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GOVERNMENT OF INDIA  
  
LAW COMMISSION OF INDIA  
  
TWO HUNDRED AND SECOND REPORT  
ON  
  
PROPOSAL TO AMEND SECTION 304-B OF  
INDIAN PENAL CODE  
  
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October, 2007  
  
  
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Dr. Justice AR. Lakshmanan  
(Former Judge, Supreme Court of India)  
Chairman, Law Commission of India  
  
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October 9, 2007.  
  
Dear Dr. Bhardwaj,  
  
I have great pleasure in presenting the 202 Report of the  
Law Commission on the proposal to amend Section 304-B, Indian  
Penal Code, 1860 dealing with the offences of dowry death  
  
The question that has been examined by the Law  
Commission in this Report is whether Section 304-B of Indian  
Penal Code, 1960 should be amended to provide for more stringent  
punishment of death sentence to curb the menace of dowry deaths.  
  
The circumstances in which the subject was taken up for  
consideration by the Commission are stated in Chapter I on  
Introduction of the Report. Briefly speaking, the Commission  
considered this subject pursuant to the Allahabad High Court’  
Order dated 31" January, 2003 in the matter of Nathu v. State of  
ULP. (Criminal Bail Application No.12466 of 2002) wherein Katju  
J. (as he then was) observed “In my opinion dowry death is worse  
than murder but surprisingly there is no death penalty for it  
whereas death penalty can be given for murder. In my opinion the  
time has come when law be amended and death sentence should be  
permitted in cases of dowry deaths”. ‘The Hon’ble Judge directed  
that a copy of the order be sent by the Registrar General of the  
Court to Hon’ble Law Minister and Hon'ble Home Minister with a  
request that they might consider introducing a Bill in the  
Parliament for such amendment or a Ordinance by the Central  
Government to the same effect.  
  
  
  
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While dealing with the subject, the Commission had to  
choose between two options available to it. The first was to  
comprehensively examine the subject of dowry death in all its  
related aspects such as definition of dowry administration and  
enforcement of the legal regulation, and accountability of the  
concerned agencies ete. and thereby endeavour to codify affresh the  
law on dowry death in its entirety. The second was to confine its  
consideration only to the point referred to it ie. whether Section  
304-B be amended to provide for death sentence? — The  
‘Commission chose the second option. In its 91\* report, the  
‘Commission has already examined the subject of “Dowry Death  
and Law Reforms’. The existing law on the subject could be  
largely attributed to the recommendations made therein. Besides,  
the Commission was of the view that pointed focus would be  
necessary to clear certain doubts and misgivings associated with  
the cases of dowry death.  
  
The Commission examined Section 304-B IPC in the light  
of various judicial pronouncements and critically dealt with the  
substantive as well as procedural aspects of the subject. The  
‘Commission finds that the offence of murder is not the same thing  
as the offence of dowry death. Though death of bride may be a  
common element in both the offences, the absence of direct  
connection between the husband and the death of wife  
distinguished the offence of dowry death from the offence of  
murder and is a strong mitigating factor. Besides, the presumptive  
character of the offence of dowry death and cardinal principle of  
proportionality as well as the underlying scheme of the Penal Code  
{20 against the proposed prescription of death sentence in case of  
dowry death. It may be pertinent to point out that where a case of |  
dowry death also falls within the ambit of the offence of murder,  
awarding death sentence is legally permissible. OF course, the  
guidelines laid down by the Supreme Court for award of death  
sentence, especially, the dictum of “rarest of rare case, may have to  
be adhered to in such cases as wel  
  
Thus having given its careful consideration to the subject,  
the Commission reached the conclusion that there is no warrant for  
amending Section 304-B IPC to provide for death sentence. ‘That  
being so, one may wander as to what then has been the necessity  
for submitting such a report where only status quo is recommended  
to be maintained and no further change in the law is suggested. In  
other words, what is the utility of making a negative  
recommendation instead of a positive one. The Commission was  
seized of this aspect especially, having regard to the fact that the  
  
  
  
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present reference has been a fall out of a Court’s Order. However,  
the Commission found a lot of misgivings and misapprehension  
associated with the subject of dowry death. Dowry death is quite  
often confused with the offence of murder. ‘There may be  
instances where the two may overlap with each other. ‘This gives  
to demand for parity in the matter of sentence in both these  
cases. Nevertheless, the two offences are distinet and independent  
offences. The Commission felt the finer nuances need to be spelt  
out clearly for their better understanding and appreciation. This  
will help in dispelling the ambiguity and confusion shrouded the  
notion of dowry death vis-a-vis murder. ‘The utility of this Report  
lies in providing clarity on the subject for its correct understanding  
and appreciation and will help in effectively dealing with the cases  
of dowry deaths by the concerned authorities.  
  
Yours sincerely,  
  
(Dr. Justice AR. Lakshmanan)  
  
Dr. H.R. Bhardwaj,  
Hon’ble Minister for Law & Justice,  
Government of India,  
  
Ministry of Law & Justice,  
  
Shastri Bhawan,  
  
New Delhi-110 001  
  
  
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CHAPTER-1  
  
INTRODUCTION  
  
1.1 Scope of Inquiry  
  
The question that the Law Commission is going to  
‘examine in this Report is whether Section 304B of Indian Penal  
Code, 1860, on dowry death, should be amended to provide for  
more stringent punishment of death sentence in order to curb  
the menace of dowry deaths,  
  
1.2 Earlier Report of the Commission on the subject.  
  
The question of “Dowry Deaths and Law  
Reforms” was suo motu taken up earlier by the Law  
‘Commission in its 91" Report. The existing laws on the subject  
may be viewed as the culmination of the Commission’s earlier  
efforts in this arena, Generally, where the facts in any incident  
of dowry related death, or for that matter any offence, are such  
which unambiguously satisfy and prove the legal ingredients of  
an offence already known to the law, say, murder in case of  
dowry death, the law can be resorted to for bringing the  
offender to book in such a case, In this regard the Law  
  
‘Commis  
  
sion noted in its earlier report referred to above, two  
impediments in connection with dowry death cases, namely,  
fi  
  
stly the facts might not fully fit into any known offence; and  
  
secondly,  
  
  
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difficulties in having proof of directly incriminating facts in the  
peculiarities of the situation in cases of dowry related deaths,  
These difficulties have been sought to be redressed by  
amending the substantive as well as procedural laws. ‘Thus, a  
new offence of dowry death has been created in Section 304B  
that has been inserted in the Indian Penal Code, 1860 with  
effect from November 19, 1986, The section provides for  
punishment of imprisonment for a term which shall not be less  
than seven years but which may extend to imprisonment for  
life. The section embodies a legal fiction whereby the husband  
or the concerned relative is deemed to have caused the dowry  
death in a case where the conditions prescribed in the section  
are present and then the onus shifts on the husband, or as the  
‘case may be, on the relative concemed to rebut the presumption  
  
enshrined in the section by cogent evidence to show that he has  
  
not caused such dowry death. Besides, Section 113A was  
inserted in the Indian Evidence Act in 1983 providing for  
presumption as to abetment of suicide by a married woman if  
  
the conditions specified in that section are satisfied,  
1.3 Inadequacy of the existing law.  
Notwithstanding the aforesaid legal amendments  
  
the incidents of dowry deaths have not shown any sign of  
  
significant decline. This gave rise to demands for capital  
  
  
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punishment/death sentence for the offence of dowry death in  
  
order to imbibe necessary deterrence in the law. On the other  
  
hand, there are others who complain about misuse of dowry  
related provisions and plead for their abrogation. Before  
dealing with these conflicting views, it may be expedient to  
  
state as to how this matter has come up before the Commission.  
  
14 Reference to the Commission.  
  
This matter has come up for consideration of the  
Commission pursuant to the Order dated 31" January, 2003 of  
Allahabad High Court in Criminal Bail Application No.12466  
of 2002 in the case of Natthu Vs State of U.P. In this case, it  
was alleged that Pritipal, son of Natthu was married to Urmila  
Devi about a year and half before her death. Pritipal and his,  
father Natthu were not satisfied with the dowry given in  
marriage and were demanding a motorcycle in dowry which  
Unmila’s father Sompal was unable to give. They did not allow  
Unmila to visit her parental house until motoreycle was given  
and when Ramveer, brother of Urmila, went to fetch her, they  
threatened to beat him and told him that Urmila would be sent  
on giving of a motoreycle. Next day information was received  
that they along with others have killed Urmila Devi. The  
  
postmortem report showed a continuo  
  
ligature mark on the  
neck below the thyroid cartilage as well as five continuous  
marks. One of them being on the neck, just below the chin, and  
others, on the other parts of the body. ‘These were ante mortem  
  
  
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injuries and prima facie indicated that Urmila Devi was beaten  
  
before strangulation. It was also mentioned by the Doctor in  
the  
  
postmortem report that the death of Urmila Devi was due to  
asphyxia as a result of ante mortem strangulation. Prime facie  
it seemed to be a case of brutal murder of Urmila Devi. While  
  
dealing with the bail application referred to above, Hon'ble Mr.  
M. KatiuJ.,  
  
she then was, inter-alia observed. “In my opinion  
dowry death is worse than murder but surprisingly there is no  
death penalty for it whereas death penalty can be given for  
murder. In my opinion the time has come when law be  
amended and death sentences should also be permitted in cases  
of dowry deaths”. ‘The Hon’ble Judge directed  
  
“Let a copy of this order be sent by the Registrar General  
  
of this Court to Hon’ble Law Minister of India and Hon'ble  
the — Home Minister of India with the request that they  
  
may consider introducing a Bill in Parliament for such  
  
amendment as suggested above or an Ordinance by the  
  
Central Government to the same effect”  
  
1.5 Culpable homicides and varied punishments.  
  
All homicides are not murders, warranting capital  
punishment, ‘There may be culpable homicide not amounting to  
murder, causing death by rash and negligence and death as a  
result of causing grievous hurt. Different punishments!  
sentences have been provided for different types of homicide,  
  
depending upon the nature and gravity of an offence in a given  
  
  
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case. The tenets of penology demands that punishment must be  
  
proportionate to the gravity of the offence, pragmatic and  
  
adequately deterrent, having due regard to its overall  
  
implications from all relevant angles, social, political and  
economic ete. ‘The question relating to the adequacy or  
otherwise of the punishment for dowry death may, therefore,  
have to be considered in this backdrop. The punishment for the  
offence of dowry death is imprisonment for not less than seven  
years that may extend to life imprisonment. Now the question  
is whether capital sentence be added to it as dowry deaths are  
certainly most abhorrent. If we carefully examine the provision  
of Section 304B, we will note that the offence there under is in  
a way fiction of law, whereby the offence of dowry death is  
deemed to have been committed if certain set of conditions are  
  
satisfied in a given case. These conditions are four in number,  
  
namely;  
  
@ ‘There is a death of a women caused by any burns  
or bodily injury or occurs otherwise than under  
normal circumstances,  
  
Gi) ‘The death of the woman has taken place within  
seven \_years of her marriage,  
  
(iii) Soon before her death, the woman was subjected to  
cruelty or harassment by her husband or any relative  
of her husband,  
  
(iv) Such cruelty or harassment has been for, or in  
  
connection with, any demand for dowry.  
  
  
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1.6 Question in issue.  
  
Ifall the four conditions stated above are present  
in a given case, then the husband or the relative concerned shall  
be deemed to have caused her death and such death will be  
called dowry death. The traditional criminal law dictum that an  
accused is presumed to be innocent unless proved guilty of the  
offence he is charged with, is not applicable on account of the  
legal fiction embodied in the provisions of Section 304B  
whereby he is deemed to have caused the death and the onus  
shifts on him to prove otherwise. Where there is evidence that  
the accused committed the murder of woman in terms of  
Section 300 defining the offence of murder, he will be charged  
with the commission of the offence of murder and liable to be  
proceeded against accordingly. If the conditions of Section  
304B or, for that matter, any other section of the Penal Code are  
present in such a case, the accused will be charged with the  
commission of that offence also. The presence of such  
conditions pertaining to any other offence will not take out the  
case from the ambit of Section 300 dealing with the offence of  
murder. In view of the aforesaid, the Commission will consider  
in the succeeding chapters as to whether there is any warrant  
for appending capital punishment to Section 304B, for the  
reason that the offence of dowry deaths are highly despicable  
  
and shocks the conscience of the society.  
  
  
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CHAPTER-2  
  
DOWRY DEATH AND THE LAW  
  
2.1 Dowry - A social evil  
  
2.1.1 Over the years, Dowry has grown as a deep-rooted social  
evil. It has become bane for our society. It is the cause of atrocity  
‘on woman and many unfortunate deaths of young ladies. It is an  
offence heinous, brutal and barbaric. The Hon’ble Supreme court  
in Kamlesh Panjiyar Vs State of Bihar, (2005)2 SCC 388 has  
made the observation  
  
“Marriages are made in heaven, is an adage. A bride leaves  
the parental home for matrimonial home leaving behind  
sweet memories therewith a hope that she will see a new  
world full of love in her groom’s house. She leaves behind  
not only her memories, but also her surname, gotra and  
maidenhood. She expects not only to be daughter in law, but  
a daughter in fact. Alas! The alarming rise in the number of  
cases involving harassment to the newly wed girl for dowry  
shatters the dreams. In-laws are characterized to be outlaws  
for perpetrating terrorism which destroys the matrimonial  
home. The terrorist is dowry, and it is spreading tentacles in  
every possible direction”.  
  
2.1.2 The offenders of death relating to demand of dowry always  
  
tries to give an impression that to be a suicidal or accidental death,  
  
  
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but it is always the bride who meets with the accident while  
  
cooking or doing household work.  
  
2.1.3. In Soni Devrabhai Babubhai Vs State of Gujarat and  
Others, (1991) 4 SCC 298, the Supreme Court observed:  
  
“Section 304B of the India Penal Code and the cognate  
provisions are meant for eradication of the social evil of  
dowry, which has been the bane of Indian society and  
  
continues unabated in spite of emancipation of women and  
  
the women’s liberalization movement. This all-pervading  
malady in our society has only a few exceptions in spite of  
equal treatment and opportunity to boys and girls for  
education and career. Society continues to perpetuate the  
difference between them for the purpose of marriage and it  
is this distinction, which makes the dowry system thrive.  
Even though for eradication of this social evil, effective  
steps can be taken by the society itself and the social  
sanctions of the community can be more deterrent, yet legal  
sanctions in the form of its prohibition and punishment are  
some steps in that direction. The Dowry Prohibition Act,  
1961 was enacted for this purpose. The report of the Joint  
Committee of Parliament quoted the observations of  
Jawaharlal Nehru to indicate the role of legislation in  
  
dealing with the social evil as under:  
  
“Legislation cannot be itself normally solve deep rooted  
social problems. One has to approach them in other ways  
  
  
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too, but legislation is necessary and essential, so that it may  
give that push and have those educative factors as well as  
the legal sanetions behind it which help opinion to be given  
a certain shape.”  
  
