with the framing of the charge by the Sessions Judge and it would be better to allow the trial to proceed. Where the High Court which considered two revision petitions one by Dilip, brother of the bride's husband, questioning the correctness of the charge of murder framed by the Sessions Court and another by the State of Maharastra, challenging the validity of discharge of the bride's father-in-law, Nathumal, had dismissed the petition by the State while accepting Dilip's revision plea.

In this case the conduct of Dilip, the brother of the husband, was reprehensible. He came down the staircase of his house when Chanda (the bride) was crying for the help from engulfing flames.

Allowing criminal appeal by the State of Maharastra and Stree Atyachar Virodhi Parishad against the decision of the High Court, discharging the accused at the pre-trial stage, the Supreme Court held that it was "unable to comprise with the approach and the opinion expressed by the High Court. The court said: "The Government has come forward with legislations from time to time to protect women and to punish those who commit atrocities on them. In 1961 the Dowry Prohibition Act (Act 28 of 1961) was passed prohibiting taking or giving dowry. A new offence called "dowry death has been created by introducing Section 304-B in the Penal Code. It raised presumption of culpability against the husband or relative hitherto unknown to our jurisprudence".

The Court referred to those provisions that are attracted to the offences of dowry-death and emphasized that "it is not enough if the legal order within sanction alone moves forward for the protection of women and preservation of social values. The criminal justice system must equally respond to the needs and notions of the society. The investigating agency must display a live concern and sharpen their wits. They must penetrate into every dark corner and collect all the evidence. The Court must also display greater sensitivity to criminality and avoid on all counts "soft-justice".

Finally the Court opined: "if the Sessions Judge after hearing the parties frames a charge and also makes an order in support thereof, the law must be allowed to take its own course. Self-restraint on the part of the High Court should be the rule unless there is a glaring injustice stares the Court in the face. The opinion on any matter may differ depending upon the person who views it. There may be as many opinions on a particular matter as there are courts but it is no ground for the High Court to interdict the trial. It would be better for the High Court to allow the trial to proceed."

The Court again rose in defence of Section 304-B, IPC and Section 113-B of the Evidence Act saying: "Section 304-B, IPC and Section 113-B of Evidence Act were inserted with a view to combating the increasing menace of dowry death. Crimes that lead to "dowry deaths" are almost invariably committed within the safe precincts of a residential house. The criminal is a member of family; other members of family are either guilty associates in crime, or silent but conniving witnesses to it. In any case, the shackles of the family are so strong that truth may not come out of the chains. There would be no eye witnesses, except for members of the family. Perhaps to meet a situation of this kind, the legislature enacted Section 304-B IPC and Section 113-B of the Evidence Act."
Also in cases of other crimes in connection with dowry, our courts have shown their concern for the eradication of the evil practice of dowry. Courts views have been that - "The requirement of the statute is acts of cruelty by husband of a woman or any relative of the husband. The word cruelty in common English acceptation denotes a state of conduct which is painful and distressing to another."  

Again in Anand Kumar\(^\text{33}\), it was observed that - "Maltreatment and demand and lust for money from beginning of marriage, subjecting the deceased to torture and assault on refusal to fulfil demand of money and not being allowed to meet or talk to her family members will amount to cruelty."

While deciding the case of cruelty and harassment to women by their husband and their relative, because of increasing number of offences against women, Courts are of the opinion that the sentence must always be deterrent and eye opener to the offenders. There are many examples where Court dealt sternly with the case of cruelty and harassment to women in matrimonial home:

(a) Where e wife was subjected to cruelty from the very inception and died within three years, the punishment was enhanced from two years rigorous imprisonment to three years i.e. maximum punishment under the section\(^\text{34}\)

(b) The mere fact that the accused is neither a habitual criminal nor does he have any criminal antecedent is hardly an argument available while dealing with matrimonial cruelty\(^\text{35}\)

\(^{34}\) Nand Kishore v. State of Maharashtra 1995 Cr.L.J. 3706 (Bom.)
\(^{35}\) State v. Vasant Shankar Mhasane 1993 Cr.L.J. 1134 (Bom.)
(c) The Supreme court observed that it is virtually a matter of shame to the civilization that indiscriminate attacks and violence are directed against married women for obnoxious and anti-social demand of dowry and accused are let off imposing free-bite sentence "till rising of the court" or "sentence already undergone" without verifying whether the accused has undergone any sentence. Result is violence against women continues unabated as law loses its deterrent effect.36

