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Dowry Deaths and Access to Justice

Rani Jethmalani and P.K. Dey

The Purpose of this Study

This study seeks to keep alive the struggle for justice by recapturing the process involved in three cases WARLAW [1]has conducted in the courts. It records the battles within and outside the courts in the hope that these will provide a meaningful understanding of the dynamics of the legal process. In doing this we are aware that these efforts are mere drops in the ocean and can provide little solace for those whose lives have been extinguished. If it provides introspection on the inadequacies of the judicial method and enables us to construct a feminist theory which would have some impact on the aspiration of women for justice it will have served a useful purpose.

We have chosen dowry related violence to highlight the continuing political insignificance of women in a patriarchal culture because we believe it allows an understanding of the underlying malaise within Indian society of which dowry is only a manifestation. It is our belief that women can have no autonomy and self-esteem unless relationships are organised in a compassionate, nurturing and egalitarian way and that material resources available are equitably shared, controlled and distributed within the family.

We are acutely aware that accomplices in dowry crimes have been women, both mothers-in-law and sisters-in-law. Courts have sometimes convicted both. This too needs analysis. We have offered our insights that women who internalize Patriarchy act and behave as patriarchs. The oppressed behave as oppressors. The cases chosen in the study are the following:

Satya Rahi Chadha's case [2]

Sudha Goel'S Case [3].

Tripta Sharma's case [4].

We refer to these "cases" generically though within each of these cases there have been a multiplicity of legal proceedings such as Criminal Revision Petitions,

Special Leave Petitions under Article 136 and Writ Petitions under Article 32 of the Constitution of India, appeals under the Criminal Procedure Code, and Contempt Petitions in the Supreme Court of India. All these cases provide invaluable material in a complicated area of criminal law and contemporary society. Dowry offences are committed within the four corners of a house making detection difficult. Where there has been detection of crime it is due to vigilant and impartial police investigation. Though corruption and manipulation by the police is the order of the day, these cases will provide reflection on the following recurring but critical questions:

1. Whether the dowry law has failed to deliver justice to women, i.e. is there an inherent weakness in the law or in the appreciation of law?
2. Does access to justice depend on a different construction of the law and/or its interpretation by judges?
3. Is there a failure only of the law or of existing mechanisms such as the courts, the investigating agencies, police, doctors, forensic laboratories, civil surgeons, prosecutors, lawyers and community?
4. Can poor women litigants afford such expensive justice in view of the elaborate set up of the courts and the legal process?
5. Do we need legal literacy to empower women?
6. Do we need to experiment with juries, panchayats, Lok Adalats or special courts?
7. Do we require a new criminal jurisprudence shorn of the inherited principles of common law and criminal jurisprudence more suited to the needs and requirements of women in the context of the prevailing socioeconomic situation?
8. Whether only sustained protests by women's organisations have led to populist gestures by governments?
9. Do we require a women's movement with a sustained national agenda for women?
10. Whether the media i.e. television, radio have strengthened or weakened access to justice?

11. Whether the laws of contempt are designed to suppress the right to free speech of women?
12. Whether political will or leadership is a precondition for any catalyst for social change and gender justice?
13. Whether we require an interdisciplinary approach in order to understand and analyse the cause of violence?
14. Whether or not judges are biased and intervene more on the side of the accused than on the side of vulnerable victims?
15. Whether by "fetishizing" the law we have ignored the real needs of victims and their families for supportive structures, compensation, productive employment?

This study will attempt to answer these questions by an analysis of case law. It will focus primarily on the offence of dowry deaths i.e. Section 304-B introduced by the Dowry Prohibition (Amendment) Act, 1986 and of Section 306 of the Indian Penal Code, and to some extent on Sections 2,3,4 of the Dowry Prohibition Act, 1961 as amended.

"Dowry" Misconceptions and Early Origins

"Dowry" is, and has always been essentially, that property which has been obtained under duress, coercion or pressure. It is in fact property extorted from the father or guardian of the bride by the bridegroom, his parents or relations. It does not consist of voluntary gifts given to the bride and bridegroom. The confusion that "dowry" is a concept of Hindu Law has arisen from the concept of "Varadakshina" [5] which was associated with an approved Hindu marriage considered as "Kanyadaan". [6] Marriage was considered a sacrament and not a contract under Hindu Law. Kanyadaan being essentially the gift which the father of the bride gave to the father of the bridegroom. The Dharmshastras, the ancient Hindu Law texts laid down detailed qualifications and qualities that bridegrooms must possess and to whom presents in cash or kind known as "Varadakshina" were to be given. Both Kanyadaan and Varadakshina were considered meritorious acts. The presents that were given to the daughter on the occasion of marriage by her relations and friends constituted her "stridhan" i.e. her separate property. Varadakshina was given voluntarily to the groom and there was no compulsion. Obviously it was his property. The modern practice of dowry has no resemblance to the original concept contained in Hindu Law as it originated in ancient times. [7] In fact it is a manifestation of the political, economic and cultural insignificance of women both in her natal family and in

the family in which she enters in marriage. Having always been considered an economic liability within her natal home, she is considered a temporary visitor until she departs in marriage to her husband's home. Dowry has to be given so as to compensate this non-productive being, even when the woman is educated and has her own job and is not economically dependent on her husband. The culture of conspicuous consumption has reached such frightening proportions that dowry has permeated even those communities and classes which traditionally did not accept dowry. They are now doing so in order to achieve social mobility and status.

A Joint Committee appointed by the Houses of Parliament to examine the working of the Dowry Prohibition Act in 1980 found that dowry had permeated all classes, communities, and religious groups and castes. [8] It noted with distress that education had no liberalising effect on the minds of people. In fact the more educated people accepted and insisted on dowry. The Committee recommended amendments to the Dowry Act of 1961 and in the Indian Penal Code. Amendments were brought into effect by the dowry Prohibition Amendment Act, 1983 and Criminal Law Amendment Act, 1986.

Relevant Legal Provisions of Dowry Offences

"Wife burning: that atrocious species of murder horrendously escalating in some parts of this country is the shocking crime proved, according to two courts, by the prosecution in this case.

The terrible in this case taken place in the house and in the presence of the husband who has been convicted. We hardly see any reason for interfering with this conviction, and would have been shocked ourselves if any other course had been adopted either by the trial court or by the High Court. Genderjustice has a high place in Indian Criminal jurisprudence. Dismissed." [9]

Alarmed by the increasing number of dowry deaths, the legislature introduced the following amendments:-

The Dowry Prohibition (Amendment) Act, 1986 (No. 43 of 1986).

(1) "304-B. Dowry Death (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death" and such husband or relative shall be deemed to have caused her death.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life." (2) Section 113 A of the Indian Evidence Act. "113A. Presumption as to abetment of suicide by a married woman-When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband."

(3) The Criminal Law (Second Amendment) Act, 1983 (Act No. 46 of 1983).

"Section 498A. Husband or relative of husband of a woman subjecting her to cruelty: Whoever, being the husband or the relative of the husband of a woman subjects such woman to cruelty, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation- For the purpose of this section, 'cruelty' means- (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security, or is on account of failure by her or any person related to her to meet such demand."

(4) Section 113-B of the Indian Evidence Act reads: "113 -B. Presumption as to dowry death. When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.- For the purposes of this section, "dowry death" shall have the same meaning as in Sec. 304 -B of the Indian Penal Code (45 of 1860)."

(5) In Section 2 of the Dowry Prohibition Act, 1961 as amended, "dowry" is defined as under-

"Definition of "dowry"- In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

by one party to a marriage to the other party to the marriage; or

by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before (or any time after the marriage) in connection with the marriage of the said parties, but does not include dower or 'mahr' in the case of persons to whom the Muslim Personal Law (Shariat) applies." These amendments are required to be read with the following relevant provisions:- (1) Section 107 "107. Abetting of a thing: A person abets the doing of a thing, who- Firstly - Instigates any person to do that thing; or

Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1: A person who, by willful misrepresentation or by willful concealment of a material fact which he is bound to disclose, voluntarily cause or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."