‘The enactment of Dowry Prohibition Act, 1961, in its  
original form was found inadequate. Experience shows that  
the demand of dowry and the mode of its recovery take  
different forms to achieve the same result and various  
indirect and sophisticated methods are used to avoid leaving  
any evidence of the offence. Similarly, the consequence of  
non-fulfillment of demand of dowry meted out to the  
unfortunate bride take different forms to avoid any casual  
connection between the demand of dowry and\_ its  
  
prejudicial effects on the bride. This experience has led to  
several other legislative measures in the continuing battle to  
combat this evil” (Paras 5 and 6 at pp.300-301),  
  
2.2 Law to regulate dowry  
  
2.2.1 The Government, from time to time, has come up with  
  
legislations to protect the women and to punish those committing  
atrocities on them, In 1961, the Dowry Prohibition Act (Act 28 of  
1961) was passed prohibiting taking or giving dowry. By the  
Criminal Law (Second Amendment) Act 1983 (Act 46 of 1983)  
Chapter XXA was introduced in the Penal Code with Section  
498A, creating a new offence of cruelty, which provides for  
punishment to the husband or relatives if they harass the women.  
  
with a view to coerce her to meet any unlawful demand for  
  
  
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property. Section 174 Cr.PC was also amended to secure Post  
  
Mortem in case of suicide or death of a woman within seven years  
of her marriage. Section 113A has been introduced in the  
Evidence Act, 1872 raising a presumption of cruelty as defined  
  
under Section  
  
498A, LP.C. against the husband or his relative if the wife  
commits suicide within a period of seven years from the date of  
  
her marriage.  
  
2.2.2. These provisions reflect the anxiety of the Government to  
deal firmly with the menace of dowry and to curb the offences for  
which the root-cause is dowry. ‘The Government again made  
sweeping changes in the Dowry Prohibition (Amendment) Act,  
1984. A new offence called “Dowry Death” has been inserted by  
introducing Section 304B in the Penal Code. Section 304, has  
been brought into force with effect from November 19, 1986. The  
  
relevant G.S.R. reads as follows:~  
  
“GSR. 1185(E)-(New Delhi, the 5" Nov, 1986) — In  
exercise of the powers conferred by Section 1 of Dowry  
Prohibition (Amendment) Act, 1986 (43 of 1986) the Central  
Government hereby appoints the 19\* day of November, 1986  
as the date on which the Act shall come into force”  
  
2.3. Offence of dowry death  
  
2.3.1 Section 304B, IPC, says:  
(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  
  
  
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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.  
  
Explanation; For the purpose of this sub-section  
“dowry” shall have the same meaning as in S.2 of the  
Dowry Prohibition Act, 1961 (28 of 1961).  
  
(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  
  
2.3.2. In Shanti Vs State of Haryana, 1991 (1) SCC 371  
the Hon'ble Supreme Court has  
  
stated that the term dowry is not  
defined in Indian Penal Code. However, it has been defined in the  
Dowry Prohibition Act, 1961 as “any property or valuable security  
given or agreed to be given either directly or indirectly ~  
(a) by one party to the marriage to the other party to the  
marriage; or  
(a) by the parents of either party to a marriage 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.”  
  
  
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Is  
In view of the aforesaid definition of the word “dowry” any  
  
property or valuable security should be given or agreed to  
be given either directly or indirectly at or before or any time  
after the marriage and in connection with the marriage of  
the said parties. ‘Therefore, the giving or taking of property  
  
or valuable security  
  
must have some connection with the marriage of the parties  
and a correlation between the giving or taking of property or  
valuable security with the marriage of the parties is  
essential. Being a penal provision it has to be strictly  
construed. Dowry is a fairly well known social custom or  
practice in India, It is well settled principle of interpretation  
of Statute that if the Act is passed with reference to a  
particular trade, business or transaction and words are used  
which everybody conversant with that trade, business or  
transaction knows or understands to have a particular  
meaning in it, then the words are to be construed as having  
that particular meaning, (See Union of India Vs Garware  
Nylons Ltd. AIR 1996 SC 3509 and Chemicals and Fibres  
of India Vs Union of India AIR 1997 SC 558). A demand  
for money on account of some financial stringeney or for  
meeting some urgent domestic expenses or for purchasing  
manure cannot be termed as a demand for dowry as the said  
word is normally understood. (See Appasaheb & Anr. Vs  
State of Maharashtra, AIR 2007, SC 763 at p. 767).  
  
  
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2.3.4. There are three occasions related to dowry. One is before  
  
the marriage, second is at the time of marriage and the third  
is “at any time” after the marriage. ‘The third occasion may  
appear to be an unending period. But the crucial words are  
“in connection with the marriage of the said parties”. This  
means that giving or agreeing to give any property or  
valuable security on any of the above three stages should  
have been in connection with the marriage of the parties.  
  
There can be many other instances for  
  
payment of money or giving property as between the spouses. For  
‘example, some customary payments in connection with birth of a  
Such  
  
child or other ceremonies are prevalent in different societies  
  
payments are not enveloped within the ambit of “dowry”. Hence  
the dowry mentioned in Section 304-B should be any property or  
valuable security given or agreed to be given in connection with  
the marriage. (See Satvir Singh and others Vs State of Punjab  
  
and another, AIR 2001, SC 2828 at p. 2834).  
  
235, It is not enough that harassment or cruelty was caused to  
the woman with a demand for dowry at some time, if  
Section 304-B is to be invoked. But it should have  
happened “soon before her death”. ‘The said phrase, no  
doubt, is an elastic expression and can refer to a period  
cither immediately before her death within a few days or  
even a few weeks before it, But the proximity to her death  
is the pivot indicated by that expression. The legislative  
object in providing such a radius of time by employing the  
words “soon before her death” is to emphasise the idea that  
  
her death should, in all probabilities, have been the  
  
  
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aftermath of such cruelty or harassment. In other words,  
  
there should be a perceptible nexus between her death and  
the dowry related harassment or cruelty inflicted on her.  
(Se  
  
atvir Singh Vs State of Punjab, supra).  
  
In Pawan Kumar Vs State of Haryana, 1998 (3) SCC  
309, the Hon’ble Supreme Court has laid down the  
ingredients necessary to attract section 304B, IPC which are  
as follows’  
  
1) death of @ woman is either by burns or by bodily  
  
injury or other wise than under normal circumstances;  
  
2) it should be within seven years of marriage;  
  
3) it should also be shown that soon before her death  
  
she was  
  
subjected to cruelty or harassment by  
husband or any relative of husband.  
4) Such harassment or cruelty should pertain to demand  
  
for dowry.  
  
2.3.7. The offence of dowry death punishable under Section 304B  
  
of the Indian Penal Code is a new offence inserted in the Indian  
Penal Code with effect from November 19, 1986 when Act 43 of  
  
1986 came into force. The offence under Section 304B is  
  
punishable with a minimum sentence of seven years which may  
  
extend to life imprisonment and is triable by a Court of Sessions.  
  
The corresponding amendments made in the Code of Criminal  
  
Procedure and the Indian Evidence Act relate to the trial and proof  
  
  
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of offence. Section 304B is a substantive provision creating a new  
  
offence. (See Soni Devrajbhai Babubhai Vs State of Gujarat  
and Others (1991) 4SCC 298 at p. 303),  
  
2.4. Present Scenario:  
  
2.4.1 Now 21 years have been passed since the enactment of  
  
Dowry Prohibition (Amendment) Act, 1986. ‘The question before  
us is:  
(1) whether the Government has succeeded in curbing the  
menace of ‘dowry death”? if not, then  
  
(2) Should death penalty be provided for the offence of  
dowry death?  
  
2.4.2. ‘The answer to the first question is in the negative. ‘The sad  
affair of dowry deaths is still continuing. Large number of cases  
relating to dowry death is reported each year, which really is a  
  
matter of shame and cause for deep concern,  
  
2.4.3. National Crime Records Bureau, Ministry of Home Affairs,  
GOI, East Block-7, RK. Puram, New Delhi, published in report  
“Crime in India ~ 2005” (dated 31\* July, 2006 ~ page 9). “Crime  
Clock of 2005” reported wherein one dowry death case is  
‘committed in every 77 minute in India. Further at page 242, table-  
5 (A), shows “Crime Head-wise Incidents of Crime Against  
Women during 2001-2005 and percentage variation in 2005 over  
2004”; SLNo. 3 reads.  
  
Sl. Crime Head 2001 2002 2003 2004 2005 Percentage  
No. variation  
  
  
Page 22:  
2  
in 2005  
over 2004  
  
3 Dowry Death 6851 6822 6208 7026 6787 -3.4  
(See.302/304B IPC)  
  
244, There are various implications of dowry in the society.  
  
Dowry has  
  
Iso a bearing for the female foeticide in our  
country. People do not want a baby git! considering the  
social situation that one-day they have to pay dowry. On the  
other hand, if there is birth  
  
of a baby boy, they will fetch some dowry. Unfortunately, in the  
  
Indian scenario, a girl is looked upon as a liability to her family.  
  
‘The need of the hour is to fight this menace of dowry in the best  
  
possible way. But one thing goes without saying that merely by  
amending the Act and making it more stringent, it will not help  
unless the law enforcing agencies do their duty diligently and  
honestly. ‘There is an argument within the law making agency that  
whether introduction of capital sentence for the offenders for  
causing dowry death would meet the ends of justice and would  
prove to be a deterrent. Before going further, it would be  
appropriate to mention that India is not only the land of Rama and.  
Buddha, it is also the land of Balmiki and Angulimal, where  
dreaded criminals have reformed after relinquishing their dark  
past. There is another adage that every saint has a past and every  
  
criminal has a future. It is stated herein that in most of the  
  
countries capital punishment has been abolished. India has adopted  
a very balanced approach in this regard. It has capital punishment  
  
in its statute book but us  
  
sit rarely. In India there is a subtle shift  
  
  
Page 23:  
2B  
from the capital punishment to imprisonment for life and death  
  
sentence has been awarded only for the rarest of the rare cases.  
  
‘Thus, even if death penalty is provided, it cannot be awarded as a  
  
matter of routine. But the dictum of rarest of rare cases will still be  
  
applicable.  
  
2.5. Sections in LP.C which preseribe Capital  
Punishment:  
  
Following are the Sections in the Indian Penal Code which  
  
prescribes for the capital punishment:-  
  
(1) Section 121 — waging or attempting to wage war, ot  
abetting the waging of war, against Government of India;  
  
2) Section 132 — Abetment of Mutiny, if Mutiny is committed  
in consequence thereof.  
  
8) Section 194 ~ Giving or fabricating false evidence with  
intent to cause any person to be convicted of a capital  
offence provided if innocent person be thereby convicted  
and executed.  
  
(4) Section 302 ~ Murder.  
  
(5) Section 303 — Murder by a person under sentence for  
  
imprisonment for life (this section has been struck down by  
  
the Hon'ble Supreme Court as it has been held to be  
  
violative of article 21 of the Constitution of India)  
  
(6) Section 305 — Abetment of suicide committed by child or  
insane or delirious person or an idiot or a person  
  
intoxicated.  
  
  
Page 24:  
4  
(7) Section 307 — Attempt by life convict to murder, if hurt is  
  
caused.  
(8) Section 364A — Kidnapping for ransom, ete.  
(9) Section 396 ~ Murder in dacoity.  
  
2.6 Death sentence : Code makers’ view:  
  
The authors of the  
Code stated:  
“We are convinced that it ought to be very sparingly  
inflicted, and we propose to employ it only in cases where  
cither murder or the highest offence against the State has  
been committed....To the great majority of mankind nothing  
  
is so dear as life, And we are of opinion that to put robbers,  
  
ravishers and mutilators on the same footing with murderers  
is an arrangement which diminishes the security of life.  
  
‘Those offences are almost always committed under such  
circumstances that the offender has it in his power to add  
murder to his guilt...As he has almost always the power to  
murder, he will often have a strong motive to murder,  
inasmuch as by murder he may often hope to remove the  
only witness of the crime which he has already committed  
If the punishment of the crime which he has already  
committed be exactly the same with the punishment for  
murder, he will have no restraining motive. A law which  
imprisons for rape and robbery and hangs for murder, holds  
‘out to ravishers and robbers a strong inducement to spare the  
  
lives of those whom they have injured. A law which hangs  
  
  
Page 25:  
2s  
for rape and robbery, and which also hangs for murder,  
  
holds out, indeed, if it be rigorously carried into effect, a  
strong motive to deter men from rape and robbery, but as  
soon as a man has ravished or robbed, it holds out to him a  
strong  
  
motive to follow up his crime with a murder.” (see Draft  
Penal Code, Note A, Page 93)  
  
2.7 Death Sentence only in rarest of rare cases  
guidelines:  
  
2.7.1 In Lehna Vs State of Haryana, 2002 (3) SCC 76, the  
Hon’ble Supreme Court has dealt with the c  
  
se law whereby  
  
guidelines were laid down for awarding capital sentence. The  
  
Hon’ble Court has further held that in Criminal Procedure Code,  
  
there is a definite swing towards life imprisonment.  
  
