Chapter 5
Chapter - 5

CRIMINAL INVESTIGATION AND
ADMINISTRATION OF CRIMINAL JUSTICE

5.1 CRIMINAL JUSTICE AS A SYSTEM

The system for delivering Criminal Justice services in our society is a composite of many complex relationships between various components and the major laws which drives the system is the Criminal Procedure Code and The Evidence Act. A system is a series of component parts that possess common interrelationships.1 Criminal Justice System is recognised as a system in our society as there is link between the various components like the police, public prosecution, court, judge and prison. However the connection between the sub systems need better reinforcement or link because it is often felt that the Criminal Justice System is failing and becoming less effective. The point is that when any segment or sub system of the system functions in isolation from the rest of the system the resulting fragmentation reduces the effectiveness of the system.2

5.1.1 Function of the Procedural Law

The Criminal Procedure Code is the main piece of procedural law, which lays down the powers, and functions of the police, prosecution, trial court and defence counsels. In addition to the general provisions applicable to all persons, there are certain provisions in the code, which have been enacted only to benefit women. It must also be stated that the Law Commission in its 84th Report recommended changes in the areas of arrest, detention, recording of statement, attendance of women and boys under fifteen years of age at the police station, presence of social workers at the time of recording of statements of women and boys, registration of First Information Report, examination of the accused, examination of the victim, trials in camera.³

5.1.2. Law Relating to Arrest of Women

In the area of arrest the legislatures have taken proper precaution to see that no harassment is made to a woman when search is made of places entered by person sought to be arrested. The Section 47 of the Code of Criminal Procedure states:

(1) If any person acting under a warrant of arrest or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into or is

within, any place, any person residing in or being in charge of such place shall, on demand of such person acting as aforesaid or such police officer allow him free ingress thereto and afford all reasonable facilities for a search therein.

(2) If ingress to such place cannot be obtained under sub-section (1) it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity to escape from a police officer to enter such place and search therein and in order to effect an entrance into such place, to break open any outer or inner door window of any house or place whether that of the person to be arrested or any other person, if after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

Provided that if any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who according to custom does not appear in public, such person or police officer shall before entering such apartment gives notices to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing and may then break open the apartment and enter it.

This is the general procedure prescribed for search when a woman occupies the place. When a woman is to be arrested the 84th Report of the Law Commission suggested to change the procedure for arrest by adding a proviso to Section 464 as follows:

Provided that where a woman is to be arrested then unless the circumstances indicate to the contrary her submission to custody on an oral intimation of arrest shall be presumed and unless the circumstances otherwise require or unless the police officer arresting is a female the police

4Sec.46 - Criminal Procedure Code.
officer shall not actually touch the person of the women for making her arrest.5

Another point which Law Commission suggested that so far as possible women should not be arrested at night and wanted a clause6 to be added to Section 46 to the similar effect. This would prevent the occurring of certain offences like sexual harassment in police custody. Law Commission of India in its 135th Report has also made similar suggestion.7 The proposed provision states as follows:

Except in unavoidable circumstances, no women shall be arrested after sunset and before sunrise, and where such unavoidable circumstances exist, the police officer shall be making a written report, obtain the prior permission of his immediate superior officer not below the rank of an inspector for effecting such arrest or if the case is one of extreme urgency and such prior permission cannot be obtained before making such arrest, he shall after making the arrest, forthwith report the matter in writing to immediate superior officer with the reasons for arrest and the reasons for not taking prior permission as aforesaid and shall also make a report to the Magistrate within whose local jurisdiction the arrest has been made.

These safeguards have been made to extend maximum protection to the women accused.

5.1.3 Delay in Lodging the FIR


6 Ibid par 3.8.

One area of serious concern is the recording of the FIR in crimes committed against women. In rape, dowry death or sexual harassment there has been delays in reporting the crime to the police. It is very essential that the delay in making the report at the police station or making the complaint in the court should be explained satisfactorily. In Pappu v. State\(^8\) there was a delay of 25 hours after the incident of rape. This delay occurred due to long distance from village to the police station. The prosecution case was automatically doubted.

As there was no explanation given by the prosecutrix for the delay in reporting the crime of rape the delay was taken as a ground for reducing the sentence of minimum 7 years to sub minimum sentence against the accused constable in State of Haryana v. Ram Lal.\(^9\)

In Paramod Mahto v. State Bihar\(^10\) however the court accepted the reason for the delay which occurred in filing the FIR and rejected the defence argument that the case had been fabricated on a false ground of communal feelings. The Supreme Court in Harpal v. State of Himachal Pradesh\(^11\) convicted the accused though there was delay of lodging the FIR by 10 days.

\(^8\)1981 Raj Cr.C.419.


\(^11\)(1981) 1 SCC 560.
In *Bhardwaja Bhigum Bhai v State of Gujarat*\(^\text{12}\) the prosecutrix was a sixteen-year-old girl. She had been raped by the accused who was a family friend and to whom her family had close friendship. The FIR was lodged after three months. The Sessions Court convicted the accused to seven years and the High Court also upheld the convictions. Hence the reason of the delay was accepted as convincing.

The Supreme Court has now and then enumerated the difficulties in lodging a complaint in the Indian setting and the consequences that arise by the reluctant delay.\(^\text{13}\) When the victim of rape especially in custodial rape is undergoing both physical and mental injury she cannot be expected to rush to the police station immediately to lodge a complaint.

In *State of Punjab v. Gurmit Singh and Others*\(^\text{14}\) the Supreme Court observed the delay lodging the FIR if it is properly explained by the prosecutrix can be condoned. The court stated:\(^\text{15}\)

The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. In the court's opinion there was no delay in the lodging of the FIR either and if at all there was some delay the same has not only been properly explained by the prosecution but in the facts and circumstances of the

---

\(^\text{12}\) 1983 Cr LJ 1096.

\(^\text{13}\) (1983) 3 SCR 289.


\(^\text{15}\) *Ibid*, p.1399.
case was also natural. The courts cannot overlook the facts that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged.

A very elaborate explanation was given by the Supreme Court in the case of State of Himachal Pradesh v. Gain Chand\(^{16}\) where there was delay in lodging the FIR. The court held:

"Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court in its guard to search, if any explanation has been offered for the delay and if offered whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the delay would be fatal to the prosecution. However if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case".\(^{17}\)

In the specific case the prosecutrix’s widowed mother was the only person to initiate action against the accused. The widowed mother was related through her late husband’s brother, to the accused. She was hesitant to take immediate action. Some settlement was to be arrived at within the four walls of the house and it was in the village that the incident took place.

\(^{16}\)AIR 2001 S.C. 2075.

\(^{17}\)Ibid., p. 2079.
When no settlement was reached, the widow was left alone to take action against the accused, only the village Panch lending a moral support to her. The series of events explained by the prosecution witnesses provided satisfactory explanation to the court for the delay.

In a later case Raju v State of Haryana\(^{18}\) where the accused enticed a young girl of 11 years raped and murdered her because she had stated to him after the rape that she would disclose the matter to her family members he hit her with two bricks. She succumbed to death due to injuries. The incident occurred in the evening at about 6 p.m. The whole night the relatives were on the search of the girl. When her body was found on the next day at about 6.30 a.m. the prosecution witness PW\(_1\) lodged FIR at about 7.30 a.m. The court accepted the version given by the prosecution witness PW\(_1\) for the delay in lodging the FIR. The Court stated:\(^{19}\)

Therefore not lodging of FIR during the night-time would not at all be a ground for doubting the evidence of PW\(_1\).