(2) Section 302, Indian Penal Code: "302. Punishment for murder: Whoever commits murder shall be punished with death or imprisonment for life and shall also be liable to fine."

(3) Section 306, Indian Penal Code: "306. Abetment of suicide: If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

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

Women and the Constitution

The low status of women sanctioned by social custom exists inspite of the egalitarian vision of women expressed in the Indian Constitution.

The Constitution of India assures equality for both sexes. Article 14 of the Constitution states as follows: "Article 14- Equality before law -The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." Article 15 prohibits discrimination on the basis of sex, but permits discrimination in favour of women. It states as follows:- "Article 15(1)-The State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them.

"Article 15(3)-Nothing in this article shall prevent the State from making any special provision for women and children." Some Directive Principles of State Policy of the Constitution of India apply to women specifically. Directive Principles contained in Part IV of the Constitution are guidelines for the State and are not justiciable. They are set out in Article 39:- "Article 39: Certain principles of policy to be followed by the State: The State shall in particular, direct its policy towards securing:

- a) that the citizens, men and women equally have the right to an adequate means of livelihood.
- b) that there is equal pay for equal work for both men and women.
- c) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength."

"Article 42: Provision for just and humane conditions of work and maternity relief The State shall make provision for securing just and humane conditions of work and for maternity relief" Part 4A of the Constitution which contains the Fundamental Duties was introduced by the 42nd amendment and enacted during the emergency when Mrs. Indira Gandhi wanted legitimacy for her government and also to make a gesture to women during the International Decade for Women in 1976. This chapter does not create rights but enjoins duties. It has been used effectively in invoking intervention and access to justice for and on behalf of women. The courts till today have not decided the scope and parameters of Fundamental Duties. It is hoped that Article 51 A Part 4A will make enforceable those responsibilities and principles that have not been enforced because of the bar in Article 37 of the Directive Principles.

Personal Law

The Constitution promises equality but a parallel regime of personal laws prevails and is justified on the ground that they are permitted in view of the

express guarantee of the freedom of religion under Article 25 of the Constitution of India. [10]

Constitution of Criminal Courts

Both substantive and procedural criminal laws are secular and apply to all groups and communities in the country. The hierarchy of criminal courts provided under the laws is as follows:

Section 6 Criminal Procedure Code-

"Classes of Criminal Courts: Besides the High Courts and the courts constituted under any law, other than this code, there shall be, in every State the following classes of criminal courts, namely-

- i. Courts of Sessions;
- ii. Judicial Magistrates of the First Class and in any metropolitan area, Metropolitan Magistrates;
- iii. Judicial Magistrates of the Second Class; and
- iv. Executive Magistrates."

Jurisdiction and Powers of the High Court are –

- a. Original
- b. Appellate
- c. Revisional
- d. Inherent

Under the original and appellate jurisdiction, the High Court can pass any sentence including death. The revisional jurisdiction of the court is to rectify any illegality or irregularity of a lower court i.e. the Court of Sessions and magistrates. The court of sessions tries those offences which are provided in Schedule I of the Cr.P.C. (Normally these are cases where the sentence for the offence is over 7 years). The Court of Sessions can also pronounce any sentence including death.

Social Action Litigation Under Article 32 and Article 226 of the Constitution of India

Article 32 provides the right to move the Supreme Court for constitutional remedies and Article 226 provides the right to move the High Court where there is a violation of fundamental rights or any legal right. Fundamental rights are available against the State and its instrumentalities.

The post emergency period i.e. after 1975 witnessed the growth of social action litigation in the Supreme Court which was mostly judge induced whereby the court, by enlarging the rules of locus standi, allowed persons or groups of persons, acting on behalf of those who are socially disadvantaged or who could not assert their own rights to do so by invoking the courts' power of intervention under Articles 32 and 226 of the Constitution of India. [11] Such persons however had to be bonafide persons and who were advancing a public cause.

This new jurisdiction of the court has been used effectively in dowry and dowry death cases to invite the supervision of the highest court and also to obtain orders from it directing the police to register complaints and carry out investigations promptly, honestly, impartially and effectively.

I

Mrs. Satya Rani Chadha's Case [12]

This dowry case is a cause celebre, and a landmark in public interest litigation which involved for the first time collaborative efforts of women's organisations under the umbrella of a group called "Solidarity with Women". The case articulated in the forum of the Supreme Court the disenchantment with the casual manner in which dowry cases were being investigated and dealt with by the police and the subordinate courts.

Facts of the Case

1. The deceased Kanchanbala, a 20 year old graduate from a middle class family was married to Subhash, a salesman in the Bata Shoe Company on 4.5.1978 in Delhi. Her in-laws were not satisfied with the amount of dowry given to her at the time of marriage. It is alleged that two days before the marriage a demand for dowry had been made. The parents of the girl had supplied a fridge and given an amount of Rs. 500 towards the purchase of a television set.
2. Kanchanbala was harassed by the husband, his mother, brother and two sisters and subjected to cruelty even though she was pregnant. On 15th

March, 1979 she visited her parents' home with her husband, Subhash, who demanded that on the birth of the first baby he should be given a scooter.

3. On 17th March, 1979, Kanchanbala died of burn injuries in the kitchen of her husband's home in Delhi. There were no eyewitnesses. Thereafter, the mother of the deceased, Mrs. Satya Rani Chadha lodged a report with the police at about 11.00 A.M. on 17.3.,1979 that Kanchanbala was burnt by her husband, brother, his mother Krishnawati and his two sisters Chanchal and Aruna 20 and 22 years old.
4. On 18th March, 1979, a postmortem was carried out on the body of the deceased at 3.15 P'M. The clothes worn by the deceased were burnt but there was no smell of kerosene oil on the clothes. There was only smell of kerosene oil on the scalp hair which was partly burnt. The doctors opined that death was due to shock resulting from 100% burn.
5. On 1st May, 1979, all five were arrested after the police inaction was decried by the women's organisations.
6. Later, on 8th May, 1979 bail was granted to the husband and his brother, Naresh. The plea of the husband accused was that he was employed at the Bata Shoe Company at Mathura and he was not present at the time of occurrence. Jeevanlal witness stated that as he was passing the house of the deceased at night he heard that a women had been burnt and so he went to the place of occurrence where he heard Subhash and his brother, Naresh say "the parents of the girl would know the consequences of their action."
7. Since there were no eye witnesses at the scene of offence the prosecution case hinged on circumstantial evidence and on the conduct of the accused. The police registered a case under section 302 i.e. murder and not under Section 306 - abetment to suicide. After investigation the police dismissed the case and did not file any charge sheet.
8. A case under Sections 3 and 4 of the Dowry Prohibition Act, 1961 i.e. for making a demand for dowry was also registered against the accused.

The Chronology of Frustrating Delays

The magistrate took 4-1/2 years to give his orders after registration of a complaint by the mother on 4.10.80. A Special Leave Petition directly to the Supreme Court by women's organisations was filed against the order of the magistrate for recording evidence in which he had adjourned the matter for three months since it was the only way of activating the subordinate court to expedite

the case. The Supreme Court issued notice to the State. The petition became infructuous because the magistrate by then had begun to hear the case. The Magistrate examined several witnesses before summoning the accused. It took 5 years for him to finally deliver his order on 10. 1.85. He held that there was no case against the sister-in-law and brother-in-law of the deceased. The husband and mother-in-law of the deceased were summoned for abetment to commit suicide punishable under Section 306, Indian Penal Code.

In 1985 the magistrate committed the case to the sessions. A charge under Section 306/34 was framed against the accused and his mother on 8.1.91. In all these proceedings the complainant could not have made any progress, had the counsel for women's organisations not been in the picture.