2.7.2 The apex Court observed:  
  
“Section 302 IPC prescribes death or life imprisonment as a  
penalty for murder. While doing so, the Code instructs to  
the Court as to its application. ‘The changes which the Code  
had undergone in the last three decades clearly indicate that  
Parliament has taken note of contemporary criminological  
thought and government. It is not difficult to discem that in  
the Code, there is definite swing towards life imprisonment.  
“Death sentence is ordinarily ruled out and can only be  
imposed for “special reasons”, as provided in Section 354  
(3). There is another provision in the Code which also uses  
the significant expression “special reason”. It is Section  
361. Section 360 of the 1973 Code re-enacts, in substance,  
Section 562 of the Criminal Procedure Code, 1898 (in short  
“the old Code”). Section 361 which is a new provision in  
  
  
  
Page 26:  
2.73,  
  
6  
the Code makes it mandatory for the court to record “special  
reasons” for not applying the provisions of Section 360.  
Section 361 thus casts a duty upon the court to apply the  
provisions of Section 360 wherever it is possible to do so  
and to state “special reasons” if it does not do so. In the  
context of Section 360, the “special reasons” contemplated  
by Section 361 must be such as to compel the court to hold  
that it is impossible to reform and rehabilitate the offender  
after examining the matter with due regard to the age,  
character and antecedents of the offender and the  
circumstances in which the offence was committed. This is  
some indication by the legislature that reformation and  
rehabilitation of offenders and not mere deterrence, are now  
among the foremost objects of the administration of criminal  
justice in our country. Section 361 and Section 354(3) have  
both entered the statute-book at the same time and they are  
part of the emerging picture of acceptance by the legislature  
of the new trends in criminology. It would not, therefore, be  
wrong to assume that the personality of the offender as  
revealed by his age, character, antecedents and other  
circumstances and the tractability of the offender to reform  
  
must necessarily play the most prominent role in  
determining the sentence to be awarded. Special reasons  
must have some relation to these factors. Criminal justice  
deals with complex human problems and diverse human  
beings. A Judge has to balance the personality of the  
offender with the circumstances, situations and the reactions  
and choose the appropriate sentence to be imposed.” (para  
14),  
  
‘The Hon’ble Supreme Court further observed:  
  
“It should be borne in mind that before the amendment of  
Section 367(5) of the old Code, by the Criminal Procedure  
Code (Amendment) Act, 1955 (26 of 1955) which came into  
force on 1.1.1956, on a conviction for an offence punishable  
with death, if the court sentenced the accused to any  
punishment other than death, the reason why sentence of  
death was not passed had to be stated in the judgment. After  
the amendment of Section 367(5) of the old Code by Act 26  
of 1955, it is not correct to hold that the normal penalty of  
imprisonment for life cannot be awarded in the absence of  
  
  
Page 27:  
7  
extenuating circumstances which reduce the gravity of the  
offence. ‘The matter is left, after the amendment, to the  
discretion of the court. The court must, however, take into  
account all the circumstances, and state its reasons for  
whichever of the two sentences it imposes in its discretion.  
Therefore, the former rule that the normal punishment for  
murder is death is no longer operative and it is now within  
the discretion of the court to pass either of the two sentences  
prescribed in this section; but whichever of the two  
sentences he passes, the Judge must give his reasons for  
imposing a particular sentence. The amendment of Section  
367(5) of the old Code does not affect the law regulating  
punishment under IPC. This amendment relates to  
procedure and now courts are no longer required to  
elaborate the reasons for not awarding the death penalty: but  
they cannot depart from sound judicial considerations  
preferring the lesser punishment.  
  
Section 354(3) of the Code marks a significant shift in the  
legislative policy underlying the old Code as in force  
  
immediately before 1.4.1974, according to which both the  
alternative sentences of death or imprisonment for life  
provided for murder were normal sentences. Now, under  
Section 354(3) of the Code the normal punishment for  
murder is imprisonment for life and death penalty is an  
exception. The court is required to state the reasons for the  
sentence awarded and in the case of death sentence “special  
reasons” are required to be stated; that is to say, only special  
facts and circumstances will warrant the passing of the death  
sentence.”  
  
2.74 In Allauddin Mian and others Vs State of Bihar (1989) 3  
SCC 5, the Supreme Court laid down certain broad guidelines for  
determining choice of sentence by Courts. It will be useful to refer  
  
to them as under:  
  
  
Page 28:  
28  
“In our justice delivery system several difficult decisions are  
left to the presiding officers, sometimes without providing  
the scales or the weights for the same. In cases of murder,  
however, since the choice is between capital punishment and  
life imprisonment the legislature has provided a guideline in  
the form of sub-section (3) of Section 354 of the Code of  
Criminal Procedure, 1973 (“the Code”) which reads as  
under:  
  
When the conviction is for an offence punishable with death  
or, in the alternative, with imprisonment for life or  
imprisonment for a term of years, the judgment shall state  
the reasons for the sentence awarded, and, in the case of  
  
sentence of death, the special reason for such sentence.  
  
‘This provision makes it obligatory in cases of conviction for  
an offence punishable with death or with imprisonment for  
life or for a term of years to assign reasons in support of the  
sentence awarded to the convict and further ordains that in  
case the judge awards the death penalty, “special reasons”  
for such Sentence shall be stated in the judgment. When the  
  
law casts a duty on the judge to state reasons it follows that  
he is under a legal obligation to explain his choice of the  
sentence. It may seem trite to say so, but the existence of the  
“special reasons clause’ in the above provision implies that  
the court can in fit cases impose the extreme penalty of  
death, Where a sentence of severity is imposed, it i  
imperative thatthe judge should indicate the basis upon  
which he considers a sentence of that magnitude justified.  
Unless there are special reasons, special to the facts of the  
particular case, which can be catalogued as justifying a  
severe punishment the judge would not award the death  
sentence. It may be stated that if a judge finds that he is  
unable to explain with reasonable accuracy the basis for  
selecting the higher of the two sentences his choice should  
fall on the lower sentence. In all such cases the law casts an  
obligation on the judge to make his choice after carefully  
‘examining the pros and cons of each case. It must at once be  
conceded that offenders of some particularly grossly brutal  
crimes which send tremors in the community have to be  
firmly dealt with to protect the community from the  
perpetrators of such crimes. Where the incidence of a  
  
  
  
Page 29:  
2»  
ertain crime is rapidly gr nd is-assumin ”  
‘may\_be\_necessary\_for the courts to\_award exemplary  
punishments to protect the community and to deter others  
from committing such crimes (emphasis supplied). Since  
the legislature in its wisdom though that in some rare cases  
it may still be necessary to impose the extreme punishment  
of death to deter others and to protect the society and in a  
given case the country, it left the choice of sentence to the  
Judiciary with the rider that the judge may visit the convict  
with the extreme punishment provided there exist special  
  
reasons for so doing.  
  
Even a casual glance at the provisions of the Penal Code  
will show that the punishments have been carefully graded  
corresponding with the gravity of offences; in grave wrongs  
the punishments prescribed are strict whereas for minor  
offences leniency is shown. Here again there is considerable  
room for manoeuvre because the choice of the punishment is  
left to the discretion of the judge with only the outer limits  
  
stated. There are only a few cases where a minimum  
punishment is prescribed. ‘The question then is what  
procedure does the judge follow for determining the  
punishment to be imposed in each case to fit the crime? The  
choice has to be made after following the procedure set out  
in sub-section (2) of Section 235 of the Code. The sub-  
section reads as under:  
  
If the accused is convicted, the judge shall, unless he  
proceeds in accordance with the provisions of Section 360,  
hear the accused on the question of sentence, and then pass  
sentence on him according to law.  
  
The requirement of hearing the accused is intended to satisfy  
the rule of natural justice. It is a fundamental requirement of  
fair play that the accused who was hitherto concentrating on  
the prosecution evidence on the question of guilt should, on  
being found guilty, be asked if he has anything to say or any  
evidence to tender on the question of sentence. This is all  
the more necessary since the courts are generally required to  
make the choice from a wide range of discretion in the  
  
  
  
Page 30:  
30  
matter of sentencing. To assist the court in determining the  
correct sentence to be imposed the legislature introduced  
sub-section (2) to Section 235.The said provision therefore  
satisfies a dual purpose; it satisfies the rule o natural justice  
by according to the accused an opportunity of being heard  
‘on the question of sentence and at the same time helps the  
court to choose the sentence to be awarded. Since the  
provision is intended to give the accused an opportunity to  
place before the court all the relevant material having a  
bearing on the question of sentence there can be no doubt  
that the provision is salutary and must be strictly followed.  
Itis clearly mandatory and should not be treated as a mere  
formality  
  
Sentences of severity are imposed to reflect the seriousness  
of the crime, to promote respect for the law, to provide just  
punishment for the offence, to afford adequate deterrent to  
criminal conduct and to protect the community from further  
similar conduct.  
  
It serves a threefold purposes (i) punitive; (ii) deterrent; and (ii)  
  
protective. That  
  
why the Court in Bachan Singh case (1980) 2  
SCC 684 observed that when the question of choice of sentence is  
under consideration the court must not only look to the crime and.  
the vietim but also the circumstances of the criminal and the  
impact of the crime on the community. Unless the nature of the  
crime and the circumstances of the offender reveal that the  
criminal is a menace to the society and the sentence of life  
imprisonment would be altogether inadequate, the court should  
ordinarily impose the lesser punishment and not the extreme  
punishment of death which should be reserved for exceptional  
  
cases only. In the subsequent decision of Machhi Singh Vs State  
  
  
Page 31:  
31  
of Punjab (1983) 3 SCC 470, the Court, after culling out the  
  
guidelines laid down in Bachan Singh cas  
  
(supra), observed that  
  
only in those exceptional cases in which the crime is so brutal,  
  
diabolical and revolting as to shock the collective conscience of  
the community, would it be permissible to award the death  
  
sentence,  
  
2.7.6 The following guidelines which emerge from Bachan Singh  
‘case [(1980) 2SCC 684] will have to be applied to the facts of each  
individual case where the question of imposition of death sentence  
  
arises, as given in Machhi Singh ease (1983) 3SCC 470 at p. 489.  
  
(i) The extreme penalty of death need not be inflicted  
  
except in gravest cases of extreme culpability  
  
(ii) Before opting for the death penalty the circumstances  
of the ‘offender’ also require to be taken into  
consideration along with the circumstances of the  
‘crime’  
  
ii) Life imprisonment is the rule and death sentence is  
an exception, Death sentence must be imposed only  
when life imprisonment appears to be an altogether  
inadequate punishment having regard to the relevant  
circumstances of the crime, and provided, and only  
provided, the option to impose sentence of  
imprisonment for life cannot be conscientiously  
  
exercised having regard to the nature and  
  
  
Page 32:  
2  
circumstances of the crime and all the relevant  
  
circumstances.  
  
(iv) A. balance sheet of aggravating and mitigating  
circumstances has to be drawn up and in doing so the  
mitigating circumstances have to be accorded full  
weightage and a just balance has to be struck between  
the aggravating and the mitigating circumstances  
  
before the option is exercised.  
  
2.7.7 In rarest of rare cases when the collective conscience of the  
  
so shocked, that it will expect the holders of the  
  
‘community is  
judicial power centre to inflict death penalty irrespective of their  
personal opinion as regards desirability or otherwise of retaining  
  
death penalty, death sentence can be awarded. ‘The community  
  
may entertain such sentiment in the following circumstances as  
observed by the Supreme Court in Lehna Singh case (supra, at p.  
86, paras 23-24)  
  
(1) When the murder is committed in an extremely brutal,  
grotesque, diabolical, revolting, or dastardly manner  
so as to arouse intense and extreme indignation of the  
  
‘community.  
  
(2) When the murder is committed for a motive which  
evinces total depravity and meanness; e.g. murder by  
  
hired assassin for money or reward; or cold-blooded  
  
murder for gains of a person vis-a-vis whom the  
  
  
Page 33:  
2.78  
  
3  
  
murderer is in a dominating position or in a pos  
  
ion of  
  
trust; or murder is committed in the course for betrayal  
of the motherland.  
  
(3) When murder of a member of a Scheduled Caste or  
minority community etc., is committed not for  
  
personal reasons but in circumstances which arouse  
  
social wrath, or in cases of ‘bride burning’ or ‘dowry  
  
deaths’ or when murder is committed in order to remarry  
  
‘for the sake of extracting dowry once again or to marry  
  
another woman on account of infatuation. (emphasis  
  
supplied)  
  
(4) When the crime is enormous in proportion; For  
instance when multiple murders, say of all or almost all  
the members of a family or a large number of persons.  
of a particular caste, community, or locality, are  
committed  
  
(5) When the victim of murder is an innocent child, or a  
helples  
  
woman or old or infirm person or a person  
  
vis-i-vis whom the murderer is in a dominating  
position, or a public figure generally loved and respected  
by the community.  
  
If upon taking an overall global view of all the  
  
circumstances in the light of the aforesaid propositions and taking  
  
into account the answers to the questions posed by way of the test  
  
  
Page 34:  
M  
for the rarest of rare cases, the circumstances of the case are such  
  
that death sentence is warranted, the court would proceed to do so.  
  
2.8 Some of the cases where the Hon’ble Supreme Court  
has commuted capital punishment to life  
imprisonment:  
  
2.8.1 In Machhi Singh Vs State of Punjab (1983) 3 SCC 470,  
the three-Judge Bench of the Supreme Court considered the  
  
Cons  
  
tution Bench decision Bachan Singh Vs State of Punjab  
and came to hold that where there is no proof of extreme  
culpability, the extreme penalty need not be given. The Supreme  
Court also further observed that the extreme penalty of death may  
  
be given only in the rarest of rare eases where aggravating  
  
circumstances are such that the extreme penalty meets the ends of  
  
justice.  
  
2.8.2. In Suresh Vs State of U.P., 2001 Cr. L.J. 1462 (SC), the  
conviction was based upon the evidence ofa child witness  
and Chandrachud, C.J. speaking for the Court held that it will not  
be safe to impose extreme penalty of death in a conviction based  
fon the deposition of a child. It was further observed that the  
extreme sentence cannot seek its. main support from the  
evidence of a child  
  
witness and it is not safe enough to act upon such deposition, even  
  
if true, for putting out a life  
  
2.8.3 In Raja Ram Yaday Vs State of Bihar, 1996 Cr. L.J. 2307:  
AIR 1996 SC 1631, the Hon’ble Supreme Court came to  
  
  
Page 35:  
35  
hold that a gruesome and cruel incident did take place and yet did  
  
not think it appropriate to affirm a sentence of death and  
commuted to life imprisonment. ‘The Hon’ble Apex Court held  
that:  
  
“We feel that although the murders had been committed in a  
premeditated and calculated manner with extreme cruelty  
and brutality, for which normally sentence of death will be  
wholly justified, in the special facts of the case, it will not be  
proper to award extreme sentence of death.”  
  