Thus it is very difficult to fix a time limit for lodging the FIR. Each case is unique in its own sense and especially in rape cases the locality in which it occurred, the attitude of the family members in trying to balance the reputation of the family and the protection of the interest of the victim, the trauma undergone by the victim are the various factors to be taken into

\(^{18}\)AIR 2001S.C. P.2043.

\(^{19}\)Ibid., p.2045.
account. When the FIR is recorded at the earliest the informants version will be more authentic and he can recapture and give a proper picture of the crime.

The above statement spells out clearly the direction in which the investigating agency, the police have to act while recording the FIR. Where the investigating agency did not conduct the investigation properly and was negligent their negligence and improper investigation cannot be a ground to discredit the testimony of prosecutrix. The prosecutrix was raped and thrown out of the car. The investigation agency failed to trace the car or its driver. The failure of the investigation agency cannot be a ground to discredit the testimony of the prosecutrix. The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not effect the credibility of the statement of the prosecutrix.20

There are circumstances where the police have failed to register cases even though they are required to do so. Under Section 154(1) of Cr.P.C. on the failure of the police to register the case the aggrieved person can send the substance of the information in writing and by post to the Superintendent of Police.21

---

20 AIR 1996 S.C 1393. (para 7).
21 Cr.P.C. Sec.153(3).
Section 153(3) is as follows:

"Any person aggrieved by a refusal on the part of an officer in charge of a Police Station to record the information referred to in sub-Section 1 (of sec.154) may send the substance of such information in writing and when information discloses the commission of a cognisable offence shall either investigate the case himself or direct an investigation to be made by any Police Officer subordinate to him, in the manner provided by this code and such an officer shall have all the powers of an officer in charge of the Police Station in relation to that offence.

However there is no provision in the code to punish the Police Officer defaulting. The Police officer should be penalised for defaulting. The 84th Report of the Law Commission made a similar recommendation.22

In an incident of sexual harassment, a representation was given to the University by a research student against her superior in the department. When the University failed to take adequate action she filed a complaint. The Magistrate dismissed the complaint on the ground of delay in filing the FIR. The court here has failed to take note of the fact that after exhausting all options she had taken the drastic step to file the complaint and hence the delay.23

---


23 Ramaseshan Geetha, “Court Ratifies Sexual Harassment Cases” The Indian Express, November 22, 1998.
5.1.4 Detention

Keeping the arrested woman in police custody for even a short period has posed a danger. Mathura case would not have occurred if she had not been in the custody of the constables. Based on the recommendation of the 84th Law Commission women are not kept in custody of the Police Station during the late hours. They are to be sent to detention centres or protective homes authorised for the purpose.

The Law commission has suggested in Section 417A that:

Where a woman is arrested and there are no suitable arrangements in the locality for keeping her in custody in a place of detention exclusively meant for women, she shall be sent to an institution established and maintained for the reception, care protection and welfare of women or children licensed under the Women’s and Children’s Institutions (Licensing) Act 1956 or an institution recognised by the State Government, except in cases where any special law requires that she should be sent to a protective home or other place of detention authorised for the purposes of such special law.24

5.1.5 Medical Examination of the Victim

The doctor attached to the concerned hospital prepares the medical report. This report in most cases is prepared in a careless and tardy way. This leads to easy acquittal of the accused. The Law Commission of India in its 172nd Report has stated that:

Section 164A:

(1) Where, during the stage when any offence under Section 376, Section 376A, Section 376B, Section 376C, Section 376D or Section 376E is under investigation and it is proposed to get the victim examined by a medical expert, such examination shall be conducted by a registered medical practitioner, with the consent of the victim or of some person competent to give such consent on his/her behalf. In all cases, the victim should be sent for such examination without any delay. Provided that if the victim happens to be a female, a female medical officer shall conduct the medical examination, as far as possible.

(2) The registered medical practitioner to whom the victim is forwarded shall without delay examine the person and prepare a report specifically recording the result of his examination and giving the following details: (i) The name and address of the victim and the person by whom he/she was brought, (ii) The age of the victim, (iii) Marks of injuries, if any, on the person of the victim, (iv) General mental condition of the victim and (v) Other material particulars, in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the victim or of some person competent to give such consent on his/her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report, and the registered medical practitioner shall without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in clause (a) of sub-Section (5) of that Section.

(6) Nothing in this Section shall be construed as rendering lawful any examination without the consent of the victim or any person competent to give such consent on his/her behalf."
This Section highlights what should be the contents of the report of the medical officer. It should deal with the:

(i) Name and address and by whom the victim was brought
(ii) Age of the victim
(iii) Whether there are injuries on the person of the victim
(iv) General mental condition of the victim
(v) The other material particulars in reasonable detail.

The time of commencement and completion of the report should also be noted down. Registered medical practitioner shall forward the report to the investigating officer who shall in turn forward it to the Magistrate.

Thus the medical practitioner has been given the responsible task of preparing the report in a fair manner. No delay should be caused in sending the report to the Magistrate. If any delay occurs he should give reasons as to why the delay had occurred.

5.1.6 Medical Examination of the Accused

Under Sec.53 Cr.P.C. the medical examination performed on the accused in all cases of crime would form evidence. The report may not be adequate, as it would be very cursory. The Law Commission in its 172nd Report outlined the procedure to be followed while preparing the medical report of the accused, which is to be stated in sub section 53A. They felt that the report should contain the reasons for each conclusion arrived at by
the doctor and the doctor should send it without delay to the investigating
officer who should forward it to the Magistrate.

Sec.53A is as follows:

"53A. (1) When a person accused of any of the offences under Sections 376, 376A, 376B, 376C, 376D or 376E or of an attempt to commit any of the said offences, is arrested and an examination of his/ her person is to be made under this Section, he/she shall be sent without delay to the registered medical practitioner by whom he/she is to be examined.

(2) The registered medical practitioner conducting such examination shall without delay examine such person and prepare a report specifically recording the result of his examination and giving the following particulars: (i) The name and address of the accused and the person by whom he was brought, (ii) The age of the accused, (iii) Marks of injury, if any, on the person of the accused, and (iv) Other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report, and the registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in Section 173 as part of the documents referred to in clause (a) of sub-Section (5) of that Section" (paragraph 4.6).

5.1.7 Cognisance of offences under Sec.376E.

The assault of young children by close relatives has been dealt with by Section 376E, which is a new Section to be added to Section 376. The 172nd Report of the Law Commission suggests that new Section have to be added to Section 198A of the code of Criminal Procedure, which deals with cognisance of offence. It states that the court shall take cognisance of the
offence upon police report or upon a complaint by the aggrieved person or by his close relatives by blood like, father, mother, brother, sister or by adoption. It can be suggested that if an organisation interested in the welfare of the child receives any information it can give a complaint to the Magistrate.

5.1.8 Evidence in Trial Proceedings

Section 273 of the Criminal Procedure Code deals with Evidence that has to be taken in criminal proceedings.

It states:

“Except as otherwise expressly provided all evidence taken in the course of the trial or other proceeding, shall be taken in the presence of the accused or when his personal attendance is dispensed with, in the presence of his pleader”.

Apprehension was raised by the “Sakshi” that when young persons are examined they might not be able to depose in front of the accused. In order to avoid this, presence of the accused need not be insisted. The Law Commission refused to accept this contention. However they suggested that a proviso might be added to Section 273 of the Criminal Procedure Code as follows:

“Provided that where the evidence of a person below sixteen years who is alleged to have been subjected to sexual assault or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such person is not confronted by the accused
while at the same time ensuring the right of cross examination of the accused”.