(d) In a case where the wife committed suicide when her husband contracted a second marriage and she was being ill treated by her husband and the second wife and she was not even given food, the court held that this was a class of offences which can only be categorized as atrocious as the mental torture undergone by the wife is far more painful than even the worst form of physical torture, therefore, it is essential to award a sentence that is commensurate with the ends of justice. The husband was sentenced to undergo rigorous imprisonment for two years with fine of Rs. 500/-, for the offence under section 498-A.37

It is not only the cruelty to women, when Court extended it's helping hand and showed it's concern towards the hapless women but also when the cases came before the Supreme Court regarding misappropriation and misapplication of dowry, the Court has always emphasized for the enforcement of women’s claim to dowry. Though full bench of Punjab and Haryana High Court held that if the husband or his parents refused to return dowry, no offence under section 406 IPC, 36 Narsingh Prasad; (2001) 4 SCC 522 37 State v. Siddaraja 2000 Cr.L.J. 4220 (Kar)
of criminal breach of trust is committed. But this stand has been reversed by the Supreme Court observing that "the concept of Streedhana property of a married woman becoming a joint property of both the spouses as soon as she enters the matrimonial home and continues to be so till she remains there and even if there is a break in matrimonial alliance, is in direct contravention of rules of Saudayika under Hindu Law which has been administered since more than a century by the High Courts, Privy Council as also this Court."  

Even before the judgment of Supreme Court in Pratibha Rani's case, a single judge of Delhi High Court held that refusal to give dowry/Streedhana to the wife by the husband or in-laws would amount to misappropriation or theft. Where the exclusive property of one of the spouses is unwarrantedly taken away or is appropriated by the other and marriage breaks down, it will not be correct to have a rigid approach, divorced from facts and circumstances of each case, to hold that the offence of misappropriation or theft cannot be made out. Similar must be held to be the position of the dowry items given for the exclusive use of one of the spouses. Even with regards to the articles of dowry which are given for common use and enjoyment the purpose for which they are brought in for such use and enjoyment disappears when the commonality no longer remains with the break down of the matrimonial life. In such a case, the spouse bringing in the articles in the commonality should be entitled to render that into his or her severalty. If in such eventuality the other spouse is not ready to see reason and is bent upon unwarranted retention or usurpation, the law must take its course. The bonds of matrimonial home are already fallen as under and when the human beings constituting the wedlock part companying for good. It is folly to treat what belong to each one of them exclusively as continuing to remain joint or common. Taking possession of res nullius may be an innocent act, but when it is later learned that

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38 Vinod Kumar v. State of Punjab; AIR 1982 P&H 372
the articles belong to a particular person, its retention may involve criminal intention.\textsuperscript{40}

There is no presumption of law that a wife and a husband constitute one person in India for the purpose of criminal law. If the wife removing her husband’s property from his house does so with dishonest intention, she is guilty of theft. Similarly a wife who clandestinely gives over the articles of her husband to her paramour without his knowledge and the paramour also takes them away knowing this position, he can be held guilty of theft. Of course, where there is claim of right in good faith, it reasonably saves the act of taking from being theft, and where such a plea is raised by the accused, it is mainly a question of fact where such belief exists or not.\textsuperscript{41}

The Dowry Prohibition Act, 1961 was enacted on 20\textsuperscript{th} May, 1961. Since then already half a century has been elapsed. But it is unfortunate to say that the menace of dowry has not been curbed. Our Courts have been live to these ever increasing and disturbing proportions of the system of dowry and called for severest condemnation of it.

Where a writ petition was filed for the issue of writs of mandamus directing the Central Government to frame Rules under Section 9 of the Act, directing the State Governments to frame Rules under Section 10 of the Act and providing for additional functions to be performed by the concerned officers under Section 8-B of the Act, for appointment of Dowry Prohibition Officers by the States as required by Section 8-B, to furnish details regarding the working of Dowry Prohibition Officers wherever they have been appointed; for setting up Advisory Board as mandated by Section 8-B of the Act and to furnish details of the composition of the Board and their working, if the Board have already been established in any particular State and for other

\textsuperscript{40} Anil Bhardwaj v. State, 1985 (1) Rec. Cr. R. 289 (288-89) (Del).

