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SOCIO ECONOMIC OFFENCES

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I INTRODUCTION

SOCIO ECONOMIC crimes continue to be one of the most formidable issues of criminal jurisprudence. This survey of 2018 examines selected cases of the Supreme Court under laws dealing with corruption, narcotic substances, organised crimes and dowry offences where the law is laid down or a conflicting view is reflected. Special emphasis is laid on the delay aspects in higher courts.

II PREVENTION OF CORRUPTION ACT, 1988

Mauvin Godinho v. *State of Goa*[1] is significant in three respects. (i) can mere suspicion be a ground for framing of charges in corruption cases? (ii) how is the concept of *prima facie* applicable (iii) why is there inordinate delay in disposal of cases despite provision for special court under the Prevention of Corruption Act, 1988.

In this case it was alleged that a minister has issued a notification in the power sector without the approval of the cabinet. However, previous notifications were issued with the approval of the cabinet. Allegedly some forged documents were also prepared. The new notification gave pecuniary benefits to certain companies. The trial court framed charges under many provisions including the Prevention of Corruption Act, 1988 (PCA) and the high court upheld the charges.

In the Supreme Court it was argued that the trial court framed charges of corruption based on mere suspicion and it should be a ground for quashing it. The Supreme Court held that at the time of framing of charges the trial court is required to examine whether *prima facie* facts speak for itself or not. The Supreme Court did not find any ground to interfere. Second aspect is inordinate delay. The FIR was registered in late 1990s. Charges were framed. Framing of charges was upheld by the high court in 2007 and by the Supreme Court in 2018. 20 years have passed in deciding the validity of framing of charges. A special court was set up so that corruption cases can be decided swiftly. But the purpose seems to be frustrated in this case. Delay in cases is music to the real culprit. The higher courts need to be more vigilant.

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1 (2018) 3 SCC 358.

A look into the timeline of this case (*Mauvin Godinho*) reveals the problem in the Supreme Court of India. On November 26, 2007, notice was issued. Counter affidavit, rejoinder affidavit was filed between 2008-2011. On February 21, 2014 the office report indicates that respondent nos. 2, 3 and 7 are yet to be served. Seven years after the petition filed in the Supreme Court it was realised that the address of respondents are not correct. The case was listed in 2017 and in 2018 the decision as to framing of charges was upheld. No one is made responsible for such delay on technical issues. What happened between 2008-10 and 2014-17 is not known. To decide a case of framing of charge, upheld by the high court, the Supreme Court heard the matter 17 times. Due process and rule of law cannot be this liberal. This case moves in a "bullock cart" and will "hurt rather than help" the state interest and the victims. This only establishes that in corruption cases high and mighty (in this case a minister in Goa) "accused have exploited every loophole in the law."[2] Judiciary has tried to plug the loopholes by fast forwarding judicial appointments, digitisation but the effort needs to be strengthened.

Section 19(3)(c) of PCA *vis-a-vis* 482 of CrPC

Asian Resurfacing of Road Agency v. *Central Bureau of Investigation*[3] is a judgement that not only clarifies a dispute but also attempts a reform in the judicial process so that institutional delay can be minimised and an accused did not exploit the situation in his favour. The issue before the court was as under:

(a)Whether the order of framing of charge is an interlocutory order? (b) Is a revision petition against such order barred by section 19(3) of the PC Act?[4] (c) Whether inherent powers under section 482(2) Cr PC can be invoked to grant stay against such order or refuge can be taken to article 226/227 of the Constitution of India ? In other words (i) what is the true interpretation of section 19(3)(c) of the PCA especially the words "any other ground". Is it "referable only to grounds which relate to sanction and not generally to all proceedings under the Act."

Rohington Nariman, J held that 19(3) (c) contains all grounds under the PCA and not limited to sanction like issue because of three reasons based on two rules of interpretation.

Firstly, if plain meaning rule is followed two reasons emerge:[5]

> A. it is separately dealt under earlier provision[6] "Section 19(3)(b) subsumes all grounds which are relatable to sanction granted." It uses the word "any" which is very wide.

2 NK Singh, *The Politics of Crime and Corruption* 230-232 (New Delhi, Harper Collins 1999). The author quotes Chief Justice YB Chandrachud, SN Dhingra and Nikhil Chakrabarti.

3 (2018) 16 SCC 299, *hereinafter* referred as *Asian Resurfacing of Road Agency*. This was decided by a full bench of Adarsh Kumar Goel, Rohinton Fali Nariman, and Navin Sinha, JJ.