5.1.9 Bail and Anticipatory Bail

Granting bail depends upon the facts and circumstances of each case as well as the discretion of the judge. In offences like rape and dowry death the release of the accused on bail gives him ample scope to fabricate with the evidence or to blackmail the victim. These factors should be in the mind of the judge while granting bail.

In the case of Kalyan v State\(^\text{25}\) the accused who had raped a 14-year old girl moved a petition to release him on bail. The Magistrate concerned refused to grant bail on the ground that the present case is one of those categories where the accused, who is guilty of a heinous crime committed in such a ruthless and merciless manner, the benefit should not be given to him.

In Tajinder Singh Rana v State of Delhi\(^\text{26}\) the girl was made unconscious by drinks and while she was in that condition photographs were taken of the naked body and the accused thereafter blackmailed her. When he was arrested the court granted him bail. The counsel for the state strongly objected stating that he will try to obstruct the complainant in appearing as a witness against him. The court granted bail but imposed

\(^{25}\)1981 Raj LW 160.

\(^{26}\)1984 24 DLT 339 (Delhi).
certain conditions. The release of the accused in such cases is highly dangerous. It further creates problem to the victim and demoralises her spirit. It is more so if the case is one where Police Officers, Superintendents of jails, Managers of rescue homes and doctors are accused of custodial rape. There are many cases when judges of High Courts have intervened and asked why bail has been granted by lower Courts to police officers etc. accused of raping girls in their custody.27

In dowry death cases also, the prosecution has not taken the matter seriously. Allegations of police compliance in wiping out crucial evidence against the in-laws and the readiness of the Subordinate Courts to grant bail and other reliefs to the suspects create suspicion in the mind of the public about the efficiency of the legal system to bring the guilty to the book.28 The Supreme Court cautioned all the courts in the country regarding the grant of anticipatory bail to accused in dowry death cases in Surinder Singh v. State of Rajasthan.29

5.2 INVESTIGATION AND INTERROGATION

Considerable hardship is caused to female either as victims or offenders when they are interrogated by Police Officers. With the

---


29 AIR 1987 S.C. 737.

252
establishment of women police station in some areas it may be possible to take the assistance of women police officers. But in all areas they may not be available. The Law Commissioners in its eighty-fourth report suggested the assistance of the qualified women social workers in interrogating women. In all situation this may not be possible. Some women organisation felt that women should be associated in the investigation of rape and allied offences. The Law Commission had not accepted the suggestion of the women organisation. In all offences under the criminal law the police does the investigation and this complex and multiple work if handled by women workers would cause great hardship to them. This ‘arduous duties’ handled by the police all these years cannot be left to women workers. The 84th Law Commission however felt that female social workers should be allowed to be present whenever a rape victim was interrogated.30

5.2.1 Interrogation of Female Victims

The availability of women police officers is less and in rural areas the number of police officers also is very less. The alternate suggestion given by the Law Commission of India 1972 Report31 to add as new sub-Sections 3 and 4 to Section 160 of the Criminal Procedure Code. It states:


31 Law Commission of India 172 Report op.cit., Para 7.3.1
(3) Where under this chapter, the statement of a female is to be recorded either as first information of an offence or in the course of an investigation into an offence and she is a person against whom an offence under Sections 354, 375, 376, 376A, 376B, 376C, 376D, or 376E or 509 of the IPC is alleged to have been committed or attempted, the statement shall be recorded by a female police officer and in case a female police officer is not available by a female government servant available in the vicinity and in case a female government servant is also not available by a female authorised by an organisation interested in the welfare of women or children.

(4) Where in any case none of the alternatives mentioned in sub Section (3) can be followed for the reason that no female police officer or female government servant or a female authorised by an organisation interested in the welfare of women and children is available the officer in charge of the police station shall after recording the reasons in writing proceed with the recording of the statement of such female victims in the presence of a relative of the victim”.32

The Law Commission of India Report 172 also suggested to substitute the proviso to sub Section (1) of Section 160.

“Provided that no male person under the age of 16 years or woman shall be required to attend at any place other than the place in which such male person or woman resides. While recording the statement a relative or a friend or a social worker of the choice of the person whose statement is being recorded shall be allowed to remain present. The relatives, friend or social worker so allowed to be present shall not interfere with the recording of statement in any manner whatsoever”.

It is a striking and significant suggestion given by the Law Commission regarding the role of social workers and female government

32Ibid 7.3.3.
servants. In the procedural system we have today, the police have been entrusted with the work of investigation. Entrusting the work, arduous task of investigation only to female be it a police, government servant or social worker is like totally discrediting the work of the male members. Moreover if the police officer were placed on equal footing with the female social worker he would try to abdicate his responsibilities. Therefore the presence of a female holding a responsible position can be allowed to be present whenever a female victim is interrogated.

When rape is committed by a police officer the women victim is posed to great hardship when fellow policemen often of the same police station conduct the investigation. The Government doctors do the medical examination. When all these corroborative evidence reach the Trial Court it is the prosecutor who has to conduct the case. They are already in close association with the police especially at the session's level. "..perhaps the idea was that investigations should be done by a police officer from another district or area than the one where the culprit officer was posted." This idea would to some extent remove the apprehension from the mind of the victim and it gives scope for a fair trial.

In dowry death cases defective investigation has been taking place. The courts should not discard prosecution evidence due to the remissness of

---

the investigation officer on the ratio laid down in *Chandra Kanta v. State of Maharashtra*. In *Ashok Kumar v. State of Rajasthan* it was reiterated we are of the opinion that the investigation officer, due to remission, failed to preserve the site is correct but it does not in any manner weaken the prosecution case nor can any adverse inference be drawn due to the non production of the nurse, compounder or any one else from the locality when the investigation report was written by the doctor himself.

In *Lichhamadevi v. State of Rajasthan* the Supreme Court deprecated the soft peddling attitude of the investigating agency. The husband was a mute witness along with his brother, when the wife was set to fire by the mother-in-law. The mother-in-law implicated the brother in the crime. Yet no charge sheet was made against him.

Dowry deaths are mostly committed within the reclusion of the home and the reliance placed on poorly paid policemen whether the death was homicidal or accidental would be misleading. This was realised by the

---

34 AIR 1977 S.C. 220.
35 AIR 1990 S.C. 2134.
legislatures and under the ancillary laws of the Cr.PC Sections 174 and 176, it is essential that enquiry into suicide and dowry death cases be conducted by officers and Magistrates. A new entry was inserted in the first schedule under chapter XXA of Cr.PC making offence of cruelty, cognizable and non-bailable. On many occasions the husband and his relatives request the police to waive the post-mortem. The girls' parents and relations take time to recover from the grief and sorrow and the body is already cremated leaving no traces of evidence.

37Sec. 174(3) Cr.P.C. states: When - (i) the case involves the 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 the 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 reason considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, 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, if the state of weather and the distance admit of itself being so forwarded without risk of such putrefaction on the road as would render such examination useless.