2.84 In“Sheikh Abdul Hamid & Anr. Vs State of M.P. (1998)  
3 SCC 188” the Hon’ble Supreme Court has held that:  
  
“Special reasons given by the trial court in awarding death  
sentence to the appellants and confirmed by the High Court,  
were that it was such a cruel act where the appellants have  
‘not even spared the innocent child and the motive being to  
grab the property. We have given our earnest consideration  
to the question of sentence and the reasons given by the  
High  
  
Court for awarding death sentence to the appellants. Having  
  
regard to the guidelines  
  
tated above, it may be noticed that  
  
in the present case it was not pointed out by the prosecution  
  
that it was a cold-blooded murder. There is nothing on  
  
record to show how the murder has  
  
taken place. In the  
  
absence of such evidence, we do not find that the ease  
  
  
Page 36:  
36  
before us falls within the category of the rarest of rare cases,  
  
deserving extreme penalty of death.”  
  
2.8.5 In “Ronny Alias Ronald James Abwaris & Ors. Vs State of  
Maharashtra (1998) 3 SCC 625” where there were more  
  
than one offender, it has been held by the Hon’ble Supreme  
  
Court that:  
  
“The possibility of reform and rehabilitation, however,  
cannot be ruled out. From the facts and circumstances, it is  
not possible to predict as to whom among the three played  
which part. It may be that the role of one has been more  
culpable in degree than that of the others and vice versa  
Where in a case like this it is not possible to say as to whose  
case falls within the “rarest of the rare” cases, it would serve  
the ends of justice if the capital punishment is commuted  
into life imprisonment.”  
  
2.8.6 In “Gurnam Singh & Anr. Vs State of Punjab (1998) 7  
SCC 722”. The Hon'ble Supreme Court while commuting the  
  
death sentence to imprisonment for life has said that:  
  
“We are also of the view that in the absence of any evidence  
as regard the motive for abduction and as regards the  
accused who actually caused their deaths and the manner  
and circumstances in which they were caused, the  
Designated Court should not have imposed death sentence  
upon appellant Gurnam Singh.”  
  
2.8.7 In “Allauddin Mian & Ors, Vs State of Bihar (1989) 3  
SCC 5” The Hon’ble Supreme Court has said that:  
  
“Having come to the conclusion that Allauddin Mian and  
Keyamuddin Mian are guilty of murder, the next question is  
what punishment should be awarded to them, namely,  
whether extinction of life or incarceration for life. Section  
  
  
Page 37:  
37  
302, IPC casts a heavy duty on the court to choose between  
death and imprisonment for life. When the Court is called  
upon to choose between the convicts ery “I want to live” and  
the prosecutor's demand “he deserves to die’ it goes without  
saying that the court must show a high degree of concen  
and sensitiveness in the choice of sentence.”  
  
2.9 Life Imprisonment means imprisonment for whole  
life:  
  
2.9.1 In Section 304B, the maximum sentence that can be awarded.  
  
is imprisonment for life.  
  
2.9.2 In Gopal Vinayak Godse Vs State of Maharashtra, (AIR  
1961 SC 600: 1961 Cr. LJ. 736: 1961 (3) SCR 440), the  
Con  
  
tution Bench of the Hon’ble Supreme Court held that the  
sentence of imprisonment for life is not for any definite period and  
the imprisonment for life must, prima facie, be treated as  
imprisonment for the whole of the remaining period of the  
convicted person’s natural life.  
  
2.9.3 In Zahid Hussein Vs State of W.B., (2001) 3 SCC 750, the  
  
Hon’ble Supreme Court has observed that:  
  
“4. ‘The Supreme Court after examining the provisions of  
Article 161 of the Constitution, CrPC and IPC has  
consistently held that a sentence of imprisonment for life  
does not automatically expire at the end of 20 years of  
imprisonment including remission, as a sentence of  
imprisonment for life means a sentence for the entire life of  
  
the prisoner unless the appropriate Government choos  
  
  
  
Page 38:  
38  
  
exercise its discretion to remit either the whole or part of the  
  
sentence, (See Gopal Vinayak Godse Vs State of  
Maharashtra, AIR 1961 SC 600: 1961 Cr. LJ. 736: (1961)  
3SCR 440; State of M.P. Vs Ratan Singh, AIR 1976 SC  
1552: 1976 Cr. LJ. 1192: (1976) 38CC 470: 1926 SCC  
(Cr) 428; Sohan Lal Vs Asha Ram , (1981) SCC 106; and  
Bhagirath Vs Delhi Admn., 1965 Cr. LJ. 1179 (1986) 2  
SCCS80: 1985 SCC (Cr) 280.  
  
5. We extract below sub-rules (4) and (29) of Rule 591 of  
the West Bengal Rules for the Superintendence and  
Management of Jails (for short ‘the Rules’).  
  
“(4) In considering the cases of prisoners submitted to it  
under sub-rules (1) and (2), the State Government shall take  
into consideration — (i) the cireumstances in each case, (ii)  
the character of the conviet’s crime, (iii) his conduct in  
  
prison, and (iv) the probability of his reverting to criminal  
  
habits or instigating others to commit crime. If the State  
Government is satisfied that the prisoner can be released  
without any danger to the society or to the public it may take  
steps for issue of orders for his release under Section 401 of  
the Code of Criminal Procedure, 1898.  
  
(29) Every case in which a convict, who has not received the  
benefit of any of the foregoing Rules, is about to complete a  
period of 20 years of continued detention including  
remission earned, if any, shall be submitted three months  
  
before such completion by the Superintendent of the Jail in  
  
  
Page 39:  
39  
which the convict is for the time being detained, through the  
  
Inspector General, for orders of the State Government. If  
the conviet’s jail records during the last three years of his  
detention are found to be satisfactory the State Government  
  
may remit the remainder of his sentence.  
6, These sub-rules do not provide for automatic release of a life  
convict after he has completed 20 years of the detention including  
remission. Under these sub-rules the only right which a life  
convict can be said to have acquired is a right to have his ease put  
up by the prison authorities in time to the State Government for  
consideration for premature release and in doing so that the  
Government would follow the guidelines mentioned in sub-rule  
),  
  
7. The Explanation to Section 61 of the Act is as  
  
follows:“Explanation .- For the purpose of calculation of  
  
the total period of imprisonment under this section, the period of  
imprisonment for life shall be taken to be equivalent to the period  
  
8. The Explanation came for consideration by the Supreme Court  
in Laxman Naskar (Life Conviet) Vs State of W.B. (2000) 7 SCC  
626: 2000 SCC (Cr.) 280, and this Court held that the said  
Explanation is only for the purpose of calculation of the total  
period of imprisonment of a life convict under Section 61, which  
  
shall be taken to be equivalent to the period of imprisonment for  
  
  
Page 40:  
40  
20 years and a ‘life convict would not be entitled to automatic  
  
release under this provision of law. We, therefore, find no  
substance in the submission made by Mr.Malik, the learned Senior  
Counsel. [Mr. Malik had submitted that in view of sub-rules (4)  
and (29) of Rule 591, all the petitioners were entitled to be  
released as of right as their total period of imprisonment was ‘more  
  
than 20 years},  
  
11, Following guidelines were framed by the Government or the  
  
premature release of life conviets, namely:  
  
(i) Whether the offence is an individual act of crime  
without affecting the society at large.  
  
(ii) Whether there is any chance of future recurrence of  
committing crime.  
  
(iii) Whether there is any fruitful purpose of confining of  
these conviets any more.  
  
(iv) Whether the convicts have lost potentiality in  
committing crime.  
  
(¥) Socio-economic condition of the convicts?  
families.  
  
12, ‘The Review Board refused to grant premature release of the  
petitioners on the following grounds: (1) police report is adverse;  
  
(2) the convicts are not overaged persons and as such have not lost  
the potentiality in committing crime; (3) since other co-convicts  
were trying to come out from jail, there was a possibility of  
regrouping for antisocial activities; (4) the offence was not an.  
individual act of crime but was \_aflecting society at large; (5)  
  
convicts were antisocial; and (6) the witnesses who had deposed at  
  
  
Page 41:  
41  
the trial as well as local people were apprehensive of retaliation in  
  
theevent of —\_ premature release.  
  
14... The conduct of the petitioners while in jail is an important  
factor to be considered as to whether they have lost their  
potentiality in committing crime due to long period of detention.  
The views of the witnesses who were examined during trial and  
the people of the locality cannot determine whether the petitioners  
would be a danger to the locality, if released prematurely. This has  
to be considered keeping in view the conduct of the petitioners  
during the period they were undergoing sentence. Age alone  
cannot be a factor while considering whether the petitioners still  
have potentiality of committing crime or not as it will depend on  
changes in mental attitude during incarceration.”  
  
294 In Ravindra Trimbak Chouthmal Vs State of  
Maharashtra, (1996) 4 SCC 148, Hon'ble Supreme  
Court commuted the sentence of death to imprisonment  
for life and further ordered that sentence passed under  
  
Section 201 to run not  
  
concurrently but consecutively: While doing so, the Court  
  
observed:  
  
“We have given considered thought to the question and we  
have not been able to place the case in that category which  
could be regarded as the “rarest of the rare” type. ‘This is so  
because dowry death has ceased to belong to that species  
killing. ‘The increasing number of dowry deaths would bear  
this. To halt the rising graph, we, at one point, thought to  
  
  
  
Page 42:  
2  
maintain the sentence; but we entertain doubt about the  
deterrent effect of death penalty. We, therefore, resist  
‘ourselves from upholding the death sentence, much though  
we would have desired annihilation of a despicable  
character like the appellant before us. We, therefore,  
commute the sentence of death to one of RI for life  
imprisonment.  
  
But then, it isa fit case, according to us, where, for the  
offence under Sections 201/34, the sentence awarded, which  
is RI for seven years being the maximum for a case of the  
present type, should be sustained, in view of what had been  
done to cause disappearance of the evidence relating to the  
commission of murder — the atrocious way in which the  
head was severed and the body was cut in nine pieces.  
These cry for maximum sentence. Not only this, the  
sentence has to run consecutively, and not concurrently,  
to show our strong disapproval of the loathsome, revolting  
and dreaded device adopted to cause disappearance of the  
dead body.”  
  
2.10 302 and 304 B of the  
  
2.10.1, Section 304B and Section 302 are clearly distinguishable.  
The court before framing of the charges should see and analyze  
  
that whether charge can be framed against the accused under  
  
Section 302 or not. Charge under 304B is made out in those cases  
where what is not clear is the cause of the death. The Section says  
where death is caused due to burns or bodily injuries or caused  
otherwise than under normal circumstances. ‘This shows that it  
may be clear that the death was due to burns or bodily injuries or is  
otherwise than under normal circumstances (courts say this covers  
  
suicide also) so what is not clear is whether those persons who  
  
  
  
Page 43:  
4B  
subject to cruelty or harassment are responsible for the cause of the  
  
burns or bodily injuries.  
  
2.10.2 In Hemchand Vs State of Haryana, 1994 (6) SCC 727,  
the Hon’ble Supreme Court has held that Section 113B of the  
Evidence Act says that when the question is whether a person has  
committed a dowry death of a woman and it is shown that soon  
before her death, such woman has 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, The Hon'ble Supreme Court has further held that  
proof of direct connection of the accused with her death is not  
essential. The absence of direct connection of the accused with  
death has to be taken into consideration in balancing the sentence  
  
to be awarded to the accused.  
  
2.10.3 In Ashok Kumar Vs State of Rajasthan, 1991 (1) SCC  
166, the Hon'ble Supreme Court has laid down that motive for a  
murder may or may not be. But in dowry deaths, it is inherent  
  
‘And hence, what is required of the court is to examine is as to who  
  
translated it into action as motive for it is not individual, but of  
  
family.  
  
2.11 Framing of charge - whether u/s 302 or 304 B:  
  
2.11.1 In Shamnsaheb M. Multani Vs State of Karnataka,  
(2001) 2 SCC 577 the Hon'ble Supreme Court has observed:  
  
  
Page 44:  
“4  
  
“The question raised before us is whether in a case where  
prosecution failed to prove the charge under Section 302  
IPC, but on the facts the ingredients of Section 304-B have  
winched to the fore, can the court convict him of that  
offence in the absence of the said offence being included in  
  
the charge.  
  
14, Sections 221 and 222 of the Code are the two  
provisions dealing with the power of a criminal court to  
convict the accused of an offence which is not included in  
the charge. The primary condition for application of  
Section 221 of the Code is that the court should have felt  
doubt, at the time of framing the charge, as to which of the  
several acts (which may be proved) will constitute the  
offence on account of the nature of the acts or series of acts  
alleged against the accused. In such a case the Section  
permits to convict the accused of the offence which he is  
  
shown to have committed though he was not charged with it.  
  
15, Section 222(1) of the Code deals with a case “when a  
person is charged with an offence con:  
  
ing of several  
particulars”. The Section permits the court to convict the  
accused “of the minor offence, though he was not charged  
  
ightly  
  
with it”, Sub-seetion (2) deals with a similar, but  
different situation  
  
  
Page 45:  
45  
  
222. (2) When a person is charged with an offence and  
facts are proved which reduce it to a minor offence, he may  
be convicted of the minor offence, although he is not  
  
charged with it”  
  
16, What is meant by “a minor offence” for the purpose of  
Section 222 of the Code? Although the said expression is  
not defined in the Code it can be discemed from the context  
that the test of minor offence is not merely that the  
prescribed punishment is less than the major offence. The  
two illustrations provided in the Section would bring the  
above point home well. Only if the two offences are  
cognate offences, wherein the main ingredients are common,  
the one punishable among them with a lesser sentence can  
  
be regarded as minor offence vis-a-vis the other offence.  
  
17. The composition of the offence under Section 304-B  
IPC is vastly different from the formation of the offence of  
murder under Section 302 IPC and hence the former cannot  
  
be regarded as minor offence vis-A-vis the latter. However,  
  
the position would be different when the charge  
  
contains the offence under Section 498-A IPC (husband or  
  
relative of husband of a woman subjecting her to cruelty),  
  
18, So when a person is charged with an offence under  
Sections 302 and 498-A IPC on the allegation that he caused  
  
  
Page 46:  
46  
the death ofa bride after subjecting her to harassment with a  
  
demand for dowry, within a period of 7 years of marriage, a  
situation may arise, as in this case, that the offence of  
murder is not established as against the accused.  
  
Nonetheles  
  
all other ingredients necessary for the offence  
under Section 304-B IPC would stand established. Can the  
accused be convicted in such a case for the offence under  
Section 304-B IPC without the said offence forming part of  
  
the charge?  
  