An amendment in the criminal law i.e. Section 113A was made and so the burden of proof now lay on the accused.

Further delays were caused since the accused filed a revision petition in the Delhi High Court against the framing of charges. The High Court has stayed the proceedings pending before the magistrate.

Inadequacy of Dowry Demand Definition Exposed

The difficulties encountered in establishing the "dowry" offence can be seen from the following:-

A case registered by the police for demand of dowry was dismissed by the magistrate because the demand made pertained to a gift on the occasion of the birth of the child and was therefore not a demand for "consideration" of marriage.

The State filed a revision petition in the High Court which was also dismissed by the High Court on the ground that the demand was not in consideration of the marriage as required by Section 2 of the Act (unamended).

The Petitioners contended before the learned High Court Judge hearing the case that he himself had, in another case-Ram Sarup & Ors Vs. State: Criminal Misc. Main No. 555 of 1977-decided on 14th July, 1980 as follows:

"According to this section, any property or valuable security whether given or agreed to be given at or before or after the marriage is dowry if it is given or agreed to be given as a consideration for the marriage. What distinguished a dowry from other gifts and givings, is its being in consideration of the marriage without any relevance to the time or date of the solemnization thereof. It does

not mean that demand of anything as aforesaid if made subsequent to the marriage will not be a demand of dowry within the meaning of Section 4 of the Act, if it has not been agreed upon before the marriage. Anything demanded after the marriage without having been settled before hand will not cease to be a dowry simply because one of the parties does not do so at the time of the marriage but begins at any time after the marriage to exploit the wife or her parents by making her life miserable by use of, or threat to use force, or by in suit, deprivation, or negligent, or otherwise. Such demand may no doubt as well be covered by one of the offences defined in the Indian Penal Code but will be extraction of dowry all the same if it is in consideration for the marriage; it is rather the price for ensuring matrimonial peace."

Yet the judge held in Satya Rani Chadha's case as follows:-

"Upon consideration of the matter, I find that these observations do not apply to the present case for the simple, reason that the demand was not repeated in consideration of the marriage but was made on the occasion of the arrival of the first child.

I, therefore, find no force in this revision petition and is hereby dismissed."

Thus the inadequacy of a definition of dowry demand was highlighted.

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

Deficiency and Callousness Disclosed

Mrs. Satya Rani Chadha's case shows:

1. Inadequacy of the investigating agencies. Their failure to register a case under Section 306 at the beginning led to a long drawn delay and ultimately it was the mother herself who registered a private case.
2. it shows incompetence of counsel engaged by the State since the State does not take these matters seriously.

3. It raises serious questions about the bias of the courts in providing legal aid to the accused and ignoring the claims of vulnerable complainants and victims.
4. An amendment in the law is required so that special public prosecutors at the request of the private complainant at the cost of the State are appointed to deal with gender crimes and the trial in such cases is expeditiously disposed off within one year.
5. Investigations should also be conducted by an Investigating Officer not below the rank of ACP/DCP and preferably with the assistance of counsel for the women's organisations.
6. It also highlights the need for lawyers with perseverance.

On the Positive Side

1. Women's organisations activated the complainant.
2. The case exposed the weakness of the definition of "dowry" and the lack of creative interpretation by judges.
3. The case also highlighted the need for sensitized judges to advance laws dealing with social justice. It requires bold and creative interpretation of these laws such as the one given by Justice Fazal Ali in Pratibha Rani's [13] case on the concept of stridhan where dowry articles were held to be fiduciary i.e. to be held in trust for the bride. Accordingly the Supreme Court restored the complaint filed under section 406 IPC.

The Case Contributed to Amendments

1. The definition of Dowry was amended in 1983.
2. Section 113A was added on the presumption of dowry death in 1986.

II

Sudha Goel Case [14]

This case has the following distinctions with subtle differences:

1. It is the first dowry death case in which the death sentence was awarded by the trial court to the accused i.e. the mother-in-law, the husband and his brother. This case was registered before the amendment to the Indian Penal Code which inserted Section 304B "dowry death". The accused were tried under the unamended law i.e. for 302/34 I.P.C. i.e. conspiracy to murder.

2. Two important and significant judgments were delivered on the law of contempt by the Supreme Court: (a) pertaining to contempt by women's organisations for having held demonstrations in the High Court premises and (b) contempt against the trial Judge who had sentenced the accused as he had given an interview on television and to the press.
3. A perverse judgment was delivered by the High Court in appeal against the trial court's conviction which showed a remarkable lack of understanding to the experiences and realities faced by young brides in hostile families.
4. The case exposed the diabolical plan of the accused to burn a young woman for dowry who was pregnant and who delivered a fully developed foetus at the time of murder.
5. It demonstrated that community efforts by responsible neighbours assist in meteing out punishment to the culprits.
6. It contrasts attitudes of courts to appreciation of evidence to advance justice.
7. It shows the strategies adopted by women's organisations in the High Court and in the Supreme Court.
8. It paved the way for significant amendments to the Dowry Law (such as Section 304B I.P.C.) as the existing laws were inadequate.
9. It points to the need for intervention by women's organisations to monitor and conduct dowry cases.
10. It shows that dishonest investigations can fail justice.

Brief Facts of the Case

1. Sudha Goel, 20 years, had studied upto 8th standard in school. She belonged to a middle class traders' family in Calcutta. She married the accused Laxman Kumar on 16th February, 1980 at Delhi. Laxman was a shopkeeper. After the marriage the couple resided at Ashok Vihar, a low middle class residential area in New Delhi. The elder brother of Laxman, Subhash Chander a teacher, was married to Madhu Goel, also a teacher. The couple had three children. Subhash and members of his family lived in one of the rooms in the ground floor while Laxman and Sudha lived in an other room in the same flat. The upper rooms were occupied by the two other brothers, Vinod and Ram Avatar. Laxman Kumar had two unmarried sisters who lived in Barot,

Meerut District. in U.P. with their parents, Mrs. Shakuntala and Mr. Srinivas Shakuntala, the mother was ordinarily staying with her husband at Barot but now and then came to Delhi and lived with the sons.

2. Sudha had hardly completed a month of her marriage when she was subjected to ill treatment by the accused husband, his mother and brother. They used every opportunity to taunt her for not bringing sufficient dowry. She was also expected to do more household work than she was physically capable of. Sudha was pregnant and was to deliver within a week of murder. She had been pressurized to bring Rs. 10,000 in cash, if she delivered a male child, and a scooter and fridge at her brother Ashok's marriage. As time was fast approaching for her delivery, the accused planned to kill Sudha. This was an important factor, because if Sudha had delivered the child it would have frustrated the plan of the accused to extort more money on the occasion of his second marriage, as the living child of the first marriage would have been an hindrance.
3. Sudha's two sisters, Gayatri, P.W.3 (i.e. Prosecution Witness) and Snehlata, P.W.6 were married to Pawan Kumar Goel. and Damodar Dass Gupta respectively. Pawan Kumar was living in Prem Nagar area while Damodar Dass lived in Hari Nagar, both parts of Delhi.
4. In Sudha's flat there was a small kitchen where a gas operated stove for cooking along with a cylinder was kept. A small portion of the open space in the courtyard by the side of the kitchen had been covered with asbestos sheets. Cooking used to be done there sometimes with the help of a kerosene stove as the kitchen was small. Certain other household materials, including stocks of kerosene in tins, were kept there.
5. A little after 9.00 P.M. on a cold winter night on December 1, 1980, a shout was heard from the flat. It was a lady's voice crying "Bachao-Bachao" (save-o-save). On hearing the cry, neighbours like Jaspal Singh, PW1, Satish Chopra' PW2, Ishwari Devi P.W4 ran to the flat and PW5 Tarsem Jain who was nearabout also came there. PW1 saw Laxman standing at the entrance door attempting to close it while Subhash was standing with his hand on the latch of the door which was opened to the courtyard. He and others who had collected forced their way inside and saw Sudha in a standing position but aflame. The neighbours attempted to extinguish the fire first by pulling out the saree from the body of the lady, then with a gunny bag lying nearby on the burning body, and when Satish Chopra brought a blanket, the same was wrapped around her body. After extinguishing the fire they brought Sudha to the room where Shakuntala was standing.