38Sec.176 Cr.P.C. states: 176. Inquiry by Magistrate into cause of death. — (1) When any person dies while in the custody of the police or when the case is of the nature referred to in clause (i) or clause (ii) of sub-sec. (3) of s. 174, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-sec. (1) of s. 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. (2) The magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case. (3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined. (4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry. Explanation — In this section, the expression "relative" means parents, children, brothers, sisters and spouse.
In the case of *Gowar Chand v. The Superintendent of Police Chingleput District and Others*\(^3\) again the callous attitude of conducting the investigation by the Police is reflected. The court held that 'the failure to register a case immediately at least under Section 174 Cr.P.C. initially, the failure to hold inquest, the failure to have the body subjected to post-mortem, to find out the real cause of death and the failure to register a case at least later when several petitions had been sent to different authorities, are all lapses which may amount to callous investigation hereafter done, even by the best of investigation agencies, would not adequately compensate.'\(^4\)

Similarly in *Joint Women's Programme v. State of Rajasthan*\(^4\) the Supreme Court found that the investigation made by the police in the dowry death case was totally inadequate. It therefore directed the State of Rajasthan and the State of Haryana, two States involved in the investigation to get the investigation conducted by an officer not below the rank of Superintendent of Police. Thus the lack of faith in the investigation conducted by the local police is felt, in this case.

\(^3\)1988 Cr.L.J1399 Madras.

\(^4\)Ibid at p.1401 per Mrs.Padmini Jesuderai. J.

\(^4\)AIR 1987 SC 2060.
5.3 DYING DECLARATION IN DOWRY DEATH

Legally all dying declarations stand on the same footing when the other conditions of investigation and evidence being the same in criminal offences. But in the case of dowry death the dying declaration stand on a different footing. Usually dowry deaths are referred to as an accident by the in-laws or the husband from the report made by them. The bride burned to death also gives a false statement that the death occurred due to accident concurring with the report made by the in-laws and husband. 'The wife will never blame her husband' as this is the ethos and sentiments of Indian culture. Even if she holds the husband responsible in the dying declaration she pleads that he should be forgiven as it happened in the case of Somnath v. State of Haryana\textsuperscript{42} and Vasant v State of Maharashtra.\textsuperscript{43} Sometimes the husband and his relatives overpower her and threaten her with dire consequences to herself, her children and her loved ones that she has no courage to come out with the truth even in the last moment of her life. Under such circumstances the judge should read between the lines and interpret the dying declaration with an eye on the social reality of the life of Indian Women.

\textsuperscript{42} AIR 1980 S.C. 1226.

\textsuperscript{43} AIR 1980 S.C. 1270.
Principles governing dying declaration as laid down in *Paniben v. State of Gujarat*\(^{44}\) are based on the law on dying declarations culled from several past decisions. The principle is ‘a man will not meet his Maker with a lie in his mouth’. The situation is when a person is on the death bed is so solemn and serve that he is not likely to tell lies or implicate innocents. In the case of dying declaration, the accused has no opportunity to cross-examine the victim. That is why the courts also insist that the dying declaration should be of such a nature to inspire confidence in the court. It should make sure that it is not a product of tutoring, prompting or the result of imagination. Once the court is convinced of the truthfulness, ‘...undoubtedly it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole of basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence’.\(^{45}\)

From the cases discussed above, it can be summarised that though the law as it exists today is fairly adequate and capable of bringing about the conviction of the guilty, if not properly used at the level of investigation very often the case is lost. The result of such an investigation is due to the indifference of the police who also come from the same society within

---

\(^{44}\)AIR 1992 S.C. 1817.

\(^{45}\)Ibid Page 1817.
which these crimes are taking place. Thus one finds that though a Judge is
convinced that the accused has committed the crime but the court has to let
the person off because the prosecution has not brought forth-adequate
evidence. As long as the public prosecutor’s appointment lies with the
Government this is bound to happen. The only remedy is to make the public
prosecutor accountable to the court and the need to have judicial control
over police investigation in India. Legislation, by itself cannot solve a
deep-rooted social problem. It should have an educative factor as well as the
adequate legal sanction behind it, which help public opinion to be given a
certain shape as people and public opinion have an invaluable role to play
in both the prevention and occurrence of dowry deaths.

The recording of dying declaration led to a controversy in the case of
Arvind Singh v. State of Bihar. In the case of bride burning just before the
victim succumbed to death, she declared quietly to her mother the names of
three relations and the husband who poured kerosene to burn her alive. The
Court found that the statement made to the mother was very vague and
without any credence. The doctor who examined her stated that the death

---


49 AIR 2001 S.C .2124.
would take place at once and within ten seconds by reason of extensive burns. But the girl lived for 10 minutes after the injury. Police officials were there before the mother and brother arrived. But it was only to the mother that the victim made the statement. There was no medical certificate attached to the declaration to show whether she was in a fit state of mind at the time of making the declaration. Hence the uncorroborated testimony of the mother to whom the deceased was supposed to have made the declaration was not taken into consideration by the Court.

It is worth recalling the case of *K Ramachandra Reddy v. Public Prosecutor*\(^{50}\) where the court held:

> "While great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person, yet the court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of his imagination."

Thus in the case of *Arvind Singh v State of Bihar*\(^{51}\) the Supreme Court did not discredit the evidence tendered in court by the mother but the report of the Doctor did not establish, whether with severe burns on her body and on the verge of dying, the girl could make the statement. The severity of the burn injury and its impact on the body speaks volume of the death of the deceased. But the manner in which it occurred raises doubt.

\(^{50}\) AIR 1976 S.C. 1994.

In *Papambaka Rosamma v. State of A.P.* the medical officer who attached the certificate along with the dying declaration stated that ‘the patient is conscious while recording the statement’. The court tried to differentiate between being conscious and being fit to state what is in one's mind. In this case the deceased sustained 90% burn injuries.

The court stated:

"In this case the prosecution case solely rested on the dying declaration. It was therefore necessary for the prosecution to prove the dying declaration as being genuine, true and free from all doubts and it was recorded when the injured was in a fit state of mind”.

The doctor did not comply with the requirement while attaching a certificate at the end of the declaration to state that the deceased was in a fit state of mind. There were material omissions for which the Supreme Court did not accept the dying declaration.

*Koli Chunilal Savji v State of Gujarat* is another case where because of the improper way of recording the dying declaration the value of the evidence is lost. The Court observed:

"In view of the rival submission made at the Bar two questions really arise for our consideration.

---

52 AIR 1999 S.C. 3455.


54 AIR 1999 S.C. 3695.

55 Ibid p.3698.
(1) Whether the two dying declarations can be held to be true and voluntary and can be relied upon or can be excluded from consideration for the infirmities pointed out by Mr. Keshwani appearing for appellants.

(2) Whether the High Court exceeded its jurisdiction in interfering with the order of acquittal recorded by the Learned Sessions Judge.

Coming to the first question the answer to the same would depend upon the correctness of the submission of Mr. Keshwani, that in the absence of the doctor while recording the dying declaration the said declaration loses its value and cannot be accepted”.

The declarant was in the hospital while giving the dying declaration and so it is the duty of the officer to record the statement in the presence of the doctor after the doctor certifying that the declarant was conscious and in his senses and was in a fit condition to make the declaration.  

Whether a dying declaration made to an Executive Magistrate can be accepted was raised in Harji Kaur v State of Punjab. The Court held that he being an I.A.S. Officer holding high position of Sub Divisional Magistrate cannot be put to pressure. He had recorded after getting the endorsement from the doctor that she was in a fit condition to make the statement and obtained an endorsement to that effect. “Merely because that endorsement was made not on the dying declaration itself but on the

\[56\] Ibid., p.3698.

\[57\] AIR 1999 S.C. 2571.
application that would not render the dying declaration suspicious in any manner."  

The Criminal Law comes to the rescue of a woman who is harassed by her husband and relatives for dowry. These incidents occur mostly within the four walls of the house. In extreme cases when severe injury occurs and she is in her deathbed the most clinching and valuable evidence is only the dying declaration. So it is very essential on the part of the officer recording it to take care and caution so as to reinforce its evidentiary value.