19. A two-Judge Bench of the Supreme Court (K.  
Jayachandra Reddy and G.N. Ray, JJ.) 1994 SCC (Cr.) 235  
has held in Lakhjit Singh Vs State of Punjab, 1994 supp. 1  
SCC 173, that if a prosecution failed to establish the offence  
under Section 302 IPC, which alone was included in the  
charge, but if the offence under Section 306 IPC was made  
‘out in the evidence it is permissible for the court to conviet  
  
the accused of the latter offence.  
  
21. The crux of the matter is this: Would there be occasion  
for a failure of justice by adopting such a course as to  
convict an accused of the offence under Section 304-B IPC  
  
when all the ingredients necessary for the said offence have  
come out in evidence, although he was not charged with the  
said offence? In this context a reference to Section 464(1)  
  
of the Code is apposite:  
  
  
Page 47:  
”  
“464. (1) No finding, sentence or order by a court of  
  
competent jurisdiction shall be deemed invalid merely on  
the ground that no charge was framed or on the ground of  
any error, omission or irregularity in the charge including  
any misjoinder of charges, unless, in the opinion of the court  
of appeal, confirmation or revision, a failure of justice has in  
  
fact been occasioned thereby”. (emphasis supplied)  
  
22. In other words, a convietion would be valid even if  
there is any omission or irregularity in the charge, provided  
  
it did not occasion a failure of justice.  
  
23. We often hear about “failure of justice” and quite  
often the submission in a criminal court is accentuated with  
  
the said expression. Perhaps  
  
it is too pliable or facile an  
expression which could be fitted in any situation of a case.  
  
The expr  
  
ion “failure of justice” would appear,  
sometimes, as an etymological chameleon (the simile is  
borrowed from Lord Diplock in Town Investments Ltd. Vs  
Deptt. Of the  
  
Environment, (1977) 1 All E.R 813: 1978 AC 359: (1977) 2  
WLR 450 (HL). The criminal court, particularly the  
superior court should make a close examination to ascertain  
  
whether  
  
there was really a failure of justice or whether it is only a  
  
camoullage.  
  
  
Page 48:  
48  
  
25. We have now to examine whether, on the evidence now  
‘on record the appellant can be convicted under Section 304-  
B IPC without the same being included as @ count in the  
charge framed. Section 304-B has been brought on the  
statute-book on 9-11-1986 as a package along with Section  
113-B of the Evidence Act,  
  
28. Under Section 4 of the Evidence Act “whenever it is  
directed by this Act that the court shall presume a fact, it  
shall regard such fact as proved, unless and until it is  
disproved”. So the court has no option but to presume that  
the accused had caused dowry death unless the accused  
disproves it, It is a statutory compulsion on the court  
However it is open to the accused to adduce such evidence  
for disproving the said compulsory presumption, as the  
burden is unmistakably on him to do so. He can discharge  
such burden either by eliciting answers through cross-  
examination of the witnesses of the prosecution or by  
adducing evidence on the defence side or by both.  
  
  
Page 49:  
49  
29. Atthis stage, we may note the difference in the legal  
  
position between the said offence and Section 306 IPC  
  
which was merely an offence of abetment of suicide earlier.  
‘The Section remained in the statute-book without any  
practical use till 1983. But by the introduction of Section  
113-A in the Evidence Act the said offence under Section  
306 IPC has acquired wider dimensions and has become a  
serious marriage-related offence. Section 113-A of the  
Evidence Act says that under certain conditions, almost  
similar to the conditions for dowry death the court may  
presume having regard to the circumstances of the case, that  
such suicide has been abetted by her husband etc. When the  
law says that the court may presume the fact, itis  
discretionary on the part of the court either to regard such  
fact as proved or not to do so, which depends upon all the  
other circumstances of the case. As there is no compulsion  
fon the court to act on the presumption the accused can  
persuade the court against drawing a presumption adverse to  
him,  
  
30. But the peculiar situation in respect of an offence  
under Section 304-B IPC, as discernible from the  
distinction pointed out above in respect of the offence  
under Section 306 IPC is this: Under the former the  
court has a statutory compulsion, merely on the  
establishment of two factual  
  
  
Page 50:  
50  
positions enumerated above, to presume that the accused has  
  
committed dowry death. If any accused wants to escape  
from the said catch the burden is on him to disprove it. Ifhe  
  
fails to rebut the presumption the court is bound to act on it  
  
31. Now take the case of an accused who was called upon  
to defend only a charge under Section 302 IPC. The burden  
of proof never shifts onto him, It ever remains on the  
prosecution which has to prove the charge beyond all  
reasonable doubt. The said traditional legal concept remains  
unchanged even now. In such a case the accused can wait  
till the prosecution evidence is over and then to show that  
the prosecution has failed to make out the said offence  
against him. No compulsory presumption would go to the  
assistance of the prosecution in such a situation. If that be  
so, when an accused has no notice of the offence under  
Section 304-B IPC, as he was defending a charge under  
Section 302 IPC alone, would it not lead to a grave  
miscarriage of justice when he is altematively convicted  
under Section 304-B IPC and sentenced to the serious  
punishment prescribed there under, which mandates a  
  
minimum sentence of imprisonment for seven years.  
  
31, The serious consequence which may ensue to the  
accused in such a situation can be limned through an  
illustration: If a bride was murdered within seven  
‘years of her marriage and there was evidence to show  
  
that either on  
  
  
Page 51:  
sl  
  
the previous day or a couple of days earlier she was  
subjected to harassment by her husband with demand for  
dowry, such husband would be guilty of the offence on the  
language of Section 304-B IPC read with Section 113-B of  
the Evidence Act. But if the murder of his wife was actually  
committed either by a dacoit or by a militant in a terrorist act  
the husband can lead evidence to show that he had no hand  
in her death at all. If he succeeds in discharging the burden  
of proof he is not liable to be convicted under Section 304-B  
IPC. But if the husband is charged only under Section 302  
IPC he has no burden to prove that his wife was murdered  
like that as he can have his traditional defence that the  
prosecution has failed to prove the charge of murder against  
  
him and claim an order of acquittal.  
  
33. The above illustration would amplify the gravity of  
the consequence befalling an accused if he was only asked  
to defend a charge under Section 302 IPC and was  
alternatively convicted under Section 304-B IPC without  
any notice to him, because he is deprived of the opportunity  
  
to disprove the burden cast on him by law.  
  
34. In such a situation, if the trial court finds that the  
prosecution has failed to make out the case under  
Section 302 IPC, but the offence under Section 304-B  
  
  
Page 52:  
2  
  
IPC has been made out, the court has to call upon the  
accused to enter on his defence in respect of the said  
offence. Without affording such an opportunity to the  
accused, a conviction under Section 304-B IPC would lead  
to real and serious miscarriage of justice. Even if no such  
count was included in the charge, when the court affords  
him an opportunity to discharge his burden by putting him  
to notice regarding the prima facie view of the court that he  
  
is liable to be convicted under Section 304-B IPC, unless he  
  
succeeds in disproving the presumption, itis possible for the  
court to enter upon a conviction of the said offence in the  
  
event of his failure to disprove the presumption.  
  
35. As the appellant was convicted by the High Court  
under Section 304-B IP  
  
"without such an opportunity being  
granted to him, we deem it necessary in the interest of  
justice to afford him that opportunity. ‘The case in the trial  
court should proceed against the appellant (not against the  
other two accused whose acquittal remains unchallenged  
now) from the stage of defence evidence. He is put to notice  
that unless he disproves the presumption, he is liable to be  
convicted under Section 304-B IPC”  
  
In Shanti Vs State of Haryana 1991(1) SCC 371, the  
Hon'ble Apex Court has held that Section 304B and  
498A are not mutually exclusive. They deal with two  
  
  
Page 53:  
3  
distinct offences. A person charged and acquitted under  
  
Section 304B can be convicted  
  
under Section 498A without charge being framed, if such case is  
made. But from the point of view of practice and procedure and to  
avoid technical defects, it is advisable in such cases to frame  
charges under both the Sections. If the case is established against  
the accused he can be convicted under both the Sections but no  
separate sentence need be awarded under Section 498A in view of  
substantive sentence being awarded for major offence under  
Section 3048.  
  
2.12, Summation  
  
From the aforesaid, it may thus be seen that traditionally  
marriage has been a sacramental institution. It continues to be so  
even at present. However, over a period of time, dowry emerged as  
a social evil, leading to increasing number of deaths of innocent  
brides. This trend assumed alarming proportions and dimensions,  
which led the legislature to ponder over the issue and devise  
means to curb the menace of dowry deaths. Where the cases of  
bride deaths squarely meet the requirements of the offence of  
murder or any other offence under the Penal Code, the guilty  
persons can be proceeded against accordingly. The law provides  
for death penalty in case of murder. Here also the judicial trend has  
  
been to award death penalty in rarest of rare cases and not as a  
  
  
Page 54:  
s4  
matter of routine. The case law on the subject vividly brings out  
  
the judicial guidelines for determining as to whether a given case  
falls in the category of rarest of rare case. These are aptly reflected  
  
in the cases  
  
where death sentence has been converted into life imprisonment.  
Generally, life sentence may extend to the whole life. The law,  
however, provides for release of life convicts upon completion of  
20 years detention subject to certain conditions laid down in this  
regard, Inadequacies in the then existing laws were noted where  
cases of bride deaths for reason of dowry could not be clearly  
brought in Section 302. Nonetheless circumstances were found to  
be such which indicate the suspicious nature of death that  
warranted appropriate punishment in order to effectively curb the  
menace of dowry death. Accordingly, a new substantive offence of  
dowry death was created on presumptive basis, casting the onus to  
rebut the presumption on the accused. The Evidence Act too was  
amended to provide for certain presumptions in this regard. The  
offence of dowry death as provided in Section 304-B is not the  
same offence as murder in terms of Section 302. A case may or  
may not fall under both the sections. Where an accused is charged  
for one offence, he can be convicted for another offence if the  
charged offence is failed to be made out but the ingredients of  
another offence are satisfied on available evidence, provided it  
does  
  
not lead to mi  
  
carriage of justice. In spite of such provisions  
in the law, the incidents of dowry deaths are not showing any  
significant decline or abatement. Hence the demand for more  
  
stringent punishment of death for the offence of dowry deaths.  
  
  
Page 55:  
55  
Whether such demand has any substance or not, will be discussed  
  
in the succeeding chapter.  
  
  
Page 56:  
56  
  
CHAPTER-3  
  
CONCLUSIONS AND RECOMMENDATIONS  
  
3.1 Theoretical Perspective:  
  
Different societies react differently to crimes and their  
perpetrators depending upon their respective value system and  
  
prevailing philosophy at a given time, Reasons for commission of |  
  
crimes and the personality traits of criminals are so varied,  
complex and innumerable that these are not amenable to any  
exhaustive description and comprehension, Criminals are  
sometimes viewed as born criminal and psychopath and sometimes  
4s victims of circumstances. This has been very aptly described by  
Elmer Hubart Johonson when he observed in Crime, Correction  
and Society at page 3 that a criminal may be described as a  
monster or be pictured as a hunted animal or as the helpless vietim  
of brutality. Likewise, socio-economic reasons, among others, are  
quite often ascribed as explanation for commission of crimes. Over  
a period of time, social approaches and responses to crimes and  
their perpetrators have been generalized and classified into  
different theoretical profiles. Theories of criminality have a two-  
fold purpose: they help to organize existing information about  
criminal behaviour into a coherent, systematic framework, and  
they serve to point out directions for further research by indicating  
potentially fruitful leads to be explored. In addition, theories of  
criminality may help establish some rational basis for Programmes  
  
  
Page 57:  
7  
  
aimed at controlling, reducing, eliminating or preventing crime  
and delinqueney. (See Criminology and Crime An Introduction by  
Harold J, Vetter and Ira J. Silverman (1986) p. 235). Accordingly,  
we see the emergence of certain theories of penology which are  
imbibed in varied degrees and proportion in almost all the legal  
orders the world over. ‘Thus, we have the punitive approach which  
  
is traditional in nature and universal in  
  
import and application  
whereby the criminal is viewed as a bad guy and punishment is  
inflicted on the offender as retribution and also to protect the  
society by deterring members of the society from commission of  
crimes. Then, there is another approach called therapeutic  
approach. According to this, a criminal is a victim of  
circumstances. In this approach, a criminal is viewed as a sick  
person, requiring treatment. ‘Thus, it may be seen that in the two  
approaches referred to above, criminal is the center of attraction  
and is viewed in two diametrically opposed perspectives and  
therefore, is meted out different treatment in each of these two  
approaches. There is yet another theory wherein the focus is not on  
the criminal but on the factors that lead one to become criminal  
and thrust is on removal of such factors with a view to prevent  
  
commission of erimes. This  
  
approach is thus called the preventive  
approach. Besides, certain other theories too have developed over  
the years dealing with different aspects of criminology. ‘There are  
some who deals with the manner in which criminal should be dealt  
  
with. To mention some of these are class  
  
cal and\_ positivist  
theories, retribution theory, utilitarian theory, deterrent theory,  
  
corrective and reformative theory and rehabilitatory theory,  
  
  
Page 58:  
58  
humanitarian theory, ete. Then there are some others which focus  
  
on the factors  
  
that lead one to commit a crime. To mention, some of these  
theories are socio-economic theories  
  
sociological theories, socio-  
psychological and psychiatric and biological and anthropological  
theories. A blend of all these approaches will be found in all the  
legal systems the world over though in different proportions and  
degrees. These approaches are, however, not mutually exclusive.  
Rather they supplement each others. All these approaches deal  
with different facets of criminology and are, as such, necessary for  
understanding and appreciating criminal jurisprudence, especially,  
penology in an integrated manner and helps in the formulation of  
public policy on crimes and punishment by way of prevention and,  
  
correction.  
  
3.2 Kinds of Punishments:  
  
Various kinds of punishments are permissible under the law  
  
to punish persons found guilty of commission of different  
offences/crimes. To mention, some of these are corporal  
punishment, fines, forfeiture and confiscation of properties,  
banishment, externment, imprisonment, capital punishment or  
death sentence, corrective labour, compensation for injury by the  
offender, public censure, etc. Choice of appropriate sanction out of  
many that can be permissible under law may arise at two stages,  
fone at the legislative stage and another at the stage of  
administration of justice in a given case. ‘The first relates to the  
  
prescription of punishment for a given offence in the legislation.  
  