\textsuperscript{41} Queen Empress v. Butchi; (1893) 17 Madras 401.
incidental relieves to make the working of the Act more effective. The Court said, “The prayers are really attuned to bringing about an atmosphere for more effective and rigorous implementation of the Act and taking steps to spread the message of the Act among the people so as to educate them on the evils of dowry and remedies available in cases where demands for dowry are made.”

According to the union of India and the States, though all that needed by way of legislation have been done, the purpose of the law has not been fully achieved and the blame for this could not be put on the administration alone. They submitted in one voice, as suggested by the first Prime Minister of India in this context that the legislation cannot by itself normally solve deep rooted social problems and, though other category of approaches should also be made for its eradication, legislation is necessary and essential, so that it may give that push and have that educative factor as well as legal sanctions behind it which help public opinion to be given a certain shape.

After above submission the Court said, “We are, therefore, satisfied that the mere recording of the assurances of the Union of India and of the State Governments would not be adequate in the circumstances. We have already noticed that this writ petition was filed on 31.07.1997 and in spite of the pendency of this writ petition in this Court for the last seven years, the implementation of the Act and the Rules framed thereunder have not become as effective as one would have wished and it has not been taken up with the zeal that is expected from the Government while enforcing a legislation like the one in question brought about with the object of eradicating a social evil. It is not as if the menace posed by dowry has in any way lessened. One can take judicial notice of the fact that cases of dowry harassment are splashed in newspapers almost every day. Therefore, it is clear that

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implementation of the Act and the Rules have not been effective as it should be.\textsuperscript{43}

When there is failure on the part of the executive to strictly implement a law like the Dowry Prohibition Act, enacted to tackle a social problem which has assumed menacing proportions, the Court has a duty to step in with a Mandamus to direct its implementation rigorously and effectively. Accordingly the Court thought it necessary to step in and issue some more directions to the respondents Union of India and States to take steps to implement the provisions of the Act.

It is noteworthy that our Courts never confined itself only to matters concerning implementation of the dowry prohibition laws and prohibition of misappropriation of the dowry given to the hapless bride but also advocated for eradication of evil practice of dowry and suggested methods other than legal to eradicate the same.

Since Court considers it necessary to arouse the conscience of the people against the demand and acceptance of the dowry, it directed the Union of India and the State Governments to take steps for the effective stepping up of anti dowry literacy among the people through Lok Adalat, Radio broadcasting, Television and newspapers.

The Court emphasised that the conscience of the society needs to be fully awakened to the evil of dowry system so that the demand for dowry itself, lead to loss of face in the society for those who demanded it. Court expressed no doubt that the young and enlightened women would rise to the occasion to fight the evil which tends to make them articles of commerce. Also it hoped that the educated young males would refuse to be sold in the marriage market and come forward to choose their partners in life in a fair manner.

\textsuperscript{43} Ibid.
The Court expected that establishment of committed and sincere machinery to implement the Act and the Rules can hasten the eradication of the evil. Subsequently the Union and the State Governments were directed to devise means to create honest, efficient and committed machinery for the purpose of implementation of the Dowry Prohibition Act, 1961 and the various Rules framed thereunder.

Where cruelty and harassment was caused by their husband and his relative the Supreme Court of India stood for the protection and safeguard of the women folk and extended its hand for saving women. The question in issue was whether the learned Magistrate was right in discharging the appellant husband and other relatives on the ground that the complaint which was instituted under Section 498-A and 406 of IPC was barred by limitation under Section 468 of Cr.PC the Court said that it is necessary to ensure that due to delay on the part of the investigating and prosecuting agencies and the application of rule of limitation the criminal justice system is not rendered toothless and ineffective and perpetrators of crime are not placed in advantageous position.

As such, Courts while considering the question of limitation for an offence under Section 498-A i.e. subjecting a woman to cruelty by her husband or relative of her husband should judge that question, in light of Section 473 of the Code, which requires the Court, not only to examine as to whether the delay has been properly explained, but as to whether “it is necessary to do so in the interest of justice”.44

Where a person and his relative tried to escape the consequence of cruelty to his second wife on the ground that charge under Section 498-A was thoroughly misconceived as both Sections 304-B and 498-A, IPC presupposes valid marriage of the alleged victim-woman with the offender husband. It was contended that it was required to be shown that the victim-woman was the legally married