5.4 SENTENCING OF OFFENDERS

Efficiency of Judicial System is the salvage for the drawbacks of administration including Criminal Justice administration in a welfare state. It has been rightly said that there is no better test of a Government than the efficiency of its Judicial System, for nothing touches the welfare and security of the common man than his sense that can rely on the certain and prompt administration of justice.  

58 Ibid., p.2573.

embodiment of justice. He is the Living oracle of the law in Blackstone’s vivid phrase.

The most disturbing phenomena that are occurring in the country are the increasing growth of incidents of rape, bride burning, sexual harassment. The court must deal with the offender most ruthlessly and impose deterrent punishment.

5.4.1 Minimum Punishment – Approach Taken

The pre-amended rape law did not make any provision for minimum punishment. The 1983 amendment has laid down the minimum punishment for rape as seven years and the maximum as life imprisonment. In the case of custodial rape the minimum sentence is fixed as ten years imprisonment. However this minimum sentence can be reduced to less than ten years for adequate and special reasons in writing to be recorded in the judgement. The objective of this amendment was meant to be deterrent. The courts have also not adopted a uniform pattern. In many cases punishment of less than

---

the minimum is imposed. The “special and adequate reasons” given are often too difficult to justify yet the judicial seal makes them sacrosanct.63

In *Jai Bhagwan v State*64 the High Court of Delhi reduced the sentence of 14 years imposed by the Sessions court to 10 years. The judgement stated that courts had only two options, either life imprisonment or maximum of 10 years imprisonment. This was to be taken as the special reason.

In *Jagdish Maur v State*65 the appellant an instructor of an orphanage ravished a minor girl of seven years. He was awarded a deterrent punishment of 12 years.

In *Avtar Singh v State of Himachal Pradesh*,66 the accused satisfied his lust on a girl of only 5 years of age. Condemning the act as very shameful one and needs to be taken a serious view the court took into consideration the age of the accused. Under such circumstances the sentence of 10 years of rigorous imprisonment was reduced to 7 years.

In *Reepik Ravindar v State of Andhra Pradesh*67 the High Court reduced the sentence of 10 years awarded by the Sessions Court. The

64 1986, Cr.L.J. 975 (Delhi) p.85.
65 1986, 30 DLT 2(Del).
67 1991 Cr. L.J. 595.
accused a young boy ravished a girl of 7 years. His age was taken into consideration and sending him to prison for a long duration would make him an obdurate criminal. The accused was ordered to be kept in Borstal home for three years.

In the case of Premchand v State of Haryana, the appellants were convicted under Section 376 and 10 years imprisonment was awarded. The Supreme Court reduced the sentence to sub minimum. The mitigating factor to reduce the sentence was the conduct of the victim. When it went for a review the Supreme Court explained the 'conduct' not to the sexual immorality of the victim but the way she behaved by not disclosing for 5 days about the sexual assault perpetrated on her.

In Raju v State of Karnataka the Supreme Court opted for sub minimum sentence. This judgement from the Apex Court drew protest and demonstration from women activists and groups. The facts of the case in short are as follows. Celina D’Sowza was working as a nurse in a clinic at Hoskote and was travelling to Sakaleshwar to attend the wedding of her brother. While she was in the bus she acquired familiarity with Raju and Krishna. On the way they all got down at Hassan and the accused Raju and Krishna assured her that she will be able to reach Sakaleshwar on time and

---

69 AIR 1990 S.C .538.
70 AIR 1994 S.C .222.
took her to have food. Later they stayed in a lodge for the day. Celina slept on the cot and the accused persons slept on the floor. After some time the accused No.2 Krishna saying that mosquitoes were biting him slept on the cot next to her and made advances towards her. When she screamed the accused No.1 Raju closed her mouth with a handkerchief and sent out Krishna and bolted the door. Raju told her that he wanted to have sexual intercourse with her. She agreed provided he married her. Krishna returned and asked Raju to leave the room he threatened her with a knife and had intercourse with her.

The prosecutrix Celina some how raised alarm. The room boy and others tried to rescue her. A constable who was occupying a room in the lodge took her to file a complaint in the police station and have her medically examined. The Session Court convicted Raju for the offence of rape sentenced him to detention till the rising of the court and to pay a fine of Rs.500/- and in default to pay the fine to undergo rigorous imprisonment for three months. The Judge acquitted accused No.2 of all charges. Accused No.1 preferred an appeal against his conviction while the State of Karnataka filed an appeal against the sentence of the accused No.1 and acquittal of the accused No.2.

The High Court convicted both accused persons and to undergo rigorous imprisonment for seven years. On appeal the Supreme Court upheld the conviction but reduced the sentence to three years of rigorous
imprisonment. The court noted that in the beginning it might be that they had the genuine interest to render help to her. When they shared the room with her they became victims of sexual lust and committed rape on her.

G.N.Ray. J. observed:

"Considering the very young age of the accused persons and considering the circumstances under which there was every likelihood that they could not overcome the fit of passion and lost all sense of decency and morality and ultimately committed the offence of rape and also considering the fact that the incident had taken place long back and during the course of proceedings upto this court, both of them had suffered disrepute and suffered mental agony we think that the ends of justice would be met if both accused persons are awarded lesser sentence".

The judgement while giving special reasons for reducing the sentence has stated that the long delay in the completion of trial and disposal of the case. In what way the victim has contributed to the delay one fails to understand.

Rape is an offence having its source in unrestrained passion and occasionally in revenge. It is stated in the judgement that they could not overcome the fit of passion and lost all sense of decency is taken as another ground for reducing the sentence. The reasoning of the Apex Court will be taken as a message by the Lower Courts while fixing the quantum of punishment. It is unfortunate that the Supreme Court had failed to understand the magnitude of the offence.
The question of reducing the sentence arose in State of Punjab v. Gurmit Singh and Others. The observation of the court is as follows:

"So far as the sentence is concerned the court has to strike a just balance. In this case the occurrence took place on 30.3.1994 (more than 11 years ago). The respondents were aged between 21-24 years of age at the time when the offence was committed. We are informed that the respondents have not been involved in any other offence after the Trial Court acquitted them on 1.6.1985, more than a decade ago. All the respondents as well as the prosecutrix must have by now got married and settled down in life. These are some of the factors which needs to be taken into consideration while imposing an appropriate sentence on the respondents”.

In this case also the delay of 11 years in conducting the trial is due to the working of the Trial Court. This factor has been taken as ‘special reason’ for reducing the sentence.

In the State of Karnataka v. Krishnappa restored the sentence of imprisonment for 10 years fixed by the Trial Court for the offence under Section 376 of the IPC. The victim in that case was aged 7-8 years. The High Court in that case had reduced the sentence of imprisonment to 4 years. Dr.A.S.Anand, CJI who delivered the judgement had stated thus:

The High Court justified the reduction of sentence on the ground that the accused respondent was “unsophisticated and illiterate citizen belonging to a weaker section of the society; that he was a chronic addict to drinking’ and had committed rape on the girl while in a state of ‘intoxication’ and that his family comprising of ‘an old

---

71 1996 (2) SCC 384.