  
Page 59:  
39  
That may lay down the maximum and the minimum punishment  
  
for an offence. ‘The second stage relates to punishing an individual  
  
criminal within permissible limits so prescribed in the law  
depending upon the facts and circumstances of a given case. We  
are concerned here with the first stage, that is to say, whether  
Section 304B of Indian Penal Code, 1860 should be amended to  
provide for death sentence for the offence of dowry death. ‘The  
section presently provides for life imprisonment and a minimum  
sentence of seven years imprisonment. The subject of death  
sentence or capital punishment has generated endless debates the  
world over that failed to reach unanimous universal conclusions.  
India has retained death sentence on its statute book. However, in  
practice it is sparingly used in the rarest of rare cases. There is a  
distinct tendency to restrict its use to gravest offences committed  
  
in a diabolic way that shocks the conscience of the public at large  
  
3.3. Suggestions by the National Commission for Women  
  
The issue relating to the deep-rooted evil of dowry was also  
taken up in the convention organized by the National  
Commission for Women on 22™ November, 2005 at Symposia  
Hall of NSC, Pusa, New Delhi, The Commission proposed an  
amendment to enhance the punishment for dowry deaths under  
  
Section 304-B, IPC for the following reasons.  
  
(@) To keep this offence at par with murder and by no  
stretch of imagination it is less grave an offence than  
  
the murder;  
  
  
Page 60:  
0  
(b) To create deterrence in the minds  
  
of the people  
  
indulging in such heinous crimes by now it is more  
  
than clear that neither the Dowry Prohibition Act nor  
the amended provisions of IPC could deter the people  
and could not register the success. The Committee  
found that because of the above said discrepancies in  
the provision the law has failed in its objective. By  
incorporating the above changes law can be made  
  
effective.  
  
(©) Also the time limit of presumption may be increased  
because seven years is very short a time and often the  
offence is executed in a preplaned manner.  
  
(@)\_\_ The minimum punishment should be increased  
  
from seven to ten years.  
  
3.4. Capital Punishment:  
  
Capital punishment, also known as the Death Penalty, is the  
execution of a convicted criminal by the state as punishment for  
ccrimes known as capital crimes or capital offences. It is the  
infliction by due legal process of the penalty of death as a  
punishment for crime. The idea of capital punishment is of great  
antiquity and formed a part of the primal concepts of the human.  
race. This has been one of the most primitive and commonly used  
forms of inflicting punishment for criminals as well as political  
days,  
  
es like most European (all except Belarus), Latin American,  
  
enemies. In the world-wide scenario prevalent now.  
  
countri  
  
many Pacific States (including Australia, New Zealand and East  
  
  
Page 61:  
6  
imor) and Canada have done away with capital punishment. Even  
  
among the non-Democratic nations, the practice is rare but not,  
  
predominant, The latest countries to abolish the death penalty for  
all crimes are Philippines in June 2006 and France in February  
2007. Still many civilized nations continue to harbour this punitive  
tradition. Chief among them are United States, Guatemala, and  
most of the Caribbean as well as some democracies in Asia (e.g,  
Japan and India) and Africa (e.g. Botswana and Zambia)  
  
3.5 The Indian Scenario  
  
3.5.1 In India, the deliberated penal penalty can be imposed only  
within the ambits of Sections. 121 (Waging war against the State),  
132. (abetting mutiny actually committed), 194 (giving or  
fabricating false evidence, upon which an innocent person suffers  
death), 302 (murder), 305 (abetment of suicide of a minor or  
insane, or intoxicated person), 307 (attempt to murder by a life  
convict), and 396 (dacoity accompanied with murder) of the Indian  
Penal Code. Further, cases of constructive liability leading to death  
penalty may arise under Sections 34 and 109-111 also. Besides the  
Penal code, there are many other laws like Explosive Substances  
Act, 1908; Narcotics Drugs and  
  
yychotropie Substances Act,  
1985; Prevention of Terrorism Act, 2002; Terrorist and Disruptive  
  
Activities (Prevention) Act, 1987 (since repealed); ete. which  
  
provide for impo:  
  
ion of capital punishment  
  
3.5.2. Hon’ble Supreme Court has ruled that death penalty per se  
  
isn’t unconstitutional, although some of the modes of carrying out  
  
  
Page 62:  
e  
ime may be otherwise. The Hon'ble Supreme Court held that  
  
its  
  
the s  
  
delay in carrying out execution of capital sentence entitles  
  
‘commutation to life imprisonment, but later overruled its decision.  
Peculiarly, the deterrent value of this penal punishment has been  
recognized in several cases by various jurists. (See Jagmohan  
Singh Vs State of Uttar Pradesh, AIR 1973 SC 947; Rajendra  
Prasad Vs State of Uttar Pradesh AIR 1979 SC 916; Bachan  
Singh Vs State of Punjab AIR 1980 SC 898; Machhi Singh Vs  
State of Punjab AIR 1983 SC 957)  
  
3.5.3 There are two conflicting views which can be broadly  
classified into two schools of thoughts, namely, the Retentionists  
(Pro-Capital Sentencing) and the Abolitionists (Anti-Capital  
Sentencing), Functioning under the Retentionists’ perspective,  
Utilitarian school of thought advocates that capital punishment  
prevents the convict from replicating the offence and acts as a  
deterrent for future offenders. Correspondingly, Retributive  
theorists lay down that as a foundational matter of justice, crime  
deserves to be reprimanded, and that should be equivalent to the  
injury caused. More recently, the exponents of capital punishment  
are stressing that the death penalty discourages criminal conduct  
‘on the part of those who are aware of the existence and horrors of  
this mode of treating criminals,  
  
3.5.4 Some of the famous Abolitionists like Montesquieu,  
Voltaire, Becearia, etc. have argued that since the penalty is  
irrevocable, it should not be resorted to.  
  
  
Page 63:  
68  
3.5.5 Most anti-death penalty organizations, most notably  
  
Amnesty International, base their stance on human rights,  
  
arguments. The anti-death penalty scholars claim that the society  
seeks an escapist attitude by taking away the life of an individual  
However, in India, adequate safeguards shield penalizing powers,  
in this regard. Even if. a High Court awards death sentence to the  
accused, on appeal against the Trial Court's acquittal of the same,  
the right of appeal to the Apex court is automatic, Additionally, a  
condemned prisoner retains the right to get his sentence  
commuted, suspended, remitted, reprieved, respited or pardoned  
by the Governor of the State concerned, followed by the President  
  
of India as provided in the Constitution of India,  
  
3.5.6 Perhaps, recent trends of public sentiment against capital  
punishment represent a broader realization that correction is more  
important to society than punishment.  
  
357 It may be pertinent to note that this Commission has dealt  
in details with diverse facets of capital punishment, in its  
35% Report, September, 1967. The answer to the query  
under consideration herein may be found in principle in  
that report although the question was not specifically dealt  
  
with reference to dowry death. In para 77 of that Report, it  
  
was observed that at first sight, the capital offfences (listed  
above in para 69) may not show any common element; but  
a close analysis reveals that there is a thread linking all  
these offences, namely, the principle that the sanctity of  
  
human life must be protected. It is the will or willful  
  
  
Page 64:  
64  
exposure of life to peril that seems to constitute the bas  
  
mn for the sentence of death. The Commission  
  
for a provis  
applied this principle while considering the question  
  
whether any other offence under the  
  
Indian Penal Code or any other law should be made capital  
offence. ‘The following offences were considered by the  
‘Commission in this regard, namely, adulteration of food and drugs,  
offences against Army, arson, espionage, kidnapping and  
abduction, homicide by negligence, rape, sabotage, smuggling and  
treason (Paras 462 to 540 at pp.156-179). The Commission did  
‘not recommend that any other offences under the Indian Penal  
Code or any other law should be punishable with death (Para 3(b)  
of Summary of Main Conclusions and Recommendation at p.356).  
While reaching these conclusions, the Commission reiterated that  
the cardinal principle of willful disregard of human life, which is  
the foundation of the sentence of death for the existing capital  
offences would have to be borne in mind and the question  
examined whether the existing law was not adequate. If it was  
found to be inadequate, then before embarking on an amendment,  
it would have to be considered whether a precise formula could be  
evolved which, while conforming to this principle, could define  
clearly the scope of the acts of commission that were proposed to  
be made capital (see Para 476 at p.160). Thus, the Comi  
  
ion,  
  
inter alia, observed that where an act of adulteration or arson  
  
causes death and the conditions of Section 300 on murder,  
  
particularly as to mens rea, are satisfied the case could be dealt  
  
with under Section 300/302, IPC and death  
  
sentence could be  
  
awarded under the law. If not so, then making such an act as a  
  
  
Page 65:  
6s  
capital offence would not be in symmetry with the s  
  
Indian Penal Code (See paras 463 ~ 466 at pp.156-157). Applying  
  
theme of the  
  
the same analogy to cases of dowry related deaths, if the  
conditions of murder in Section 300 are satisfied, the offender can  
  
certainly be awarded death sentence  
  
under Section 302 as per the norms laid down by the apex court in  
various eases for the award of death sentence, the most sacrosanct  
norm being the dictum of ‘rarest of rare cases’. If not, then making.  
dowry related death as a capital offence may not be in symmetry  
  
with the schemes of the Indian Penal Code.  
  
3.6 Dowry Death vis-a-vis Murder:  
  
3.6.1 Dowry death may or may not be a case of murder. Where it  
is a case of murder, death sentence can be awarded in  
appropriate cases. But when it is not so, imposition of  
death sentence may not be in symmetry with the cardinal  
principle underlying the capital offences in the Indian Penal  
Code. It may be noted that even before insertion of Section  
304B on dowry death in 1984, there have been cases of  
dowry deaths which were prosecuted for murder under  
Section 300, IPC. Thus, State (Delhi Administration) Vs  
Laxman Kumar and others (AIR 1986 SC 250) was a case  
of bride burning wherein the trial court accepted the  
prosecution case and considering it to be one of the  
atrocious dowry deaths, had sentenced each of the  
respondents to death, namely, the husband, the mother-in-  
  
law and brother-in-law. The High Court, however,  
  
  
Page 66:  
66  
acquitted the respondents of the charge of murder of one  
  
Sudha by setting fire to her. On appeal, the Supreme Court  
partly allowed the appeal. In para 47 of the Judgment, the  
  
Court made the following observations.  
  
“47. ‘The next relevant aspect for consideration is what  
  
should be the proper punishment to be imposed. ‘The  
  
leamed trial Judge had thought it proper to impose the  
punishment of death. Acquittal intervened and almost two  
yeas 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  
(emphasis supplied). But in the facts the case and  
particularly on account of the situation following the  
acquittal at the hands of the High Court and the time lag,  
we do not think it would be proper to restore the death  
sentence as a necessary corollary to the finding of guilt.  
We accordingly allow both the appeals partly and direct  
that the two respondents, Smt. 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  
p.266).”  
  
promptly as feasible (at  
  
3.62 Smt. Lichhamadevi Vs State of Rajasthan AIR 1988 SC  
1785 was another case of dowry death that arose before the  
  
insertion of Section 304B in the Indian Penal Code. In this  
  
  
Page 67:  
or  
  
case, the trial Court acquitted the accused but High Court,  
  
reversing her acquittal, awarded death sentence. On appeal,  
the Supreme Court modified the death sentence to life  
imprisonment in view of the two opinions of the Courts  
below as to the guilt of the accused. It will be expedient to  
refer to the following observations made by the Court in  
  
this regard  
  
“15. ‘The case before us is not an accidental fire causing  
the death. This is certainly a case “being put on fire by  
someone”. The deceased having been burnt is not in  
dispute. It is a case of bride burning. The Court in State  
(Delhi Admn,) Vs Lakshman Kumar, 1985 Supp (2) SCR  
898 at p.931: (AIR 1986 SC 250 at p.266) has observed that  
in the case of bride burning, death sentence may not be  
improper. We agree. The persons who perpetrate such  
barbaric crime, without any human consideration must be  
given the extreme penalty. But in the present case, we do not  
think that the High Court was justified in awarding death  
sentence on the accused-appellant. In 1977 she was  
acquitted by the trial court. In 1985 the High Court reversed  
her acquittal and gave the extreme penalty. It was after a  
‘gap of eight yeas. When there are two opinions as to the  
guilt of the accused by the two Courts, ordinarily the proper  
sentence would be not death but imprisonment for life.  
‘Apart from that, there is no direct evidence that the appellant  
had sprinkled kerosene on Pushpa and lighted fire on her.  
There must have been other persons also who have  
combined and conspired together and committed the murder.  
Itis unfortunate that they are not before the Court. From the  
Judgment of the High Court, it is apparent that the decision  
to award death sentence is more out of anger than on  
reasons. The Judicial discretion should not be allowed to be  
swayed by emotions and indignation.”  
  
  
  
Page 68:  
68  
3.6.3. State of Punjab Vs Amarjit Singh AIR 1988 SC 2013 is  
  
another pre-Section 304B case of dowry death where the accused  
was convicted and sentenced for life imprisonment for his wife  
being put in fire for not satisfying his dowry demands.  
  
3.6.4 Subedar Tiwari Vs State of U.P. and others AIR 1989 SC  
737 is another case of bride burning where a highly educated wife  
died on unnatural death by burning within a short span of nine  
months of her marriage. Although it was not a dowry death, yet  
  
the case is relevant for the reason that the husband could be  
  
prosecuted and sentenced to suffer imprisonment for life for such  
an unnatural death under Section 302 if both accident and suicide  
  
could be excluded on facts.  
  
3.6.5 Panakanti Sampath Rao Vs State of A.P., (2006) 9 SCC  
658 is a case where the accused was charged with commission of  
offences under Sections 498A, 302 and 304B IPC and Sections 3  
and 4 of the Dowry Prohibition Act. The trial court acquitted him  
of the offence of murder under Section 302 but convicted him on.  
the remaining counts. He was sentenced to life imprisonment  
under Section 304B besides the punishment awarded under other  
charges. On appeal, the High Court found the accused guilty of the  
offence under Section 302 IPC. This was affirmed by the Supreme  
  
Court also.  
  