6. It was further the case of the prosecution that Sudha made statements to the witnesses soon after they had gathered near the flat. She started pointing to the mother-in-law as having burnt her. Sudha made the following statements according to the prosecution witnesses:
 - i. At about 9.00 PM on 1.12.90 the deceased Sudha on seeing her mother-in-law in front of her said, "this lady has put kerosene oil on me and set me ablaze" and "this lady has burnt me" when brought into the room by the neighbours.
 - ii. After some time on 1.12.1980 after 9.00 P.M. when being brought outside for being taken to hospital on seeing Ishwari Devi (PW 4) deceased said "my mother-in-law has burnt me."
 - iii. On 1. 12.80 at about 9. 1 0 PM when being taken to hospital deceased said "my mother-in-law and both these persons have grabbed my ornaments and were killing me by way of setting me on fire" and requested that her brothers from Calcutta be called.
7. Soon a taxi was brought and the three members of the family took Sudha for treatment to the hospital. On the way they picked up P.W.3 i.e. Sudha's sister and her husband. Initially the accused person had decided to take Sudha to Hindu Rao Hospital but on P.W.3's suggesting that Sudha be taken to St. Stephen's Hospital where she was being looked after for her pre-maternity care, she was taken there.
8. On 1.12.80 at about 10 P.M. it was stated before Dr. Vijay Kumar Tikka that Sudha got burnt while heating milk over a kerosene oil stove. (This too was a declaration, if made by deceased).
9. Sudha died in the early hours of 2nd December, 1980. After due investigation the Respondents were prosecuted on a charge of murder under Section 302 of IPC (304-B had not come into effect). There was no eye witness to testify that Sudha was set on fire which was the prosecution case, or to the fact of Sudha's saree catching fire accidentally as alleged by the defence. Prosecution sought to rely upon the oral testimony of witnesses who ran to the spot soon after hearing the cries of Sudha, the statements made by Sudha to various witnesses implicating the accused persons as the perpetrators of the crime, the conduct of the accused persons as deposed to by the witnesses when Sudha's clothes were aflame, the alleged torture of Sudha for some time preceding the occurrence over demands for cash and goods in kind and other circumstances on record.

10. P.W.17 the Investigating Officer, Incharge of the case claimed to have gone to the hospital and approached the doctor, P.W.18 for recording her declaration. This declaration was not signed. There was a partial thumb impression purported to be of Sudha on the document. At the time Sudha was supposed to have been given a pethedine injection. Although the doctor could have called a magistrate or himself recorded the statement, the statement was recorded by the police officer as follows:

"I was boiling milk at home when I lit the stove. The flame "leapt up" (Bhupka Utha) all of a sudden and my clothes caught fire as a result of which my body got burnt. At that time, my mother-in-law and my Jeth (Husband's elder brother) were present at home who extinguished the fire by wrapping a blanket (on me) and they brought me to the hospital. I got burnt when fire broke out all of a sudden and nobody is responsible for it. I have heard the statement and the same is correct."

According to the defence version, Sudha while trying to light the kerosene stove for heating milk for one of the children of Subhash, who was feeling hungry, had accidentally lit her saree by the stove fire which led to the incident. Laxman was away as he had accompanied Sudha's sister up to the bus stand. Subhash and Shakuntala took reasonable care to put off the fire. To prove this the defence examined five witnesses.

Trial Court

The learned trial judge accepted the prosecution version. He believed that Sudha was about to deliver a child and on account of the advanced stage of pregnancy had become somewhat immobile. Kerosene had been sprinkled on her body with a view to kill her and fire was set to her clothes at the time alleged. The relationship of Suddha with Laxman and members of his family had become strained on account of demand for more dowry and the accused had decided to do away with her before the child was born. He accepted the oral evidence of the prosecution. He also accepted the prosecution allegation that the accused persons had not taken appropriate steps and it was the neighbours who put out the fire. Accepting the charge and convicting the respondents of murder, he was of the view that the appropriate punishment to be meted was death. He accordingly sentenced all the Respondents to death. The trial court had found the conduct of both the doctor and the police officer improper and ordered their trial by the appropriate authorities. As required by the law, the trial Judge referred the matter to the High Court of Delhi for confirmation of the death sentences. The respondents challenged their conviction by preferring an appeal. The reference and the appeal were taken up together for hearing by the High Court.

The High Court discharged the reference and allowed the appeal. The Respondents thus came to be acquitted.

High Court

The High Court differed from the trial Judge on almost every aspect except that it accepted the presence of P.Ws. 1,2 and 5 at the time of Sudha's burning at the scene of offence and their role in extinguishing the fire at the scene of offence but disbelieved the statements purported to have been made by the deceased on the culpability of the accused. It accepted the written recorded declaration of the I.O. as attested by the doctor.

The Approach to the Supreme Court

The Supreme Court had to decide whether to rely upon the oral dying declarations of the deceased made to the witnesses who had seen Sudha in flames when she was brought out of the house in burnt condition in the cold winter night in December in Delhi or the written one recorded by the Investigating Officer. Obviously both could not be correct. Further, the witnesses in their statements to the police and in court had made minor but inconsequential variations in the oral declarations purported to have been made by the deceased. The Supreme Court after hearing the arguments upheld the Trial Court's judgement and set aside the acquittal by the High Court.

The Supreme Court held that the neighbours were reliable and dependable witnesses and hence their testimony on the oral declarations made by Sudha upon as corroborative material even if there were minor variations in their statements in court and in their statements to the police since there was ring of truth to them could be relied it also found that when a doctor was available there was no justification for the Investigating Officer to have recorded the statement of Sudha himself and held that the police officer had not requested the doctor to record the statement and had voluntarily done so himself.

The Supreme Court was of the opinion that the dying declaration was not evidence by itself but could be used as corroborative material on the basis of the facts and circumstantial evidence in the case. The Supreme Court's approach displayed a sensitive understanding on most, issues such as:

1. The psychological explanation by it of the letters written by Sudha to her sister-in-law which the court held, were not evidence of cordial and good relations between the deceased and the accused but were just an expression of the traditional courtesies of young brides to their in-laws.

2. The evidence of the witnesses that it clearly indicated that the accused persons appeared to be indifferent even when Sudha had been aflame. If the mother-in-law were really interested in a child being born to Sudha, an event likely to happen within a few days thereafter, she would have been terribly upset and would not have left any stone unturned to bring safety to Sudha.
3. It found that on the evidence of the prosecution witnesses it was clear that there was no sense of grief or anxiety in the conduct of the accused and therefore, the neighbours who gathered had to take the lead in the matter of providing relief to her.

Finally, the Supreme Court concluded that although the trial court had imposed the punishment of death and such punishment could be imposed in suitable cases of bride burning, in the instant case life imprisonment would serve the ends of justice. It held that:

"The next relevant aspect for consideration is what should be the proper punishment to be imposed. The learned trial judge had thought it proper to impose, the punishment of death. Acquittal intervened and almost two years have elapsed since the respondents were acquitted and set at liberty by the High Court. In a suitable case of bride burning, death sentence may not be improper. But in the facts of the case particularly on account of the situation following the acquittal at the hands of the High Court and the time lag, we do not think it would be proper to restore the death sentence as a necessary corollary to the finding of guilt. We accordingly allow both the appeals partly and direct that the two respondents, Mrs. Shakuntala and Laxman Kumar shall be sentenced to imprisonment for life. Both the appeals against Subhash stand dismissed and his acquittal is upheld. Steps shall be taken by the trial judge to give effect to this judgement as promptly as feasible."