72 2000 (3) S.C. 516.
mother, wife and children’ were dependent upon him. These factors, in our opinion, did not justify recourse to the proviso to Section 376(2) IPC to impose a sentence less than the prescribed minimum. These reasons are neither special nor adequate. The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the Criminal Act. Crimes of violence upon women need to be severely dealt with. Socio-economic status, religion, race, caste or creed of the accused or the victim is irrelevant considerations in sentencing policy. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The Sentencing Courts are expected to consider all relevant facts and circumstances hearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence.\footnote{2000 (4) Scale 52.}

In Kamal Kishore v. State of Himachal Pradesh a minor girl studying in 4th class was raped by the son of a flour mill proprietor while she went to his house for viewing a T.V. film. Based on the medical evidence and the testimony of her mother and aunt which was duly corroborated the Trial Court acquitted and the High Court on appeal reversed the order of acquittal. Legislative mandate of minimum sentence is fixed and the court has normally no discretion to reduce the sentence except for certain very exceptional situation so as to meet the extreme rare contingencies. One is that there should be ‘adequate and special reason’ and the other is that the reasons should be mentioned in the judgement.\footnote{Ibid., p.58.}
The Supreme Court convicted the accused for the offence of rape under Section 376 for which the punishment is imprisonment of seven years.\textsuperscript{75} The court in the said decision noted that:

"...there are no extenuating or mitigating circumstances available on the record which may justify imposition of any sentence less than the prescribed minimum to the respondent".

Justice Thomas who authored the judgement of the Bench very clearly explained the meaning of the expression "adequate and special reasons". He said:

"...it indicates that it is not enough to have special reasons nor adequate reasons distinctively. There should be a conjunction of both for enabling the court to invoke the discretion. Reasons, which are common or general in many cases, cannot be regarded as special reasons. What the division Bench of the High Court mentioned (i.e. occurrence took place 10 years ago and the accused might have settled in life) are not special to the accused in this case or to the situations in the case. Such reasons can be noticed in many other cases and hence they cannot be regarded as special reasons. No catalogue can be prescribed for adequacy of reasons nor instances can be cited regarding special reasons, as they may differ from case to case".

The High Court in this case advanced reasons to extend the benefit of the proviso to Section 376, which can reduce the sentence to sub minimum punishment. The High Court supported the reasons given by learned counsel for the accused. He submitted that the prosecturix was married to another person and was the mother of children and is well

\textsuperscript{75}\textit{Ibid.}, p.58.
established in life. The accused was 24 years when the offence was committed and continued to be unmarried till his age of 34. Many offers for marriage came to him but at the final stage on two occasions it was dropped due to the social stigma and disrepute, which surrounded him. These reasons he advanced for the sentence to be reduced.

The Supreme Court held that the above reasons could not be extenuating reasons for the court to decide.

"...all these things which happened during the intervening period may be factors for consideration by the executive or constitutional authorities if they have to decide whether remission of the sentence can be allowed to the accused. We make it clear that we have imposed the enhanced sentence on him without prejudice to any motion he may make for such remission of the sentence before the authorities concerned".76

The court in this case has reflected the public abhorrence of the crime through imposition of the appropriate sentence. As pointed out by Justice Anand in State of Karnataka v. Krishnappa77:

"The courts are, therefore expected to deal with cases of sexual crimes against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitised Judge is a better statutory armour in cases of crime against women than long clauses of penal provisions containing complex exceptions and provisos".

The phrase ‘special and adequate reasons’ has on many occasions been mis-spelt by the courts in our country as seen from some of the cases

76 Ibid., 59.
77 2000 SCC 77.
decided. The judges have to properly exercise the discretion so as to cause no injustice to the victim.

5.4.2 Compensation to Victims of Rape

The Criminal Procedure Code provides under Section 357 compensation to the victims of offences as one of the remedies to set right injury both mental and physical suffered by them. The injury suffered cannot by quantitatively measured. Some jurist has also argued that remedy of compensation is within the purview of Tort law and the Criminal law cannot interfere with this remedial measure.

Another view taken by criminologist is that Criminal law has for long been focusing its attention only on protecting the interest of the accused and nothing is done to the victim once the punishment is imposed on the accused. But of late the study of Victimology has gained momentum and the present thinking is to bring legislation dealing with compensation to victim.

Meanwhile the courts have to rely on Sec.357 Cr.P.C. whenever the question comes regarding compensating the victim.

In Rathinam v. State of Gujarat a fit case which, demonstrated the lawlessness and brutality of the police officers in which, a tribal woman, was allegedly raped in the presence of her husband by the police officers. A

78 1993 (2) Scale 631.
commission was constituted by the Supreme Court to report on the matter. The matter came up for hearing on April 2, 1993. Some of the inquiries were concluded while others were still pending. At an earlier date when the matter came up to the court the State Government filed an affidavit to explain the delay. The court expressed discontent and ordered the Government to complete the enquires in an expeditious manner and post the matter after five weeks. It observed that many enquires were pending over last several years and that reasons assigned for delay in respect to each of the inquiries were not satisfactory. The court made the following directions:

(i) All the enquires pending as on today shall be concluded within three months subject, of course, to any order of stay granted by a competent court on or before this date. We direct that the said enquires shall proceed unhindered here after and shall not be stayed by any court or tribunal hereinafter.... any delay or violation in this order, it is made clear, shall be viewed seriously and persons responsible therefore shall be answerable.

(ii) A sum of Rs.50000/- shall be paid as interim compensation by the state of Gujarat to the victim of rape. Smt.Gunloben wife of Hanna Ranjit...

The Rathinam's case clearly demonstrates the way in which the State Machinery functions in dealing with rape cases. The victims of rape are put to insurmountable hardship, humiliation and mental agony. If a public servant is involved in the commission of the crime suspicion arises in the

79 Ibid.
way in which the enquires are conducted belatedly. The Supreme Court of course directed that compensation be paid to the victim of rape for the delay in conducting the trial. The Law Commission in its 172nd Report has suggested to fix criminal liability on the public servant when the investigation is not done properly.

In Bodhi Satwa Gautam v. Subhra Chakraborty the facts of the case as outlined in the reported decision discloses that the petitioner was not at all charged for the offence of rape. He was charged under Sec.312 (causing miscarriage) 493 (cohabitating with the girl deceitfully inducing a belief of lawful marriage, 496 (fraudulent marriage ceremony; 420 (cheating) and 498-A (subjecting his wife to cruelty) of the IPC. The judiciary delved into the offence of rape laws and directed to award interim compensation. It held:

"If the court trying an offence of rape has jurisdiction to award the compensation at the final stage there is no reason to deny to the court the right to award compensation which should also be provided in the scheme. The jurisdiction to pay interim compensation shall be treated to be part of the overall jurisdiction of the court trying the offences of rape which is an offence against the basic human right it is as also the Fundamental Right of Personal Liberty and life."

---

80. Law Commission of India 172. op.cit., Sec 166.


82. Ibid ,p.923.
In Delhi Domestic Working Women’s *Forum v Union of India and Others*\(^{83}\) the Apex Court stressed the need to set up Criminal Injuries Compensation Board to compensate victims of rape. It also directed the National Commission for Women to formulate a scheme within six months from the date of judgement and the Union of India to examine it and take necessary steps for its implementation. The responsibility to award compensation should be placed on the courts in case of conviction. When the offender is acquitted then the Criminal Injuries Compensation Board should pay the compensation. It is heartening to observe the change in the judicial attitude towards rape victims and more particularly in granting compensation to them at the Apex Court level.

The counsel for the National Commission for Women in response to the prayer, that the commission must engage themselves in framing appropriate schemes and measures said that it was beyond the mandate given to the National Commission for Women. The Supreme Court summarily rejected the argument of the National Commission for Women and held that this was clearly within the provision of Section 10 of the National Commission for Women Act 1990.

The Section lays down that the National Commission for Women shall perform all or any of the following functions:

\(^{83}\)1995 1(SCC) 14.
(a) Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws.