3.6.6 Wazir Chand and another Vs State of Haryana, AIR  
1989 SC 378 is another case of dowry death wherein the accused  
  
persons, the husband and the father-in-law were proceeded against  
  
  
Page 69:  
CG)  
under $s. 306 r/w 107 for abetting commission of suicide but were  
  
acquitted of the charge as suicide could not be proved. Yet they  
were convicted under Section 498A in view of the fact the  
  
harassment for dowry was proved.  
  
3.6.7. State of U.P. Vs Ashok Kumar Srivastava, AIR 1992 SC  
840 is another case of bride burning for dowry wherein a young  
woman aged about 25 years died of bums within less than a year  
of her marriage. The three accused were charged and convicted  
  
under Section 302/34 IPC by the trial court and were sentenced to  
  
imprisonment for life. However, the High Court acquitted the  
accused as the trustworthiness of some of the prosecution  
witnesses was suspected. Though ordinarily the Supreme Court is  
slow to interfere in an acquittal while exercising power under  
article 136 but in this case the apex court found that the approach  
of the High Court had resulted in gross miscarriage of justice. The  
court, therefore, did not find it possible to refuse to interfere in  
such a case where gruesome crime was committed which resulted  
in the extinction of young mother to be. Accordingly, the Supreme  
Court allowed the appeal restored the order of conviction and  
  
sentence passed by the trial court.  
  
3.6.8 The cu  
Bale Subrahmanyam Vs State of A.P. (1993) 2 SCC 684  
  
se of dowry claimed another victim in Kundula  
  
wherein the husband and mother-in-law of the deceased Kundula  
Koti Nagbani were convicted under Sections 302/34 IPC and  
  
sentenced to suffer imprisonment for life. It will be expedient to  
  
  
Page 70:  
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refer the following observations made by the Supreme Court in  
  
this case.  
  
\*25. Of late there has been an alarming increase in cases  
relating to harassment, torture, abetted suicides and dowry  
deaths of young innocent brides. This growing cult of  
violence and exploitation of the young brides, though keeps  
‘on sending shock waves to the civilized society whenever it  
happens, continues unabated. ‘There is a constant erosion of  
the basic human values of tolerance and the spirit of “live  
and let live”. Lack of education and economic dependence  
‘of women have encouraged the greedy perpetrators of the  
crime, It is more disturbing and sad that in most of such  
reported cases it is the woman who plays pivotal role in this  
  
crime against the younger woman, as in this case with the  
husband either acting as a mute spectator or even an active  
  
participant in the crime, in utter disregard of his matrimonial  
obligations. In many cases, it has been noticed that  
husband, even after marriage continues to be “Mamma”  
baby” and the umbilical cord appears not to have been cut  
even at that stage.”  
  
3.6.9 Kailash Kaur Vs State of Punjab (1987) 2 SCC 631 is yet  
another case of unfortunate instance of gruesome murder of a  
young wife by the barbaric process of pouring kerosene oil all over  
the body and setting her on fire as the culmination of a long  
process of physical and mental harassment for extraction of more  
  
dowry. The prosecution case was that the sister  
  
Jaw caught hold  
of the deceased and the mother-in-law poured kerosene oil on her  
and set her on fire. The Supreme Court observed that “whenever  
such cases come before the court and offence is brought home to  
  
the accused beyond reasonable doubt, it  
  
the duty of the court to  
deal with it in most severe and strict manner and award the  
  
maximum penalty prescribed by the law in order that it may  
  
  
Page 71:  
1  
operate as a deterrent to other persons from committing such anti-  
  
social crim  
3.7 Role of Courts in Dowry Death Cases  
  
3.7.1 Awakening of the collective consciousness is the need of  
the day. Change of heart and attitude is what is needed. If  
man were to regain his harmony with others and replace  
hatred, greed, selfishness and anger by mutual love, trust  
  
and understanding and if woman were to receive education  
  
and become economically independent, the possibility of  
this pernicious social evil dying a natural death may not  
remain a dream only. ‘The legislature, realising the gravity  
  
of the situation has amended the laws and.  
  
provided for stringent punishments in such cases and even  
permitted the raising of presumptions against an accused in cases  
of unnatural deaths of the brides within the firs  
  
seven years of  
their marriage. The Dowry Prohibition Act was enacted in 1961  
‘and has been amended from time to time, but this piece of social  
legislation, keeping in view the growing menace of the social evil,  
also does not appear to have served much purpose as dowry  
seekers are hardly brought to books and convictions recorded are  
rather few. Laws are not enough to combat is evil. A wider social  
  
movement of educating women of their rights  
  
to conquer the  
menace, is what is needed more particularly in rural areas where  
women are still largely uneducated and less aware of their rights  
and fall an easy prey to their exploitation, The role of courts,  
under the circumstances assumes greater importance and it is  
  
expected that the courts would deal with such cases in a more  
  
  
Page 72:  
n  
realistic manner and not allow the criminals to escape on account  
  
of procedural technicalities or insignificant lacunae in the evidence  
as otherwise the criminals would receive encouragement and the  
victims of crime would be totally discouraged by the crime going  
unpunished. ‘The courts are expected to be sensitive in cases  
involving crime against women. The verdict of acquittal made by  
the trial court in this case is an apt illustration of the lack of  
  
sensitivity on the part of the trial court. It recorded the verdict of  
  
acquittal on mere surmises and conjectures and disregarded the  
evidence of the witnesses for wholly insufficient and insignificant  
reasons. It ignored the vital factors of the case without even  
properly discussing the same. (See in Kundula Bale  
  
Subrahmanyam Vs State of A.P. (1993) 2 SCC 684).  
  
3.7.2 In Kailash Kaur Vs State of Punjab (1987) 2 SCC 631,  
Avtar Singh, the husband, Kailash Kaur, the mother-in-law and.  
Mahinder Kaur, the sister-in-law were put in trial under Section  
302 for setting Amandeep Kaur, the deceased, on fire. The trial  
court acquitted the husband giving him the benefit of doubt, but  
convicted Kailash Kaur and Mahinder Kaur under Section 302 and.  
sentenced to undergo life imprisonment. On appeal, the High  
Court confirmed the conviction of Kailash Kaur but acquitted  
Mahinder Kaur giving her the benefit of doubt. When the matter  
came up before the Supreme court, it said, “we have very grave  
doubts about the legality, propriety and correctness of the decision  
of High Court insofar as it has acquitted Mahinder Kaur by giving  
her the benefit of doubt. But since the State has not preferred any  
appeal, we are not called upon to go into that aspect any further.  
  
As regards  
  
conviction of Kailash Kaur, the Court expressed its  
  
  
Page 73:  
B  
regret “that the Sessions Judge did not treat this case as a fit ease  
  
for awarding maximum penalty under the law and that no steps  
were taken by the State Government before the High Court for  
  
‘enhancement of the sentence.  
  
3.7.3 It will be expedient to refer to the editorial comments  
  
prefixed to this case, which read as follow  
  
[Ed.: This case is not the first time that the Supreme Court in  
unequivocal terms has commended death sentence to perpetrators  
of “gruesome murder of young wives ... as the culmination of a  
long process of physical and mental harassment and torture for  
  
extraction of dowry”. A three Judge Bench of the Court speaking  
  
through Thakkar, J. in Machhi Singh Vs State of Punjab, (1983)  
3 SCC 470; 1983 SCC (Cri.) 681, had clearly enunciated various  
circumstances which could be treated as ‘rarest of the rare” cases  
in which the accused convicted under Section 302, IPC must be  
punished with death sentence. One of the circumstances mentioned  
  
under the category “Ant  
  
cial and socially abhorrent nature of the  
crime’ was the “cases of “bride burning’, and what are known as  
“dowry deaths’ or when murder is committed in order to remarry  
for the sake of extracting dowry once again or to mary another  
  
woman on account of infatuation”. The Court felt that in such  
  
cases the “collective conscience” of the community “is so shocked  
  
that it will expect the holders of the judicial power centre to inflict  
death penalty irrespective of their personal opinion as regards  
desirability or otherwise of retaining death penalty”. (SCC pp.  
487-88, paras 32 and 35).  
  
  
Page 74:  
”  
  
Notwithstanding the consistent concem of the Court to  
award deterrent punishment to such bride killers, in the instant  
case the Sessions Court as well as the High Court preferred  
sentence of life imprisonment for the accused mother-in-law of the  
deceased victim. The Supreme Court confirmed the same even  
  
though the facts called for the extreme penalty. It is the socio-legal  
  
obligation of the Sessions Court and High Courts of the country to  
award capital punishment in such cases of bride killing so as to  
produce deterrent effect in consonance with the mandate of the  
  
Supreme Court  
  
Another disturbing feature in the present case is the acquittal  
of the abettor of the dastardly crime viz. the sister-in-law of the  
deceased who according to the dying declaration had caught hold  
of the deceased while the appellant-mother-in-law poured kerosene  
oil on her and set her on fire. Though the trial court had convicted  
  
her under Section 302 IPC the High Court acquitted her on ground  
  
of benefit of doubt. The Supreme Court expressed its “grave  
  
doubts about the legality, propriety and correctness of the dei  
  
ion  
  
of the High Court” in this regard but it was helpless since the State  
  
had not preferred any appeal against her acquittal. Thus an abettor  
of a serious crime escaped punishment due to sheer laxity on the  
part of  
  
the State administration. Again no appeal was taken against the  
  
acquittal of the husband by the trial court.  
  
  
Page 75:  
15  
The prosecution must keep in mind the trend set by the  
  
Legislature with the enactment of Section 498-A, IPC and the  
  
recent amendments to the Dowry Prohibition Act, 1961  
  
Pathak, J., as he then was, speaking for the Court in  
Bhagwant Singh Vs Commissioner of Police, Delhi, (1983) 3  
SCC 344 had made significant suggestions regarding creation of a  
special magisterial machinery for prompt investigation of such  
incidents, need for adoption of efficient investigative techniques  
and procedures taking into account peculiar features of such cases,  
association of a female police officer of sufficient rank and status  
with the investigation from its very inception, and extension of  
  
application of Coroners’ Act, 1871 to other cities besides those  
  
where it operates already. It is for the Government to implement  
  
these suggestions.)  
  
2.8 Different offences arising from the same facts:  
  
3.8.1 Offences under different Sections of the Indian Penal  
Code,1860 are distinet offences. A person can be convicted  
under more than one Section if the conditions of the  
  
charged Sections are satisfied in a given case. Thus  
  
in  
Ravindra Trimbak Chouthmal Vs Stat of Maharashtra  
(1996) 4 SCC 148, a case of dowry death, the accused  
  
husband was charged and convicted by trial court under  
  
Section 302 read with Section 120B, IPC for committing  
  
murder of his wife Vijaya. He was also found guilty under  
  
  
Page 76:  
16  
Sections 201/34, Sections 498A/34 and Sections 304B/34  
  
IPC. He was awarded the sentence of death for the offence  
under Section 302 read with Section 304B; to RI for seven  
years for the offence under Sections 201/34; to RI for three  
years and a fine of Rs.500/- in default RI for three months  
for Sections 4984/34; and RI for seven years for Sections  
304B/34 offence, the same being the minimum sentence  
prescribed under the law. On appeal to High Court,  
convietion under Sections 304B/34 IPC was set aside. But  
conviction under other Sections were confirmed when the  
matter came up before the Supreme Court, the following  
observations were made which have material bearing on the  
issue under consideration. The Supreme Court thus  
  
observed:  
  
“9.The present was thus a undermost foul, as pointed out by us  
in the opening paragraph. The motive was to get another girl  
  
for the appellant who could get dowry to satisfy the greed  
oft the father. Dowry deaths are blood-boiling, as human  
blood is spilled to satisfy raw greed, naked greed; a greed  
which has no limit. Nonetheless, the question is whether the  
extreme penalty was merited in the present case?  
  
10, We have given considered thought to the question and we  
have not been able to place the case in that category which  
could be regarded as the “rarest of the rare” type. This is so  
because dowry death has ceased to belong to that species of  
killing. The increasing number of dowry deaths would bear  
this. To halt the rising graph, we, at one point, thought to  
maintain the sentence; but we entertain doubt about the  
deterrent effect of a death penalty. We, therefore, resist  
ourselves from upholding the death sentence, much though  
we would have desired annihilation of a despicable  
character like the appellant before us. We, therefore,  
  
  
  
Page 77:  
1  
commute the sentence of death to one of RI for life  
imprisonment.”  
  
3.8.2. The conviction under Sections 201/34 was sustained but the  
sentence was directed to run consecutively and not concurrently to  
show Court’s strong disapproval of the loathsome, revolting and  
dreaded device adopted to cause disappearance of the dead body.  
Convictions under other Sections namely, Sections 316, 498A/34  
  
were set aside.  
  
3.83 On the other hand, merely because accused has been  
acquitted under Section 302, IPC, presumption as to dowry  
death does not stand automatically rebutted (See Alamgir  
Sani Vs State of Assam, AIR 2003 SC 2108). Furthermore,  
even if accusation under Section 304 B fails, a person can be  
convicted under Section 498A notwithstanding that cruelty  
is common essential to both the Sections. A person can also  
be convicted under Section 306 though  
  
accusation under Section 304B fails. (See Hira Lal and others  
Vs State (Govt. of NCT), Delhi, AIR 2003 SC 2865, see also  
Kaliyaperumal Vs State of Tamil Nadu, AIR 2003 SC 3828.  
  
s, it may be seen that the offence of murder is not the  
same thing as the offence of dowry death under Section  
304B though death of bride may be a common element in  
both the offences. The absence of direct connection between  
the husband and the death of wife distinguished offence of  
  
  
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8  
dowry death from the offence of murder. This is a strong  
  
mitigating factor as has been held by the Supreme Court in  
  
the case of Hem Chand Vs State of Haryana (1994) 6 SCC  
  
727. It may be relevant to note that in this ease, the Supreme  
  
Court has gone to the extent that even life imprisonment  
under Section 304B should not be awarded as a matter of  
routine in all cases of dowry deaths but only in rare cases.  
  