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44 Arun Vyas v. Anita Vyas; AIR 1999 SC 2071.
wife of the accused. The question before the Supreme Court was – can a person who entered into a marital arrangement be allowed to take a shelter behind the smokescreen to contend that since there was no valid marriage, the question of dowry does not arise? Answering in negative the Supreme Court observed that “The concept of dowry is intermittently linked with a marriage and the provisions of the Dowry Act apply in relation to marriages. If the legality of marriage itself is in issue further legalistic problem do arise. If the validity of the marriage itself is under scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognizable. Even then the purpose for which Section 498-A and 304-B IPC and Section 113-B of the Indian Evidence Act, 1872 were introduced cannot be lost sight of. Legislation enacted with some policy to curb and alleviate some public evil rampant in the society and effectuate a definite public purpose or benefit positively requires to be interpreted with certain element of realism too and not merely pedantically or hyper-technically. The obvious objective was to prevent harassment to a woman who enters into a marital relationship with a person and later on becomes a victim of the greed of money. Can a person who enters into a marital arrangement be allowed to take a shelter behind a smokescreen to contend that since there was no valid marriage the question of dowry does not arise? Such legalistic niceties would destroy the purpose of the provisions. Such hair-splitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature “dowry” does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498-A. The legislature has taken care of children born from the invalid marriages. Section 16 of the Hindu Marriage Act deals with the legitimacy of children of void and voidable marriages. Can it be said that legislature which was conscious of the social stigma attached to children of void and voidable marriages closed eyes to the plight of the women who unknowingly or unconscious of the legal
consequences entered into her marital relationship. If such restricted meaning is given, it would not further the legislative intent. On the contrary it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The first exception of Section 494 has also some relevance. According to it the offence of bigamy will not apply to “any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction”. It would be appropriate to construe the expression “husband” to cover a person who enters into a marital relationship and under the colour of such proclaimed and feigned status of husband subjects the woman concerned to cruelty or coerce her in any manner or for any of the purposes enumerated in the relevant provisions – Section 304-B/498-A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498-A and 304-B, IPC. Such an interpretation, known and recognised as purposive construction has to come into play in a case of this nature. The absence of a definition of ‘husband’ to specifically include such persons who contract marriages ostensibly and cohabitate with such women, in the purported exercise of his role and status as husband is no ground to exclude them from the purview of Section 304-B or 498-A, IPC viewed in the context of the very object and aim of the legislations introducing those provisions.\(^{445}\)

Now a days, it is common observation that Section 498-A of Indian Penal Code is mostly used to harass and trouble the husband and his relative by unscrupulous persons making false allegations. There are several instances where commission of offence punishable under Section 498-A, IPC has been alleged with oblique motives with a view to harass the husband, in-laws and relatives. Very recently a learned Judge of Delhi High Court showed its concern about increasing number of false and frivolous allegations punishable under Section 498-A, IPC. These are the instances where accusers are more at fault than

the accused. Those persons try to take advantage of the sympathies exhibited by the Courts in the matters relating to alleged dowry torture.

Such an anxiety was shown in the writ petition before the Supreme Court which was filed by Sushi Kumar Sharma. In this case, by a petition under Article 32 of the Constitution, prayer was made to declare Section 498-A, IPC to be unconstitutional and *ultra virus* or in the alternative to formulate guidelines so that innocent persons are not victimised by unscrupulous persons making false accusations. Further prayer was made, whenever any Court comes to the conclusion that the allegation made regarding commission of offence under Section 498-A, IPC are unfounded, stringent action should be taken against the person making allegations. This, according to the petitioner, would discourage person from coming to court with unclean hands and ulterior motive. Disposing the writ petition, Supreme Court observed that “mere possibility of abuse of provision of law does not per se invalidate legislation. It must be presumed unless contrary is proved, that administration and application of a particular law would be done “not with an evil eye and unequal hand”.

Similarly a provision of law may not be discriminating but it may land itself to abuse bringing about discrimination between the persons similarly situated. From the decided case in India as well as in United States of America, the principle appears to be well settled that if a statutory provision is otherwise intra-virus, constitutional and valid, mere possibility of misuse of power in a given case would not make it objectionable, ultra-virus or unconstitutional. In such a case “action” and not the “section” may be vulnerable. If it is so, the court by upholding the provision of the law, may still set aside the action, order or decision and grant appropriate relief to the person aggrieved.