(b) Call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities so also recommend strategies for their removal.

The observations of Justice Anand in State of Punjab v. Gurmit Singh\textsuperscript{84} are pregnant with meaning and jurisprudential thoughts of victim justice. The Court held:\textsuperscript{85}

"In this case we have while convicting the respondents imposed for reasons already set out above the sentence of 5 years R.I. with fine of Rs.5000/-... Therefore we do not in the instant case, for those very reasons consider it desirable to award any compensation in addition to the fine already imposed, particular as no scheme also appears to have drawn up as yet".

Hence the pressure is slowly mounting to set a scheme to decide the compensation for victims when the conviction of the offender takes place and by setting the Criminal Injuries Compensation Board to decide whether or not conviction has taken place and award compensation suitably.

In State of Karnataka v. Krishnapa\textsuperscript{86} the Trial Court imposed a sentence of 10 years R.I. and a fine of Rs.3000/- and in default of payment

\textsuperscript{84}AIR 1996 S.C. 1393.

\textsuperscript{85}Ibid ,p.1404.

\textsuperscript{86}Op.cit., p.75.
of fine to further undergo 6 months RI for the offence under Section 376 IPA. It was directed that in the event of recovery of fine the entire amount should be paid to the victim. When the High Court reduced the sentence to 4 years the Supreme Court stated that the sentence be enhanced to 10 years and the fine that has been imposed to be maintained.87

The Supreme Court’s attitude to award compensation to victims of crime demonstrate a tremendous concern shown by the judiciary in dealing with rape cases. However the right signal shown by the Supreme Court should reach the High Court and other Lower Courts. Parliament should also act for evolving a new legislation, which will deal with compensating the victim of rape and other related crimes against women.

5.4.3 Inconsistent Decisions in Dowry Death Cases

In a typical case of bride burning Kailash Kaur v. State of Punjab,88 the husband was acquitted by giving him the benefit of doubt. The mother-in-law was convicted but since no appeal was preferred by the State against the acquittal of the sister-in-law the Supreme Court refused to deal with that issue.

87 Ibid., p.84.

88 AIR 1987 S.C. 1368.
In *Lichma Devi v. State of Rajasthan*\(^9^9\) the Supreme Court observed that when two different opinions to the guilt of the accused are given by two different courts ordinarily the proper sentence will not be death but life imprisonment. In *Ashok Kumar v. State of Rajasthan*\(^9^0\) caution was the watch word of the Apex Court as it was also a case of appeal against acquittal.

Inordinate delay in conducting the trial was taken as a factor for acquitting the accused in *Brijlal v. Premchand*.\(^9^1\) In *Ashokkumar v. State of Haryana*\(^9^2\) a noteworthy case where in spite of clear evidence that the accused had committed the murder of the deceased the Court acquitted him on the ground of inadequate circumstantial evidence. The court here failed to invoke the provision of Sec.113B of the Evidence Act. *Brijlal v. Premchand*\(^9^3\) is a case where the Supreme Court had rendered an inappropriate judgement acquitting the accused on the ground that more than 11 years had elapsed since the High Court had acquitted the accused and he was leading a settled life and not only that he had already undergone imprisonment for 10 months. The court here considered only the fact of

---

\(^9^9\) *AIR 1988 S.C. 1785.*

\(^9^0\) *Op.cit., p.2134.*

\(^9^1\) *AIR 1989 S.C. 1661.*

\(^9^2\) *1986 Cr.L.J. 1963.*

\(^9^3\) *Op.cit., p.1661*
‘settled life’ of the accused. It tried to justify the delay on its part by enhancing the amount of fine and thus set right the imbalance of justice to the victim. In what way the fine would console the victim who committed suicide is a question to be raised. Judgement of this kind will not create any deterrent effect on the many husbands who continue to squander money from the in laws. The decision shows that by paying fine they can easily escape imprisonment.

The Court observed:

"The degradation of society due to the pernicious system of dowry and the unconscionable demands made by greedy and unscrupulous husband and their parents and relatives resulting in an alarming number of suicide and dowry deaths by women has shocked the legislative conscience to such an extent that the legislature has deemed it necessary to provide additional provisions of law, procedural as well as substantive, to combat the evil and has consequently introduced Section 113A and 113B in the Indian Evidence Act and Section 498A and Section 304B in the Penal Code".\(^\text{94}\)

It is submitted that the above observation of the court seems unnecessary considering the fact of acquittal of the accused because it serves no other purpose than mere verbosity.

In the case of Public Prosecutor High Court of A.P., Hyderabad v. Tota Basava Punnaiah and Others\(^\text{95}\) the accused and others were charged

\(^94\)\text{Ibid.}, at p.1669 Per Natarajan.

\(^95\)1989 Cr.L.J. 2330.
under Sections 302, 304B, 201 and 498A I.P.C. The High Court instead of finding them guilty under Section 302 and 201 I.P.C. found them guilty under Section 304B and 498A only and sentenced them to undergo seven years rigorous imprisonment. In *Atula Ravinder and Others v. State of Andhra Pradesh*\(^96\) is a case where the court instead of invoking Section 304B of the I.P.C. invoked Section 498-A of the Penal code and awarded a reduced sentence of two years imprisonment.

The courts have been showing a sympathetic view when the accused is a woman. This can be illustrated by *Smt. Shanti and another v. State of Haryana*\(^97\) The two accused, the mother-in-law and the sister-in-law was found guilty of murder. But Supreme Court opined that minimum sentence of seven years rigorous imprisonment would serve the ends of justice and set aside the life imprisonment. *Vemuri Venkateswara Rao*\(^98\) is also a similar case where the court acquitted the sister of the accused though there was clear evidence to show that she also participated in the harassment of the deceased.

In *Bhagwant Singh v. Commissioner of Police*\(^99\) the court criticised the method of investigation. Reflecting the social malady the court

\(^{96}\text{AIR 1991 S.C. 1142.}\)
\(^{97}\text{1991 Cr.L.J. 1713.}\)
\(^{98}\text{1992 Cr.L.J. 563.}\)
\(^{99}\text{AIR 1983 S.C. 826.}\)
suggested that there should be special magisterial machinery for the purpose of the prompt investigation of such incidents and efficient investigative techniques and procedures hereto be adopted for the expeditious investigation of such cases.\(^{100}\)

In *State (Delhi Administration) v. Laxman Kumar and Others*\(^{101}\) the Trial Court awarded death sentence; the High Court acquitted the accused but the Supreme Court reversed it and awarded life imprisonment. The Supreme Court was of the view that though in suitable cases of bride burning death sentence may not be improper but the facts of the case, especially acquittal at the hands of the High Court and the time lag, the court thought that it was not proper to award them death sentence.

The activist approach of judiciary in protecting burned wives can be seen in the case of *Joint Women’s Programme v State of Rajasthan & others*\(^{102}\). Here, by way of interim order the court directed the state officials that the investigation should be conducted by an officer not below the rank of superintendent of police. The court also directed both the States of Rajasthan as well as Harayana to create a special dowry cell at the state

---

\(^{100}\) *Ibid.*

\(^{101}\) AIR 1986 S.C. 250.

level to investigate into the dowry deaths through specialised investigative units. The court has done a commendable job by giving this direction.

A deterrent view was taken by the court in the case of *P.Bikshapathi and other v. State of A.P.* The court observed that considering the spirit and object and the changed circumstances necessitated for introducing Section 113A in the Evidence Act, the courts should shed its conservative approach in appreciating cases relating to suicidal deaths of married women or dowry death. Anti social crimes, if proved, must be dealt with severely. The sentence would lose its efficiency as a deterrent sentence if it were too lenient.