4 No court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in inquiry, trial, appeal or other proceedings.

5 Nariman did not use the word plain meaning rule.

6 No court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice.

> B. The explanation also makes it clear that error includes error on part of sanction.

Secondly, assuming there is some ambiguity of the provision where two views are possible, purposive interpretation holds the field even if it is a penal statute. Nariman, J. held :[7]

> the view which most accords with the object of the Act, and which makes the Act workable, must necessarily be the controlling view. It is settled law that even penal statutes are governed not only by their literal language, but also by the object sought to be achieved by Parliament. [8]...Section 19(3)(c) is to be read with section 4(4) and section 22, all of which make it clear that cases under the Act have to be decided with utmost dispatch and without any glitches on the way in the form of interlocutory stay orders.

***Satya Narayan Sharma* overruled**

The case of *Satya Narayan Sharma* was on the same issue. It was of the opinion that the high courts cannot exercise their inherent power under Cr PC as section 19 of PCA prohibits it. The reasoning of *Satya Narayan Sharma* was that often high courts issue stay orders on trial in corruption cases and then it lingers on for decades. To arrest delay it held that the prohibition under section 19 of PCA is absolute and "there is a blanket ban of stay of trials and that, therefore, section 482, [of Cr PC] even as adapted, cannot be used for the aforesaid purpose." However, Nariman, J. in *Asian Resurfacing of Road Agency* held that *Satya Narayan Sharma* v. *State of Rajasthan*[9] is overruled. *Satya Narayan Sharma* was also against the Constitution Bench decision of *In re Special Reference 1 of 1964*,[10] which held that the power of the superior court (high court) cannot be that of limited jurisdiction because they are constitutional courts due to which inherent jurisdiction is provided.

Framing of charge: Nature whether interlocutory

On the issue whether the order of framing a charge is an interlocutory order or not the court held as under:[11]

> It was is not "a purely interlocutory order so as to attract the bar of Section 392(2), but would be an "intermediate" class of order, between a final and a purely interlocutory order, on the application of a test laid down by English decisions and followed by our Courts, namely, that if the order in question is reversed, would the action then go on or be terminated. Applying this test, it was held that in an order rejecting the

7 Nariman, J. at para 8 in sci.gov.in.

8 Nariman, J. referred *Eera through Manjula Krippendorf* v. *State (Govt. of NCT of Delhi*) 2017 SCC Online SC 787 at paragraphs 134-140) which is on the interpretation of POCSO case. A detailed discussion on purposive interpretation in penal statute can be found in the *Brijesh Singh* case examined in this work.

9 (2001) 8 SCC 607. It was a division bench judgement.

10 (1965) 1 SCR 413 at 499.

11 Nariman, J. on para 13.

framing of a charge, the action would not go on and would be terminated and for this reason also would not be covered by Section 397(2).

Similarly on the exercise of article 226, 227 the court held that they cannot be barred being a part of basic structure theory but should not be used as routine matter. While quoting *Kartar Singh* the court cautioned that such power should be used "only in rare and appropriate cases in extreme circumstances. But the judicial discipline and comity of courts require that the High Courts should refrain from exercising extraordinary jurisdiction in such matters."

The interpretation of section 19 of the PCA shows a shift from crime control model to due process model. In *Satya Narayan Sharma* both judges of the division bench gave their opinion and both concurred that in corruption cases once charge is framed by a trial court, no interference by the high court or the Supreme Court should be entertained because stay delays the trial, derails prosecution and pleases the accused. Quick and uninterrupted disposal of corruption cases was in the mind of judges in *Satya Narayan Sharma* and they avoided due process model. The decision in *Asian Resurfacing of Road Agency*, is more accused friendly and is inconsistent with the idea of early disposal of socio economic crime cases like corruption. The Parliament should intervene and address the matter of delay due to the power of section 482 of Cr PC.

Dashrath Singh Chauhan v. *Central Bureau of Investigation*[12] is a conventional case of bribe. A1 asked bribe from B1 for electricity connection. The police used a trap on complaint. The bribe was given to A2. A1 and A2 both were prosecuted under Indian Penal Code, 1860 and PCA. According to sections 7, 13(2) read 13(1)(d) of PCA, the prosecution was under a legal obligation to prove the twin requirements of "demand and acceptance of bribe money by the accused", the proving of one alone but not the other was not sufficient. Here bribe was asked by A1 but accepted by A2. There was no evidence of conspiracy between A1 and A2. Therefore both were acquitted. The twin condition is to ensure that there is no false allegations against accused. Therefore, the modification of law is no answer to such cases because it will reduce the protection to accused. The correct approach is to plan the trap in such a way that the angle of conspiracy can be established. It was an unprofessional execution of catching the bribe giver red handed. The Police and officials should be trained for such purpose.