Unfortunately the Supreme Court acquitted Subhash though his role could not be considered to be different or distinguishable from that of the accused husband or mother-in-law.

Role of Women's Organisations

Women's organisations had not participated during the trial but welcomed the conviction. It was thought necessary to watch the case in the High Court and, therefore, permission was sought to intervene on behalf of the Mahila Dakshata Samiti. [15] The court refused intervention but permitted the counsel for the Mahila Dakshata Samiti to assist the public prosecutor but not to intervene as a party. No copies of the record of the case were given to the counsel by the court.

Hence counsel was under a major handicap in rendering effective assistance to the court. However, it was crucial to ensure that the case was effectively monitored. Women's organisations were low profiled and cautious. Several representatives of women's organisations sat in court to keep track of the proceedings.

The judgement of the court was startling as the accused were acquitted and this led to demonstrations by women's organisations outside the court to register their protest. This resulted in a petition for contempt [16] being filed in the High Court against the following women's organisations:-

1. Mahila Dakshata Samiti
2. Janwadi Mahila Samiti, and
3. Karmika

A resolution of the Delhi High Court Bar Association was also passed condemning the demonstration held in the premises of the Delhi High Court. The petitions against the women's organisations were heard by Judges Rajinder Sachar and Leila Seth.

The Court held -

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

Accordingly the court felt that the ends of justice would be met by expressing disapproval of their action and it was hoped that the Respondents would moderate their activities.

In the Supreme Court 12 women's organisations, as mentioned below appeared as Petitioners in the appeal filed against the acquittal by the High Court:-

1. Indian Federation of Women Lawyers

2. Mahila Dakshata Samiti
3. Centre for Women's Development Studies
4. Saheli
5. Committee for Portrayal of Women in the Media
6. Indian Council for Family Welfare
7. Karmika
8. Manushi
9. Janvadi Mahila Samaj
10. Y.W.C.A.
11. Lawyers' Collective
12. Kalyani

All the organisations helped in drafting the petition. Several meetings were held to discuss the strategies. There is no doubt that the final outcome of the case was largely due to the active efforts of women's organisations and women lawyers who were vindicated by the court's judgment.

Finale

The saga of the Sudha Goel's case should have ended with the conviction of the accused by the Supreme Court. Eighteen months after the judgment was delivered, it was discovered that the accused had not yet been taken into custody and were still at large. This incredible state of affairs was possible only with the collusion of the police whose responsibility it was to ensure their arrest and surrender to custody after pronouncement of the Supreme Court's verdict. During the period, Laxman Kumar, accused husband, got married a second time, and had two children as well! Finally the accused were arrested.

III

Tripta Sharma Dowry Death Case^[17]

This is the case where the learned Sessions Judge, while acquitting the accused, ignored the basic principle of criminal jurisprudence as to how testimony of

witnesses is to be appreciated, accepted and rejected. The judge, wrongly appreciated the testimony of important witnesses. The witnesses who testified in favour of the defence were treated as important witnesses. The testimony of the witnesses who spoke against the defence, their testimony was either rejected on baseless grounds or treated as false. The reasoning of the learned judge was absurd and based on surmises and conjectures. The judgment was bad in law. The learned judge misread the evidence and misinterpreted the law laid down by the Supreme Court and the High Courts.

Facts of the Case

- A. That Tripta Sharma was an employee in the Ministry of Defence. She was married to Jeetender Pal Sharma, an employee of District Statistical Office, Government of Haryana, on 22.11.83 as per Hindu rites. After the marriage she was physically and mentally harassed and tortured by her husband and her in-laws for her not giving her full salary to them.
- B. That from the wedlock of the deceased Tripta Sharma and Jeetender Pal Sharma a son was born in August 1984 and a second son was born about 2 months before her death.
- C. That the deceased Tripta Sharma died an unnatural death in very mysterious and suspicious circumstances in the early hours of 30th May, 1986. The body of Tripta Sharma was badly burnt. The death was reported to the police by Mahavir Singh, District Commandant Home Guard, Ghaziabad at about 9.00 a.m. on 30th May, 1986. Thereafter, the police came to the spot and conducted an inquest inquiry and sent the body for post-mortem examination.
- D. That the police officer during investigation noticed several incriminating circumstances which he has mentioned in the case diary. The Panch (local) witnesses Raj Kumar, Sukhvir Singh and Mr. Ajay Singh Rana also stated in their statements about the incriminating circumstances, which were noticed by the Investigating Officer, which are as follows:
 - i. The room where the dead body of the deceased was lying, was quite empty, wherein on one side a cot was lying and a small bedding was lying folded thereon, which was not burnt.
 - ii. Kerosene oil was lying scattered around the dead body of the deceased which showed that Kerosene oil in large quantities had been used.

- iii. No vessel of kerosene oil was lying in the room. A container of 5 litres was lying in the kitchen, but the kitchen was at a distance of about 10 steps from the dead body of the deceased.
 - iv. There was no odour of kerosene oil in the kitchen, nor was the kerosene oil found scattered from the room of the deceased upto the kitchen.
 - v. The container of kerosene oil was lying in the kitchen properly stoppered with the lid. The container had about 1/2 or 3/4 litre of oil.
 - vi. In the room where the dead body of the deceased was found the eastern door was closed, but the western door was found open which opens towards the compound. Looking from inside, no latch was found on the door, it was in a normal condition.
 - vii. The back portion of the deceased was not found to be as badly burnt as compared to the other parts of the dead body.
 - viii. On careful examination of the dead body and the room, neither signs of struggle nor a fire were noticed. The dead body was found lying stiff.
 - ix. The northern window of the room was closed but was not bolted.
 - x. "At the time when I, Sub-Inspector reached the house, the radio was functioning at high volume inside the house. It was switched off in the presence of the witnesses of the inquest proceedings."
 - xi. "When I, Sub-Inspector reached the house, the mother-in- law of deceased Smt. Tripta Devi, namely Smt. Sumitra Rani was sitting silent and was feeding milk to the elder son of Tripta in a normal manner. The younger child was sleeping in a sound sleep in the bed room. The mother-in- law of the deceased after telling her name started weeping."
- E. That the brother of the deceased, Dharam Pal Sharma, lodged a report on 31.5.1986 at 5.15 p.m. and on the basis of such a report the police registered a case u/s 302 IPC. During the course of investigation, the police recorded the statements of various witnesses and came to the conclusion that this is not a murder but is a suicide and ultimately submitted a challan against the accused (Respondents 2 & 5) persons u/s 306 IPC i.e. abetment to commit suicide.
- F. Dr. S.N. Agarwal conducted the autopsy on the same day at about 4.45 P.M. and found that the body of Tripta was 100% burnt, the tongue was

protruding and the cause of death was recorded as shock resulting from excessive thermal burn. The prosecution did not produce this important witness. Thereafter this witness was summoned as court witness in pursuance of the Order of the Supreme Court. During the course of statement in court, the doctor stated that since the soot particles were not present in the esophagus or lungs, he opined that at the time of burning the deceased was not alive.

G. That the Sessions Judge framed charges against the accused persons under Section 306 IPC and proceeded with the trial. To prove its case, the prosecution examined 14 witnesses but did not examine the important witness i.e. Dr. S.N. Agarwal who conducted the postmortem, for reasons best known to them. After examination of the 14 witnesses the prosecution closed its evidence. The statements of the accused under Section 313 Cr. Pr. Code were recorded, and thereafter, the defence led the evidence to prove that the deceased was depressed and mentally ill and that she committed suicide due to that illness. To prove the defence, the accused examined two other doctors and thereafter the case was fixed for arguments.