The case of *State of Punjab v. Iqbal Singh* established that dowry death can occur even after the prescribed period of seven years and employment of wife is no sure remedy to dowry harassment. The court expressed serious concern over the increasing number of such deaths while it observed:

> The legislative intent is clear to curb the menace of dowry deaths etc. with a firm hand. We must keep in mind this legislative intent. It must be remembered that since such crimes are generally committed in the privacy of

---

103 *Ibid* at p.2062.

104 1989 Cri. L.J. 1186.


residential homes and in secrecy, independent and direct evidence is not easy to get.  

A hard view of the judiciary is reflected in the case of Omprakash v. State of Punjab where the court observed:

It is the duty of the court in a case of death because of torture and demand for dowry to examine the circumstances of each and evidence adduced on behalf of the parties for recording a finding on the question as to how the death has taken place.

The callous attitude of the prosecution in not examining the investigating officer led to the acquittal of the husband and his relatives in the case of Arvind Singh v. State of Bihar

The appeal in question deals with the death of a young woman by the husband, father-in-law, mother-in-law and brother-in-law under Section 304B of the Indian Penal Code and 498A/34 together with 120B of the Indian Penal Code. The Sessions Court convicted the accused and his relatives for the offences. The High Court on appeal however found the husband guilty for murder and his conviction under 304B had been converted to Section 302 IPC and the conviction under Section 498A IPC was maintained.

\[108\] Ibid., at p.1537 per A.M. Ahmadi, J.

\[109\] AIR 1993 SC 138 A similar view was also adopted in Kishore Kumar v. State 1993 Cr.L.J. 1253.

\[110\] Ibid. at p.141 per N.P. Singh, J.

\[111\] AIR 2001 S.C. 2124.
The Prosecution case was kerosene was poured all round the 'body of the woman and thereafter she was burnt to death alive. The FIR recorded that she was tortured in order to attract Section 498A IPC together with Section 304B. It was observed by the High Court that the FIR was found to be interpolated and on this ground acquitted the accused persons under 304B.

The High Court over looked the issue of non-examination of Investigation officer. The charge under Section 304B was converted to 302, which is a severe offence when compared to Section 304B.

The Apex Court observed:\textsuperscript{112}

"So far as the husband is concerned the High Court converted the charge from Section 304B to 302 on the ground that the only motive of the murder could be attributed to the husband who must be interested in committing such offence so that he can perform another marriage — This is rather a far-fetched assumption without any cogent evidence available on record".

The court further pointed out that on heinous activities attributed to the husband, on assumptions alone without any witness being examined and without any evidence in support of it the husband cannot be convicted. It stated:

"Presumptions and assumptions are not available in criminal jurisprudence and on the wake of the aforesaid we are unable to lend concurrence of the assumptions of the High Court as recorded herein before in this judgement".

\textsuperscript{112}Ibid., p.2132.
Again the defence story of milk being boiled in the kitchen and burst has been the cause of injury has not been taken as the cause by the Lower Court and High Court. The Supreme Court while pointing that the prosecution has failed stated:

"As the experience goes this unfortunate trend has turned out to be a growing menace in the society and does not warrant any sympathy whatsoever but that does not however mean non adherence to even the basics of the law. When the parents arrived the girl was lying on the bed and without there being any evidence as the state of the linen, the cot and the surroundings. Is this an omission without having any impact on the entire prosecution case?"

From the cases analysed we can state that judiciary has taken the right path though in some cases it has stuck to its conservative approach.

5.5 Courts to become more sensitive to Sexual Harassment and Eve Teasing

Like rape and dowry death sexual harassment and eve teasing are crimes, which are difficult to prove in a court of law. Lack of evidence and social stigma prevent the victim from complaining.

Eve teasing is a compoundable offence. In Ram Asray v. State of U.P.113 the accused was punished by the Trial Court under Section 354 IPC. He filed a revision petition and while it was pending he persuaded the woman to forgive him. The Court thereafter allowed the offence to be compounded. Of late more and more cases of eve teasing are reported. A

113 1990 Cr.L.J. 405 All.
more effective way to deal with this problem would be to make the offence non-compoundable.

Another case which generated lot of controversy is K.P.S.Gill’s case of sexual harassment Rupan Bajaj a senior I.A.S. Officer. The stand taken by Mr.Gill was that it was not such a serious matter to be taken to a court of law. The High Court also seemed to agree with the attitude of Mr.Gill. But the Supreme Court made him guilty of harassment assault. The Apex Court has thus become sensitive to the increasing sexual assaults on women.114

5.6 IMMORAL TRAFFIC (PREVENTION) ACT - FUTILE EXERCISE

In an attempt to curb prostitution the SITA was amended in 1986 and renamed as Immoral Traffic (Prevention) Act. Under the new Act the land owners, tenants and occupants of the premises may not escape from punishment for brothel keeping under the defence of ignorance. The punishment for living in the earnings of the child prostitute has been increased.

There is an increase in the prison term for offenders convicted for procuring minors. Life imprisonment is the maximum punishment ordained when it is committed against minors or children. Provisions for protective homes and corrective homes for the safe custody of children and special

114 See Chapter 4, Note 70, Supra.
Courts for their speedy trial are some of the welcome changes that are sought to be achieved by the new Act.

While the PITA seeks to deal with adult prostitutes the Juvenile Justice (Care and Protection of Children) Act 2000 has made elaborate provisions for the proper care, protection, and treatment of child, who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts, who is found vulnerable and is likely to be inducted into drug abuse or trafficking, who is being or is likely to be abused for unconscionable gains. Such children are covered under the definition of ‘child in need of care and protection’, and the Juvenile Welfare Board treats them. While remarking about the Juvenile Justice Act 1986 it was stated that the ‘main objective of this legislation is to use the legislative measures as a last resort. As far as possible while the law enforcement agencies while meeting his/her needs would separate the child from the mother or legitimate guardian only on justifiable grounds’.

Creation of rescue homes to the victim is noteworthy feature of the law relating to prostitution. Though these provisions are, progressive, enormous practical difficulties are found by these institutions day in and

---

115 Juvenile Justice (Care and Projection of Children) Act, 2000, Sec.15.

It is hoped that the new enactment Juvenile Justice Act 2000 will bring down the difficulties. In *Upendra Bakshi v. State of U.P.* it was found that the inmates of Agra protective homes were living in inhuman and degrading conditions in blatant violation of Article 21 of the constitution.\(^{119}\) The Supreme Court had appointed a team to investigate the truth about the homes. But the conditions of most of the rescue homes of the country are still miserable.

Cases against the racketeers and the kingpins of prostitution business get snowballed due to lack of evidence and blaming and counter blaming by the prostitute and the police. It is worthwhile to consider the suggestion of social workers and women’s organisations to legalise brothels and issue licences to the prostitution.\(^{120}\) In recent years the AIDS scare and the consciousness of sexually transmitted disease has inspired people working in the field to learn more about prostitution.

A heavy responsibility is placed on the police, judiciary and the lawmakers to curb the increasing rate of these crimes. While dealing with these crimes, they must understand that they can effectively provide safe

---

\(^{117}\) *Ibid* p.,224.

\(^{118}\) (1983) 2 SCC 308.

\(^{119}\) *Indian Express* March 8, 1989, p.5.

environment for women, improved and conducive living conditions and security in life.\textsuperscript{121}

\textsuperscript{121}Ibid, p.276.