III MCOCA-NEW DEVELOPMENTS

Not many cases are found in criminal laws which challenge the established criminal jurisprudence. *State (NCT of Delhi)* v. *Brijesh Singh @ Arun Kumar*[13] case indicates a major development in this area. They address four questions. (i)Can the classical rule of interpretation of penal law be overlooked? (ii) Is the principle of territorial nexus applicable in criminal cases? (iii) What is the limitation of the term "crime is local"? (iv) How to interpret the word "court" under Maharastra Control of Organised Crime Act, 1999 (MCOCA) as applicable in Delhi?

12 2018 SCC OnLine SC 1841.

13 (2017) 10 SCC 779. This case could not be covered in 2017.

Interpretation of penal law

It is an old principle of interpretation that penal laws are required to be given a strict meaning. If a word in the penal law can convey two meanings, then the courts must accept the meaning which favours the accused. One of the reasons for this tilt in favour of the accused is to provide a level playing field for the accused *vis-a-vis* state which is very powerful. However, Maxwell,[14] the leading authority on statutory interpretation, discloses another less known reason for strict interpretation of penal law. He says that this rule was more rigorously applied in former times because capital punishment was prescribed for more than hundred offences, that too very trivial in nature *viz.,* if anyone cuts down a cherry-tree in an orchard, or if you are seen in the company of gipsies for a month or a soldier is found begging or he wanders without a pass[15] or stealing of horses.[16]

Many modern authorities and judicial pronouncements have also quoted this principle of strict interpretation of penal laws, without realising that the strict meaning rule has lost most of its classical vigour a century ago. In this regard Maxwell suggests as under: [17]

> Invoked in the majority of cases *in favorem vitae,*[18] *it* [strict interpretation] *has lost much of its force and importance in recent times*, and it is now recognised that the paramount duty of the judicial interpreter is to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning, and *to promote its object.* [emphasis added]

In other words the interpretation of penal laws should not be too rigid to lose sight of its own purpose. This purposive approach is at the core of interpretation. While classical criminal laws have shown great affection to the conservative meaning of strict interpretation, modern criminal laws like socio economic crimes have shown rejuvenated interest in purposive approach of interpretation of penal statutes.

Brijesh singh case highlights the application of purposive approach to interpretation. The court observes as under:[19]

> The principles of strict construction have to be adopted for interpretation of the provisions of MCOCA, which is a penal statute.[20] However, it is

14 Peter Benson Maxwell, *On The Interpretation of Statutes* (London, 6th edn., 1920), *hereinafter* referred as *Maxwell.*

15 *Maxwell* in the ch. X. "Section I.—Construction of Penal Laws" at 462.

16 *Id.* at 467.

17 *Maxwell* at 462-463. He also quotes Day J., in *Newby* v. *Sims* (1894) 63 L. J. M. C. 229.

18 In favour of life.

19 *Murlidhar Meghraj Loya* v. *State of Maharashtra* (1976) 3 SCC 684.

20 *Ranjitsing Brahamajeetsing Sharma* v. *Maharashtra* (2005) 5 SCC 294 (para 42). It was a full bench opinion. —Commissioner of Police, Bombay, was arrested under MCOCA for helping Abdul Karim Ladsa Telgi in 200 crore fake stamp case. He challenged his FIR and arrest under MCOCA. The interpretation of MCOCA was also in question. "We are not oblivious of the fact that in certain circumstances, having regard to the object and purport of the Act, the Court may take recourse to principles of 'purposive construction' only when two views are possible." *State of Maharashtra* v. *Lalit Somdutta Nagpal* (2007) 4 SCC 171 (para 62).

> no more *res integra* that even a penal provision should be interpreted to advance the object which the legislature had in view.