Role of Mahila Dakshata Samiti

It is pertinent to mention here that in the meantime the Mahila Dakshata Samiti, a social organization engaged in handling cases of crimes against women, intervened in the matter through their lawyer, for assisting the State. A transfer petition was filed before the Supreme Court but the court refused to transfer the case. However, it allowed the application and directed the Trial Court to examine the witnesses named in the application. The court further directed that after examination of witnesses, liberty is reserved by the court to consider whether charges already framed should be maintained or altered.

That after the aforesaid directions of the Supreme Court the Trial Judge examined six witnesses as Court Witnesses:

1. Raj Kumar Goel (CWI)
2. Sukhvir Singh (CW2)
3. Ajay Singh Rana (CW3)
4. Dr. S.N. Agarwal (CW4)
5. Kranti Singh (CW5)

6. Savitri Bhuttan (CW6)

After the examination of the aforesaid six witnesses as court witnesses, the trial judge amended the charge and an additional charge u/s 302 was also framed. Thereafter, again a statement of the accused was recorded and an opportunity was given to the accused to cross examine the witnesses and to lead further evidence in their defence. The prosecution and the defence also filed certain papers.

The Verdict of Acquittal

- H. That the case of the prosecution was that the deceased was murdered by the accused persons and the defence case was that the deceased committed suicide due to depression and mental illness. There was no dispute on the points of the time and place of death. The main question before the Sessions Judge was whether it was a case of suicide, or homicide committed by the accused persons.
- I. That in this case, 14 witnesses were examined by the prosecution, two witnesses were examined by defence and the court examined six witnesses as court witnesses. The prosecution also placed on record, some documents from the District Statistical Office, Gurgaon to prove that the accused, Jeetender Pal Sharma, husband of Tripta Sharma, on the day of incident reached office at about 11.00 a.m. instead of at 7.00 a.m. and that thereafter he absconded for about 3 months. In reply to this, the accused Jeetender Pal Sharma stated that he reached office on that day at 7.00 a.m. and not at 11.00 a.m., and that due to hostile atmosphere in the office the officials of this department wrongly recorded his reaching time as 11 a.m. instead of 7.00 a.m. He further explained that he never absconded, and that he attended his office everyday and that his superior officers, due to hostility towards him, have shown him to have absconded for about 3 months.
- J. That the learned trial judge, after assessing the entire evidence on record came not only to the conclusion that the prosecution had failed to prove the case against the accused persons, but the learned Judge also held that the prosecution case is totally false and there was no evidence whatsoever to connect the accused persons with the aforesaid crime. The learned judge has held that the accused persons was totally innocent and that they have not committed the murder of the deceased, but that the deceased has committed suicide due to mental illness and depression.

The Flawed Verdict

That the conclusion of the learned judge is based on surmises and conjectures. He misread the evidence and came to a wrong conclusion. The judgment is manifestly illegal, perverse and unsustainable under law. The judgment is not based upon the legally admissible evidence. It was submitted before the learned Judge that bride burning/dowry death always took place in the secrecy of the husband's house and in such circumstances it is very difficult to get direct evidence. In such cases the few circumstances, along with the conduct of the accused is sufficient to bring the guilty to book.

The Judgment is Bad on the Following Grounds

A. Motive

- i. The prosecution case was that the accused persons committed the gruesome murder of the deceased as she was resisting paying her salary to them and further she was disobeying the accused, not to go along with her children to live with her brother.
- ii. The evidence of PW4, PW5, PW6, PW7 & CW6 established that after the marriage the deceased was physically and mentally harassed and tortured for salary money. The learned Judge misread the statement of the aforesaid witnesses and came to the conclusion that since the deceased was an earning member, her extermination would result in a loss of her salary to her husband and in-laws. The learned Judge further held that these facts deterred the accused persons from committing her murder. The petitioner submitted that the learned Judge failed to appreciate, that since the deceased was not obeying her husband and in-laws, they conspired to exterminate the deceased, so that the husband may marry another working woman or a woman from any rich family to get more money or dowry.
- iii. The learned Judge has held that there is no cogent evidence to prove the demands. There is clear and cogent evidence that the deceased was forced to give her salary to her husband and in-laws. The evidence of PW 4 to PW6 and CW6 proved the aforementioned facts.
- iv. The learned Judge further rejected motive on the ground that the deceased had two bank accounts, one in Punjab National Bank, Delhi in the name of her son, where there was an amount of Rs. 948.00 and this account was last operated in February, 1986. Another account of the deceased was in Punjab National Bank, Ghaziabad which appears to have been opened in

March 1984. This was last operated on 27.5.86 i.e. 3 days before her death when Rs. 700/- was withdrawn and the balance was Rs. 7,135.15. The learned Judge did not consider this important aspect that as per the defence, for the last 1- 1/2 years the deceased Tripta Sharma along with her husband were residing in Janakpuri, Delhi and this account was opened in March, 1984 at Ghaziabad near her in-laws residence. This shows that a conspiracy was hatched and the deceased was forced to open the account in Ghaziabad, whereas she was staying in Delhi, with a view to show that she was despositing her salary in her account.

- v. Another aspect which the learned Judge forgot to notice is that it is not necessary for the account holder to be present for operating the account either for despositing or for withdrawing the money. Anybody can deposit the money in the account but for a withdrawal, only signatures of the account holder are required and the signatures can be obtained forcibly.

Absence of Motive Not Fatal

That the learned Judge failed to notice the law laid down by the Supreme Court that the failure to prove motive is not fatal as a matter of law. Proof of motive is never indispensable for conviction. When the facts are clear it is immaterial that no motive has been proved. The Supreme Court finally held that absence of proof of motive does not break the link in the chain of circumstances connecting the accused with the crime nor militate against the prosecution case.

Medical Evidence

- i. The learned Judge has not considered that the medical evidence supports the prosecution case. The prosecution case is that the deceased was first throttled and due to shock and asphyxia she died, and that immediately thereafter, she was burnt during the fatal period. The doctor, who conducted the post mortem categorically stated that: (a) There were no soot/carbon particles in either the esophagus, trachea region, or even in the lungs. (b) The tongue of the deceased was protruding.
- ii. The doctor further stated that the presence of soot or carbon particles in either the esophagus, trachea region or even in the lungs indicates that the deceased was alive at the time of burning. The absence of the same indicates that at the time of burning she was not breathing or inhaling and her respiratory system was not working which means that she was not alive at that time.

- iii. Parikh's Text Book of Medical Jurisprudence and Toxicology, [18] (Third Edition) at page 421 says: -"inhaled smoke is seen as black particles of soot mixed with mucus covering the congested lining of air passage. The soot frequently extends deeply into the lungs... occasionally, soot is swelled and may be recovered from esophagus. These are vital signs and provide sure evidence that the person was alive at the time of burning... "
- iv. Modi's Medical Jurisprudence and Toxicology, [19] (21st Edition) at page No. 336, says: ,...if death has occurred from suffocation, the nasopharynx, trachea and bronchial tube may contain sooty carbon particles and the mucus membrane may be congested and covered with frothy mucus. Some of the, sooty mucus may trickle into the stomach... "
- v. The Cox's Medical Jurisprudence and Toxicology [20] by Dr. Bernard Knight (5th Edition) at page 323 says: "... If soot and carbon particles are found in larynx, trachea, main bronchi and smaller bronchi, then respiration must have been proceeding during the conflagration and therefore the fire was in progress during the life... "
- vi. Dr. S.N. Agarwal (CW4) who conducted the postmortem categorically stated that there were no soot carbon particles in trachea and lungs of the deceased which established that the deceased was not breathing and that she was not alive at the time she was burnt.