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46 Sushil Kumar Sharma v. Union of India; AIR 2005 SC 3100; 2005 (2) PCCR 254(SC)
47 A T K Mealer v. MV Potty AIR 1956 SC 246.
48 Buchan Chuddar v. State of Bihar, AIR 1955 SC 191
The Court was of view that while interpreting a provision, the Court only interprets the law and cannot legislate it. If a provision of law is misused or subjected to abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary.49

Courts have always kept in mind that the object of the provision is prevention of dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bonafide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes advance media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of well-intentional provision. Merely because the provision is intra virus, does not give a licence to unscrupulous persons to wreak personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not as an assassin’s weapon. If cry of “wolf” is made too often as prank assistance, protection may not be available when the actual “wolf” appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that the ultimate object of every legal procedure is to arrive at the truth, punish the guilty and protect the innocent.50

50 Sushil Kumar Sharma v. Union of India; AIR 2005 SC 3100; 2005 (2) PCCR 254(SC)
From the above discussion, it is clear that our Courts have shown enormous concern towards crimes related to dowry, demand of dowry and 'dowry death'. They have helped in setting the ingredients of 'dowry' as defined in Section 2 of the Act as also in describing the constituents of the crime of 'demanding dowry'. There are a number of cases where the Court had occasion to define the ingredients of the crimes of “dowry death” under Section 304-B and “cruelty” as defined in Section 498-A of IPC. It was in Bhagawant Singh v. Commissioner of Police\textsuperscript{51} where the court called for the need of severest condemnation of the system of dowry and emphasized the need of awakening conscience and will of the social community. Besides this, the Court was of the opinion that appropriately high priority should be given to the expeditious investigation of such cases and a female police officer of sufficient rank and status in the police force should be associated with the investigation of such cases. The Courts have tried to strike a balance between the heinousness of the dowry death cases and the punishment meted out to the accused. In appropriate cases condign punishment has been awarded. It has also been observed by the Supreme Court that in case of bride burning, death sentence may not be improper\textsuperscript{52} and the sentence awarded must always be deterrent and eye opener to the offenders. They have also deprecated the indifferent attitude of the investing agencies.\textsuperscript{53} The Courts have exercised considerable amount of restraint in granting bail to the persons accused of committing dowry death\textsuperscript{54} and where a young bride died within three months of marriage, the accused was refused bail at the stage anterior to filing of challan.\textsuperscript{55}

The Supreme Court also directed that while awarding the sentence any court should not allow emotional and sentimental feelings to come into the judicial pronouncements because emotional and

\textsuperscript{51} AIR 1983 SC 826.
\textsuperscript{52} Romesh Kumar v. State of Punjab, AIR 1987 SC 1368.
sentimental feelings are bound to create bias thus resulting in great injustice.\textsuperscript{56} The Court sought for the need that social reformist and legal jurists should evolve machinery for debarring those boys from remarriage who have committed the crime of dowry death and that social ostracisation of such family is needed to curtail increasing malady of bride burning.\textsuperscript{57} It was again in State v. Pandalik,\textsuperscript{58} where Karnataka High Court highlighted the level of professionalism that is required in handling of these cases and issued suitable guidelines in handling them. While in Pratibha Rani v. Suraj Kumar\textsuperscript{59} the Court emphasized for the enforcement of women’s claim to her dowry so also in Reema Aggarwal v. Anupam\textsuperscript{60} the Court observed that a person who entered into a marital arrangement can not be allowed to take a shelter behind the smokescreen to contend that since there was no valid marriage the question of dowry does not arise? The Court did not stop there only, in spite went beyond and in a case\textsuperscript{61} while upholding constitutional validity of Section 498-A, it sought the necessity that the legislature should find out the ways and means that how the makers of frivolous complaints or allegations can be appropriately dealt with. Thus it is clear that the modern judicial trends regarding dowry is very encouraging, judicious and helpful to the hapless women of the society and it has been very supportive in dealing firmly the menace of dowry.

\textsuperscript{56} State (Delhi Admn.) v. Laxaman Kumar, AIR 1986 SC 692.
\textsuperscript{57} Ashok Kumar v. State of Rajasthan, AIR 1990 SC 2134; 1991 SCC (Cri.) 126; 1990 Cr.L.J.2276.
\textsuperscript{58} 1999 Cri.L.J. 4751 (Kar).
\textsuperscript{59} AIR 1985 SC 628.
\textsuperscript{60} AIR 2004 SC 1484; Cr.L.J. 2004 892; 2004 (3) PCCR 120 (SC).
\textsuperscript{61} Sushil Kumar Sharma v. Union of India; AIR 2005 SC 3100; 2005 (2) PCCR 254(SC).