The court took support from a previous decision in *Eera through Manjula Krippendorf* v. *State (Govt. of NCT of Delhi)*[21] where he was examining the interpretation of section 2(1)(d) of the Protection of Children from Sexual Offences Act, 2012. R.F. Nariman, J. in that case (*Ms. Eera*) held as follows:

> It is thus clear on a reading of English, U.S., Australian and our own Supreme Court judgments that the 'Lakshman Rekha' has in fact been extended to move away from the strictly literal rule of interpretation back to the rule of the old English case of Heydon, where the Court must have recourse to the purpose, object, text, and context of a particular provision before arriving at a judicial result. In fact, the wheel has turned full circle. It started out by the rule as stated in 1584 in Heydon's case, which was then waylaid[22] by the literal interpretation rule laid down by the Privy Council and the House of Lords in the mid 1800s, and has come back to restate the rule somewhat in terms of what was most felicitously put over 400 years ago in Heydon's case.

He rightly pointed out that *Heydon's* case has travelled a full circle and the purposive approach dominates the field of interpretation.

Nature of organised crime

The menacing nature of organised crime was considered by the court which compelled the Parliament to bring a special law like MCOCA as under:

> The commission of crimes like contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnappings for ransom, collection of protection money and money laundering, etc. by organised crime syndicates was on the rise. To prevent such organised crime, an immediate need was felt to promulgate a stringent legislation. The Government realized that organised crime syndicates have connections with terrorist gangs and were fostering narcotic terrorism beyond the national boundaries. MCOCA was promulgated with the object of arresting organised crime which was posing a serious threat to the society. *The interpretation of the provisions of MCOCA should be made in a manner which would advance the object of MCOCA.* [emphasis added]

An analysis of the above paragraph rightly explains that the nature of organised crime is hybrid or mixed. It is a deadly blend of classical crime and white collar crime coupled with terrorist offences. The Parliament found that the classical laws or even special laws of the time were not able to suppress the mischief. The Parliament passed another special law to address the menace of organised crime. There was a change in Parliamentary approach to penal law. It should be translated into a shift in judicial

21 (2017) 15 SCC 133 at para 24 (concurring judgment of R.F. Nariman J.).

22 Conveys to temporarily stop the movement or progress of (someone or something).

interpretation of penal law. Therefore, purposive approach of interpretation holds the field so that for the want of technical evidence, an accused of socio economic crimes ought not to be beyond the long hands of law.

After making a principal statement on the interpretation of penal law the court applied the principle to this case. A few lines of fact are desirable for better understanding. The accused was a mafia don who was being prosecuted under IPC and special laws for dozens of heinous crimes in Uttar Pradesh. A couple of less serious cases were also registered against him in Delhi under IPC. Based on various crimes being prosecuted in Uttar Pradesh and Delhi the Police imposed MCOCA on *Brijesh Singh.* The issue was whether MCOCA can be lawfully imposed on the accused in Delhi considering the accusation of offences in UP?

The court framed two issues as under:-

i) Whether charge sheets filed in competent courts outside the National Capital Territory of Delhi can be taken into account for the purpose of constituting a "continuing unlawful activity", and

ii) Whether there can be prosecution under MCOCA without any offence of organised crime being committed within Delhi.

Territorial nexus and criminal law

As the first issue dealt with the principle of territorial nexus in criminal law, the court discussed it in detail and held that territorial nexus is applicable to all, be it civil or criminal law. It is established that jurisdiction of a state law is limited to its own territory. However, in some cases that law can overstep and can be applicable to other states also if it has some nexus with another state. This is called the principle of territorial nexus. *State of Bombay* v. *RMD Chamarbaugwala*,[23] recognized the existence of two elements to establish territorial nexus which are:

i. The connection must be real and not illusory, and

ii. The liabilities sought to be imposed must be pertinent to that connection.

Is the principle of territorial nexus applicable to penal laws also? It was argued that in a previous case *State of Bombay* v. *Narayandas Mangilal Dayame*,[24] the argument of territorial nexus was rejected. In this case, there was a trial in the State of Bombay for bigamy committed in the State of Bikaner. The Supreme Court distinguished the high court case from *Brijesh Singh* case by observing that in *Narayandas Mangilal Dayame* a "trial" was in question for an alleged crime committed in another State. In *Brijesh Singh* case the conduct of the accused in Uttar Pradesh is not a subject matter of trial in Delhi. Here the conduct in Uttar Pradesh is being considered only for the purpose of cognizance under MCOCA in Delhi. The *ratio decidendi* of the Supreme Court on this issue (first issue) is as under:

23 [1957] SCR 874 (p.901). It was a Constitution Bench judgement on taxation.