Rejection of Medical Evidence was Wrong

- i. The learned Judge held that the absence of soot or carbon particles would not establish that the deceased had been murdered first and subsequently set on fire with the kerosene oil. The aforesaid findings of the learned Judge is totally against the evidence on record.
- ii. The learned Judge ought to have considered another aspect of the case to determine as to whether the deceased was alive at the time of burning. According to medical jurisprudence and the doctor (CW4) who conducted the postmortem, there are three basic differences in ante mortem and postmortem burning i.e., line of redness, vesication and reparative process are present in cases of ante mortem burning. According to the doctor, the line of redness was present in this case. Parekh's text book of Medical Jurisprudence and Toxicology at pages 186 and 187 says [21]: Fatal Period: if the hanging be with a drop as a judicial hanging, death is frequently instantaneous from fracture of the cervical vertebrae (usually the third and fourth, and rarely the second), and injury to the spinal cord, although the heart may continue to beat for fifteen to twenty minutes. In other

cases, death is rapid if the case is asphyxia and least rapid if coma is responsible. If there is no injury to the spinal cord and the stoppage of air is not complete, five to eight minutes is the common fatal period.. "

- iii. The aforesaid findings of Parekh suggest that even in the case of hanging, the heart continues to beat for 15-20 minutes and the fatal period is 5-8 minutes. In the present case, the deceased was throttled and immediately thereafter, she was burnt during the fatal period, hence line of redness is present as per the postmortem report. The Judge wrongly concluded that since the line of redness was there in this case, hence she died due to burn injury.
- iv. The learned Judge failed to appreciate another aspect of the case that the deceased's tongue was protruding. The tongue may be protruded due to asphyxia caused by throttling, strangulation and hanging or suffocation due to inhalation of gases etc. In the present case, the asphyxia was not due to suffocation i.e. inhalation of gases etc., because no soot or carbon particles were found either in trachea, esophagus or lungs. This leads to the conclusion that the protruding of the tongue is due to either throttling, strangulation or hanging. The prosecution pleaded that she was first throttled which caused asphyxia and due to that the tongue protruded and- thereafter she was burnt.
- v. The learned Judge rejected the prosecution case on the, ground that there was no injury on the neck region. The Judge also rejected the doctor's evidence as there was no injury either external or internal in the neck region. The doctor said that in case of strangulation, it is not necessary for internal injuries to be present. So far as external injuries are concerned, it was submitted on behalf of the prosecution that the skin of the neck region was burnt, so the doctor could not find any external injury in the neck region. It is further submitted that according to medical jurisprudence, fracture or dislocation of cervical vertebrae is rare. The learned Judge did not consider that Garroting is one of the methods where the victim is suddenly overpowered.

"Garroting is another method that was used by Thugs around 1862 in India. Beck & Beck reported such cases in their book It is possible to overpower silently, and kill a healthy strong person single handed. A rope or a loin cloth is suddenly thrown over the head and quickly tightened around the neck Due to sudden loss of consciousness, there is no struggle. The assailant is then able to lie the ligature." [22]

Conduct of Accused

- i. The learned Judge ought to have considered the unnatural and suspicious conduct of the accused persons. The learned Judge has given a clean chit to the conduct of the accused in the face of overwhelming evidence to the contrary.
- ii. The accused persons neither provided her with medical aid nor removed her to the hospital and further, they did not inform the police. The Police was informed at 9.30 a.m. by the Commandant of Home Guard.
- iii. They did not try to save the deceased, as there were no injuries on their fingers, nor did the accused persons extinguish the fire with water or by any other means.
- iv. The accused persons in their statement u/s 313 Cr.P.C. stated that they were not in the house at the time of incident. Subsequently, some of the accused persons admitted their presence at the spot. Contradictory statements of the accused persons only suggest their involvement. The learned Judge ought to have considered that Jeetender Pal Sharma, husband of the deceased along with the deceased and the children came to Ghaziabad from Delhi to meet the other family members 2-3 days before the incident as per the statement of PW5 and further, they were there the previous night till the next morning. It is admitted that the accused persons were present during the previous night and in the morning.
- v. The learned Judge has held that the husband and brother were not present in the house at the time of incident and that the prosecution could not prove their presence in the house. It is true that the prosecution could not prove through direct evidence that these two accused were present in the house, but there is strong circumstantial evidence which conclusively proves that these accused were present in the house during the early hours of the date of the incident.
- vi. The husband reached his office on that very day at 11 a.m. instead of at 7 a.m., and thereafter absconded for a period of three months. No proper explanation was given by him about reaching the office late. On the contrary, the accused made a false statement that Governments records are manipulated and forged under some pressures. The Judge did not discuss this point at all.

Improper Appreciation of other Evidence.

The Judge rejected the observation of the Investigating Officer (PW10) regarding the place of incident. The Petitioner submits that after framing the charge u/s 302 this witness was further summoned, but unfortunately he died, so he could not appear before the Court to give his evidence in support of his observations about the place of incident. But three witnesses, who are also panch witnesses, fully supported these observations of the Investigation Officer (I.O.) but the Judge did not consider them. On some flimsy grounds, the Judge rejected the testimony of the witness and observed that these are afterthoughts and misconduct of the I.O. with a view to create some circumstances to establish a case of murder.

1. The learned Judge illegally and arbitrarily rejected the evidence of CW1, CW2 & CW3 who fully supported and corroborated, the observations of the I.O. of the scene of the offence, on the ground that their 161 Cr. P.C. statement was not recorded. This order is palpably false. In fact, their 161 Cr. P.C. statement was recorded by the I.O. on 1.6.1986 and the learned defence counsel cross-examined these court witnesses in reference to their previous statement recorded u/s 161 Cr. P.C. The order dated 6.9.1991 passed by the 4th Additional Sessions Judge established that their 161 Cr. P.C. statement was recorded.
2. The learned Judge ought to have considered the defence stand that Smt. Tripta committed suicide by burning herself. Thereafter, the defence changed the version that the deceased died due to heart-failure and that she in fact died the moment she lighted the match stick to bum herself. So, the case of the prosecution as well as the defence is that at the time of burning she was not alive and was burnt soon after the death. In view of the changed version, the presence of line of redness has become insignificant as according to the case of both sides, the bum is immediately after the death. Unfortunately, with respect to the Judge, he did not consider this aspect of the case at all.
3. The Judge illegally considered the contents of the case diary and thereby held that the accused husband was not present in the house. The Judge considered the statement in the case of diary of Smt. Santosh and according to that statement, husband was in the house in Janakpuri and had left for office around at 8.30 a.m. The learned Judge is totally wrong on the aspect for the following reasons:

A statement of the witness recorded in the case diary could not be used to contradict the substantive evidence.

The Judge considered the statement of Mr. Vinod Kumar written in the case diary and used the same to discredit the substantive evidence of the prosecution witnesses. Before returning a finding of the said statement in the case diary, the Judge was bound by law to summon the said Mr. Vinod Kumar under Section 311 Cr. P.C.

The Judge has held that the case diary statement of Smt. Santosh and Shri Vinod Kumar proved that at 8.30 a.m. the accused (husband) was there in Janakpuri, Delhi and as such he could not be present at the scene of offence in Ghaziabad. Unfortunately, the learned Judge forgot to consider Section 313 Cr. P.C. statement of this accused himself who categorically stated that at 7 a.m., he was at Gurgaon in his office which is in the State of Haryana.

The findings of the Judge that the statement of Smt. Santosh and Shri Vinod Kumar could prove that he was not present at the spot, and in fact was in Janakpuri, Delhi at the relevant time, is palpably wrong.