After quoting Section 304B, the Supreme Court observed:  
  
“The point for consideration is whether the extreme  
punishment of life imprisonment for life is warranted in the  
present case. A reading of Section 304B, IPC would show  
that when a question arises whether a person has committed  
the offence of dowry death of a woman what all that is  
necessary is it should be shown that soon before her  
unnatural death, which took place within seven years of  
marriage, the deceased has been subjected, by such person,  
to cruelty or harassment for or in connection with demand  
for dowry. If that is shown, the Court shall presume that  
such person has caused the dowry death. It can, therefore, be  
seen that irrespective of the fact whether such person is  
directly responsible for the death of the deceased or not by  
virtue of the presumption, he is deemed to have committed  
the dowry death if there were such cruelty or harassment and  
that if the unnatural death has occurred within seven years  
from the  
  
date of marriage. Likewise, there is a presumption under  
Section 113B of the Evidence Act as to the dowry death. It  
lays down that the Court shall presume that the person who  
has subjected the deceased wife to cruelty before her death  
caused the dowry death if it is shown that before her death,  
such woman had been subjected, by the accused, to cruelty  
or harassment in connection with any demand for dowry.  
Practically, this is the presumption that has been  
incorporated in Section 304B IPC also. It can, therefore, be  
seen that irrespective of the fact whether the accused has  
any direct connection with the death or not, he shall be  
  
  
  
Page 79:  
”  
presumed to have committed the dowry death provided the  
other requirements mentioned above are satisfied. In the  
instant case, no doubt, the prosecution has proved that the  
deceased died an unnatural death namely due to  
strangulation, but there is no direct evidence connecting the  
accused. It is also important to note in this context that there  
is no charge under Section 302 IPC ...... Therefore, at the  
most it can be said that the prosecution proved that it was an  
unnatural death in which case also Section 304B would be  
attracted. But this aspect has certainly to be taken into  
consideration in balancing the sentence to be awarded to the  
accused ..... AS mentioned above, Section 304B, IPC only  
raises presumption and lays down that minimum sentence  
should be seven years but it may extend to imprisonment for  
life. ‘Therefore, awarding extreme punishment of  
imprisonment for life should be in rare cases and not in  
every case.”  
  
3.8.5 From the aforesaid analysis, the following proposition  
  
emerges:  
  
1. The offence of dowry death in Section 304B, IPC  
does not fall into the categories of the offences for  
which death penalty has been provided in the Penal  
Code.  
  
2. Dowry death is different from the offence of murder.  
  
Death of a bride may fall under both the categories of  
  
offences, namely, murder and dowry death, in which  
case, death sentence may be awarded for committing  
the offence of murder in appropriate cases depending,  
  
upon the facts and circumstances of each case.  
  
  
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3. Dowry death per se does not involve the direct  
connection between the accused and the offence  
because of its presumptive character. Where the  
evidence in a given case clearly shows that the  
accused willfully put human life to peril, the case will  
attract the provisions of Sections 300 rw 302 and it  
will no longer be a case of dowry death simpliciter.  
  
In view of the aforesaid, there is no justification for  
  
amending Section 304B to provide for death penalty. Such penalty  
  
will also not be in conformity with the principle of proportionality.  
  
3.8.6 During the course of deliberations in the Commission,  
suggestions were received that if the Section was not being  
amended to provide for death sentence, then at least the minimum.  
imprisonment of seven years under the section should be raised to  
  
ten years. This has been also one of the recommendations of the  
  
National Commission for Women, and has been referred to earlier  
  
in this chapter. The reason ascribed for this is that a victim of  
dowry death is generally forced to undergo long and persistent  
torture before being killed. There seems to be much substance in  
  
this recommendation and we concur in it, The recommendations of  
  
the National Commission for Women are already before the  
Government. It is for the Government to take an appropriate view  
  
‘on the above recommendation.  
  
3.9. Principle of Proportionality in Prescription of  
Punishment:  
  
  
Page 81:  
sl  
  
3.9.1 ‘The principle of proportionality in prescribing liability  
according to the culpability of each kind of criminal conduct has  
been very aptly elaborated by the Supreme Court in the case of  
Lehna Vs State of Haryana (2002) 3 SCC 76. It will be expedient  
to refer to the observations made by the apex court on this subject  
  
as under:  
  
“The criminal law adheres in general to the principle of  
proportionality in prescribing liability according to. the  
culpability of each kind of criminal conduct. It ordinarily  
allows some significant discretion to the Judge in arriving at a  
sentence in each case, presumably to permit sentences that  
reflect more subtle considerations of culpability that are  
raised by the special facts of each case. Punishment ought  
always to fit the crime; yet in practice sentences are  
determined largely by other considerations. Sometimes it is  
the correctional needs of the perpetrator that are offered to  
justify a sentence; sometimes the desirability of keeping him  
‘out of circulation, and sometimes even the tragic results of his,  
  
crime, Inevitably these consideration  
  
s cause a departure from  
just desert as the basis of punishment and create cases of  
  
apparent injustice that are serious and widespread.  
  
The principle of proportion between crime and punishment  
is a principle of just desert that serves as the foundation of  
every criminal sentence that is justifiable. As a principle of  
  
criminal justice it is hard less familiar or less important than  
  
  
Page 82:  
2  
the principle that only the guilty ought to be punished  
  
indeed, the requirement that punishment not to be  
disproportionately great, which is a corollary of just desert,  
is dictated by the same principle that does not allow  
punishment of the innocent, for any punishment in excess of  
what is deserved for the criminal conduct is punishment  
  
without guilt  
  
A conviet hovers between life and death when the question  
of gravity of the offence and award of adequate sentence  
comes up for consideration. Mankind has shifted from the  
state of nature towards a civilized society and it is no longer  
the physical opinion of the majority that takes away the  
liberty of a citizen by convieting him and making him suffer  
a sentence of imprisonment. Award of punishment following  
conviction at atrial in a system wedded to the rule of law is  
the outcome of cool deliberation in the court room after  
adequate hearing is afforded to the parties, accusations are  
brought against the accused, the prosecuted is given an  
opportunity of meeting the accusations by establishing his  
innocence. It is the outcome of cool deliberations and the  
screening of the material by the informed man i.e. the Judge  
  
that leads to determination of the lis.  
  
Proportion between crime and punishment  
  
s a goal espected  
in principle, and in spite of errant notions it remains a strong  
  
influence in the determination of sentences,  
  
‘The practice of  
  
punishing all  
  
serious crimes with equal i  
  
verity is now  
  
unknown in civilized societies; but such a radical departure  
  
  
Page 83:  
3.92  
  
8  
from the principle of proportionality has disappeared from  
  
the law only in recent times. Even now a single grave  
infraction is thought to call for uniformly drastic measures.  
Anything less than a penalty of greatest severity for any  
serious crime is thought than to be a measure of toleration  
that is unwarranted and unwise. But, in fact, quite apart  
from those considerations that make punishment  
Unjustifiable when it is out of proportion to the crime  
uniformly disproportionate punishment has some very  
  
undesirable practical consequences.”  
  
There is another important aspect that needs to be kept in  
  
view while dealing the subject under consideration, that is to say,  
  
the need for keeping emotional and sentimental feelings generated  
  
why incidence of dowry death within permissible bounds both  
  
while prescribing sentence for an offence and also while awarding  
  
a sentence in any case. It will be usefull to refer the following  
  
observations made in the case of State (Delhi Administration) Vs  
Laxman Kumar, AIR 1986 SC 250:  
  
“We appreciate the anxiety displayed by some of the women  
organizations in cases of wife burning crime to be  
  
condemned by one and all and if proved deserving the  
  
severest sentence, The evil of dowry is equally a matter of  
concer for the society as a whole and should be looked  
upon contemptuously both on the giver and the taker.  
  
The Courts cannot allow an emotional and sentimental  
  
feeling to come into the judicial pronouncements. Once  
  
  
Page 84:  
3.93  
  
84  
sentimental and emotional feelings are allowed to enter the  
  
judicial mind the Judge is bound to view the evidence with a  
bias and in that case the conclusion may also be biased  
resulting in some cases in great injustice. The eases have to  
be decided strictly on evidence howsoever cruel or  
horrifying the crime may be. All possible chances of  
innocent man being convicted have to be ruled out. There  
should be no hostile atmosphere against an accused in court.  
‘A hostile atmosphere is bound to interfere in an unbiased  
approach as well as a decision. This has to be avoided at all  
  
costs.”  
  
‘The Court further observed as follows:  
  
We were, however, disturbed by the fact that the High Court  
took notice of publicity through the news media and  
indicated its apprehension of flutter in the public mind. It is  
the obligation of every court to find out the truth and act  
according to law once the truth is discovered. In that search  
for truth obviously the Court has to function within the  
bounds set by law and act on the evidence placed before it.  
What happens outside the Court room when the Court is  
busy in its process of adjudication is indeed irrelevant and  
unless a proper cushion is provided to keep the proceedings  
within the court room dissociated from the heat generated  
outside the court room either through the news media or  
through flutter in the public mind, the cause of justice  
  
bound to suffer. Mankind has shifted from the state of  
nature towards a civilized society and it is no longer the  
physical power of litigating individual or the might of the  
ruler nor even the opinion of the majority that takes away  
the liberty of a citizen by convicting him and making him  
suffer a sentence of imprisonment. Award of punishment  
following conviction at a trial in a system wedded to rule of  
law is the outcome of cool deliberation in the court room  
after adequate hearing is afforded to the parties, accusations  
  
  
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are brought against the accused, the prosecutor is given an  
‘opportunity of supporting the charge and the accused i  
‘equally given an opportunity of meeting the accusations by  
establishing his innocence. It is the outcome of cool  
deliberations and the screening of the material by the  
informed mind of the Judge that leads to determination of  
the lis. If the cushion is lost and the Court room is allowed  
to vibrate with the heat generated outside it, the adjudicatory  
process suffers and the search for truth is stifled,  
  
‘The above approach may be germane to judicial proceedings  
before a court determining the guilt of an accused. It is not  
so in respect of legislative proceedings conceming  
prescription of a sentence in law for any given offence. The  
  
legislature ought not be oblivious to public sentiments and  
  
demands. Laws are made to satiasfy the needs of the society  
in which they operate. Admittedly, having regard to the  
number and the manner of dowry deaths, there are  
widespread public demands for stringent legal measures to  
effectively curb this social evil. But, at the same time, the  
cardinal principles of penology, especially those relating to  
sentencing, have to be duly adhered to. It is important that  
legal sanctions must be appropriate, pragmatic and effective.  
Sentence must not be too less or too harsh and more than  
  
what is necessary. Both will be counter  
  
productive. A rational balance has to be made in prescribing  
  
punishment for dowry deaths.  
  
  
Page 86:  
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3.9.5 It may be expedient to reiterate the word of caution sounded  
  
by this Commission in its 91\* Report, viz;  
  
Given all these circumstances of the usual “dowry death’, it  
will be conceded that even where there is in a particular  
case, moral certainty that the death is the result of murder,  
the circumstances would be hostile to an early or easy  
discovery of the truth. Punitive measures ~ such that can be  
pursued with the ambit of the existing law — may be  
adequate in their formal content. But their successful  
enforcement is a matter of difficulty. ‘That is why there is  
need to supplement the punitive measures by appropriate  
preventive measures. This Report seeks to make a few  
modest suggestions as to what can be done in this regard. It  
is possible that the measures recommended here will be  
regarded as very mild by some persons or as radicals by  
others. But it is hoped that the discussion will at least give a  
new stance to the thinking on the subject. Some effective  
preventive measures whatever be there content and drift, are  
needed urgently. If this is not done soon, there is a grave  
risk  
  
that the problem of bride burning will grow out of control  
and a stage will come when one of the two possibilities will  
become real. Either there will be no enthusiasm left for  
trying out conerete solutions or there will come to be  
adopted solutions that might be wors  
  
than the problem. It  
  
will be the earnest endeavour of this Commission to see that  
  
neither of the two possibilities is materialized.  
  
  
  
Page 87:  
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3.9.6 Keeping this in view, we are of the considered view that  
there is no warrant for prescribing death sentence for the offence  
of dowry death as defined in Section 304B IPC having regard to  
presumptive character of the offence, absence of direct connection  
in between the death and the offender and gravity of the culpable  
  
conduct as well as the object sought to be achieved thereby.  
  
3.9.7. The reason for this is not for to seek Capital punishment has  
already been prescribed in Section 302 LP.C (in a case of  
murder). There is no necessity to prescribe capital  
punishment for offence committed under Section 304B  
(dowry death). There is distinction between section 302  
(murder), section 304B (dowry death) and Section 306  
(abetment to suicide) of the Indian Penal Code. If charge is  
framed under Section 304B, but after recording and  
appreciation of evidence, the case proved to be a case under  
Section 302, the charge can be altered and the accused can  
very well be punished under Section 302 and if the court  
finds that the case under Section 302 to be a rarest of rare  
cases, then the offender can very well be awarded with  
  
capital punishment.  
  
3.9.8 In Panakanti Sampath Rao Vs State of A.P.,(2006) 9 SCC  
658 the Hon’ble Supreme Court affirmed the order passed by the  
High Court converting conviction w/s 304B and 398A to 302 LP.C.  
the Hon'ble Supreme court held that:  
  
  
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“There is ample evidence which shows that the appellant has  
harassed and ill-treated the deceased for dowry and the  
circumstances point out that he has caused the death of the  
deceased. Therefore, we find the appellant (A-1) guilty of  
the offence under Section 302 IPC”  
  
3.10. Recommendation.  
  
In view of the aforesaid, we do not recommend amendment  
of Section 304-B of the Indian Penal Code, 1860 to provide for  
death sentence as the maximum punishment in the case of a dowry  
death  
  
3.11 Valedietory remark.  
  
Before parting, we would like to reiterate the rider  
‘enunciated by the Supreme Court in its judgment in the case of K.  
Prema S.Rao Vs Yadla Srinivasa Rao AIR 2003 SC 11 at p.11  
(para 27) to the effect that “the Legislature has by amending the  
Penal Code and Evidence Act made Penal Law more strident for  
dealing with punishing offences against married women. Such  
strident laws would have a deterrent effect on the offenders only if  
they are so stridently implemented by the law courts to achieve the  
legislative intention”. We may add that the enforcement agencies  
too will have to be more sensitive and responsive to the needs of  
the situation arising from the incidents of dowry death. Dowry  
deaths are manifestation of socio-economic malady prevailing in  
  
as to  
  
the society. This has to be addressed at different levels  
curb the menace of dowry deaths and not at the legal redressal  
  
level  
  
  
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alone. We will, however, refrain ourselves from entering into this  
  
arena as this does not strictly belong to legal realm.  
  
(Dr. Justice AR. Lakshmanan)  
Chairman  
  
(Prof. (Dr) Tahir Mahmood) (ord  
Member Member-Seeretary