4. The Judge adopted dual standards while appreciating the evidence on record. The evidence of witnesses which were in favour of the accused were accepted, but those that were against them were rejected for insignificant reasons. The Judge in one place admitted the doctor's evidence where he stated in favour of the accused. Line of redness and the other evidence of the doctor was rejected where he spoke against the accused regarding internal injury in the neck region. Those who stated a little bit in favour of the defence were treated as important witnesses but those who said something against the defence were treated as valueless or their testimony was rejected or declared to be false. In this regard, it is important to mention the statement of CW6, who was a material witness, but the Judge rejected the evidence of this witness on the count that her evidence was not material.
5. The Judge illegally rejected the evidence of PW4, PW5, PW6, PW7 regarding the motive of the crime as there were insignificant, minor variations in their statements regarding the taking of salary of the deceased by the accused persons. The prosecution case was that the husband and in-laws used to take her salary. That fact was proved by the prosecution, but there were minor variations regarding particular accused who used to take the salary. The rejection of the entire evidence of these witnesses only on the ground as to who used to take the salary was totally perverse. The evidence of the other prosecution witnesses was rejected on the basis of surmises and conjectures.
6. The Judge considered the evidence of defence to be very important and held therefore that the deceased was very much depressed, and in a fit of depression she committed suicide. Two doctors DW1 & DW2 nowhere stated

that her condition was very serious. The word "very serious" was invented by the Judge himself. DW1 herself stated she was not a psychiatrist and she further said she was not a specialist in mental cases. DW2, the other doctor, has said that her condition was not serious.

7. The Judge ought to have noted that two months before her death Tripta Sharma gave birth to a son and she was mother of two sons. She was happy. She was an employee of the Defence Ministry and there was no complaint that she was mentally sick, otherwise she would have been terminated from service. After three months of maternity leave she was fully examined and found fit by the government medical officer and thereafter she was permitted to rejoin her duties. The husband said that he took his wife on 19.5.86 to RML hospital for medical check up, whereas as per his official records he was away at that time on an official tour in Haryana. All the aforementioned circumstances suggest that she was not mentally ill or depressed and that this was only a fabricated story to give the case the colour of suicide. An appeal is pending in the High Court in Allahabad against the order of the Sessions Court.

Conclusion

These cases speak for themselves. Dowry will not vanish overnight by law alone. At a joint sitting of both Houses of Parliament, the Prime Minister, Mr. Jawaharlal Nehru on Dowry Prohibition Bill in May 1961 observed: "Legislation cannot by itself normally solve deeprooted social problems. One has to approach them in other ways too, but legislation is necessary and essential, so that it may give that push and have that educative factor as well as the legal sanctions behind it which help public opinion to be given a certain shape." The concept of dowry has been so intimately linked with custom that it has become legitimised in the sub-conscious minds of people and is not perceived as immoral or illegal. The Joint Committee of Parliament noted that even among those who are highly educated, including government servants, dowry laws are frequently flouted. On August 11, 1991 the government admitted in the Lok Sabha that "more than 922 women were burnt to death in 1988 due to dowry. Between 1986 and 1988 dowry deaths showed an increase of 65 per cent."

The Dowry Prohibition Act is reactive and punitive. But unless there is a deep commitment and relentless community efforts in the implementation of the law, the law is ineffective. Although Dowry Prohibition Officers have been created under the Act, in practice there has been no democratisation and accountability. The Ministry of Education and Social Welfare, Government of India in 1966 in a Study reported that a great number of women considered dowry as good. These misconceptions are due to inadequate understanding of the nature of dowry

which devalues and commercialises women in the institution of marriage. Political and judicial leaderships have not helped in changing these perceptions. The ex-Chief Justice of the Supreme Court of India in his speech to the Brahmakumaris exhorted women "to stay at home and leave their offices" and "not to compete with men". He asserted that the "constitutional mandate of gender equality" was the "anti-thesis of the human process because God has not created man and woman as equal".

In spite of the passing of the National Commission for Women Act, 1990 and the law laid down by the Courts, insurmountable obstacles are put in the way of women's organisations to intervene on behalf of disadvantaged sections. Nor has the Legal Services Authorities Act of 1987 been translated to provide legal aid to women. Most assistance to women who need it most is due to the personal efforts of some public spirited lawyers which can only make a very small dent. They too lack the resources to render lasting and sustained assistance. Further, the courts are ever ready to expand and protect the right of the accused but are less keen when it comes to protecting the rights of women complainants. Even though Article 15(3) of the Constitution clearly sanctions discriminatory laws in favour of women, the courts are dismissive.

Several suggestions have been made to control the evil of dowry such as increased efforts at legal literacy and social mobilisation for legal action. One of the serious handicaps in dowry cases has been the manipulation by investigating agencies in collusion with public servants such as government doctors, magistrates etc. The law should be strengthened to deal severely with such cases and classify it as a crime of "custodial suppression of evidence."

Political leaderships have trivialised cases pertaining to dowry. The public has become accustomed to tolerating crimes against women by highly placed political persons. Politics too has become a playground for criminals and lumpen elements adding to the growing aggression against women. The challenge today for women is to resist this and impose a new political culture that is life affirming and empowering. Cultural perceptions of women have also led to distorted attitudes about women. While women have been exalted to divine heights there is a schizophrenia about women in practice arising from ancient religious texts as in Manusmriti.

"in childhood a female must be subject to her father, in youth to her husband, when her lord is dead to her sons. A woman must never be independent." (Manu V, 145)

"Though destitute of virtue, or seeking pleasure (elsewhere) or devoid of good qualities, (yet) a husband must be constantly worshipped as a God by a faithful wife." (Manu V, 154)

"The sacred and imperative duty of a wife is to carry out the commands of her husband, and to live in perfect obedience to his wishes." (Garuda Purana, 95; Dutt, 270)

Dowry challenges the sanity and health of our society. It requires multi-level strategies to combat the insatiable greed of a savage consumer culture that brutalises our society. If women are to be empowered equitable structures must be devised to humanise the family which includes changes in property laws to give women equal rights to inheritance.

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Footnotes

1. Women's Action Research and Legal Action for Women, Trust setup in 1992; hereinafter referred to as 'WARLAW'.
2. State v. Subhash, FIR No. 2034 of 1981.
3. State v. Laxman Kumar & Ors & Indian Federation of Women Lawyers v. Srnt. Shakuntala & Ors (AIR 1986 SC 250).

4. State v. (1) Jitendar Sharma, (2) Jagdish Sharma, (3) Smt. Sunita Rani, (4) Smt. Usha Rani, (5) Surinder Mohan in the Court of IIIrd Addl. Sessions Judge, Ghaziabad, u/s. 306/302 Indian Penal Code. S.T. No. 68 of 1988.
5. 'Varadakshina': A token or gift given to the bride-groom by the bride's father.
6. Kanyadaan': Gift made by father of a bride to father of the bride-groom.
7. Paul M.C.; Dowry & Position of Women of India; Inter-India Publications, 1955, New Delhi.
8. Report of the Joint Committee of the Houses of Parliament to examine the question of working of the Dowry Prohibition Act, 1961.
9. Somnath vs. State of Haryana: (1980, Cri. L.J. 926), Iyer, J.S. Judgment.
10. "See State v. Narsu Appa (I 95 1, Bom. 755) Chagla CJ & Gajendragadkar J., said that personal laws were not included in the law referred in Art. 13(3) (a) and was not law saved by Art. 372(3).
11. PUDR, v. Union of India: 1982 (2) SCC 253.
12. Ibid, pg. 2.
13. Pratibha Rani v. Swaraj Kumar (AIR 1985 SC 628).
14. Infra see, n. 3.
15. "Mahila Dakshata Samiti; a women's organization.
16. Shri V.K. Dutta v. M.D.S.C.W. & Ors. Crl. Contempt Petn. No.4/1983 and C.W. No. 26769/1983 in the High Court of Delhi, Unreported Judgement 19th April, 1984.
17. Ibid 4.
18. Parikh C.K., Text Book of Medical Jurisprudence & Toxicology; Medical Publications, 1981, Bombay.
19. Modi, V.K., Medical Jurisprudence & Toxicology, 21st ed., Law Book Co. (P) Ltd., Allahabad.

20. Dr. Knight, B., Medical Jurisprudence and Toxicology 5th ed., Law Book Co. (P) Ltd., Allahabad.

21. Infra, Pg., See n. 18.

22. Infra See n. 18.