24 AIR 1958 (Bom) 68 (Full Bench).

> The existence of filing of the charge sheets [in UP] as a matter of fact, is taken into consideration [in Delhi] merely for the purpose of *determining the antecedents of the Respondents* (Brijesh Singh). The Respondents would still be liable to face trial in competent Courts in [UP] where the charge sheets are filed.

Comparative jurisdiction

However, the court also held that "even if a crime is committed in one State, the accused can be tried in another State if the detrimental effect is in that State." The principle of 'Crime is local' is not applicable in such cases. The Supreme Court took support from the English case of *Lawson* v. *Fox*[25] decided by the House of Lords, where a driver was convicted for violation of transport law of Britain for which his conduct committed in France was taken into account.

Competent court

Another point in *Brijesh Singh* case was how to interpret the word "competent court" under MCOCA. The court observed:

> A restrictive reading of the words "competent Court" appearing in Section 2 (1)(d) of MCOCA will stultify the object of the Act. We disagree with the learned senior counsel for the Respondents that it is impermissible for the Special Courts to take into account charge sheets filed outside the National Capital Territory of Delhi as that would result in giving extra territorial operation to MCOCA. A perusal of the charge sheets filed against the Respondents in the State of Uttar Pradesh which are relied upon by the prosecution to prove that organised crime was being committed by them shows clear nexus between those charge sheets and the National Capital Territory of Delhi where prosecution was launched under MCOCA.

L Nageshwar Rao, J. applied the vertical *stare decisis*, ("A court engages in vertical *stare decisis* when it applies precedent from a higher court")[26] from *RMD Chamarbaugwala* case as under:

> The twin conditions to establish territorial nexus in *RMD Chamarbaugwala's* case (supra) are fulfilled. If members of an organised crime syndicate indulge in continuing unlawful activity across the country, it cannot by any stretch of imagination said, that there is no nexus between the charge sheets filed in Courts in States other than Delhi and the offence under MCOCA registered in Delhi. In such view, we are unable to accept the submission of the Respondents that charge sheets filed in competent Courts in the State of Uttar Pradesh should be excluded from consideration. We hold that 'competent Courts' in the definition of 'continuing unlawful activity' is not restricted to Courts in Delhi alone.

25 [1974] 1 All ER 783.

26 *Available at*: https://www.law.cornell.edu/wex/stare_decisis.

Organized crime in Delhi is *sine qua non*

The court also held that "an activity of organized crime in Delhi is a sine qua non for registration of a crime under MCOCA." Organised crime is punished under section In other words the ingredient of "continuing unlawful activity" has to be satisfied for the application of MCOCA. An unlawful activity becomes continuing "unlawful activity" if the offence is cognizable and prescribes three years or more punishment besides other elements.

In Delhi two FIRs were registered against Brijesh Singh. They were either not cognizable or if cognizable, the punishment prescribed was less than three years. Section 341 IPC is punishable with a maximum sentence of one month, though it is cognizable offence. Section 506 IPC is a non-cognizable.[27]

There was a complaint regarding an extortion call. But the investigation revealed that the call was made from a PCO booth, Varanasi. Cause of action did not arise in Delhi. Section 45 of the MCOCA provides "punishment for possessing unaccountable wealth on behalf of a member of an organized crime syndicate." There was no mention of any property belonging to the respondents Brijesh Singh in Delhi. The counsel for State also admitted that there was no property in Delhi. In other words there was no prima facie proof of organised crime committed in Delhi. Therefore, MCOCA cannot be applied on accused.

IV NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

Fair investigation is an umbrella term. It is a part of due process clause and lack of fair investigation violates article 21 of the Constitution of India. One of the questions that is often posed is the rule of natural justice. Can an informant be an investigating officer? The issue of fairness is more important in the cases of socio economic crimes like NDPS, PCA, dowry laws *etc.* because of the provision of reverse onus, minimum punishment, presumption clause etc.

Mohan Lal v. *State of Punjab*[28] attempts to decide this case. In this case there were two types of issues. The primary issue was related to the matter of common importance, ie what is the impact on a case if an informant becomes an investigator. The issue of secondary importance is restricted to this case only like why a couple of important witnesses (ASI) were not examined. Why was the seized narcotics not deposited in the malkhana nor was it entered in the roznamcha? Why was there a delay of nine days in sending the sample for chemical analysis? No explanation was given by the prosecution on these aspects.

On the first and primary issue the full bench observed that NDPS carries a reverse burden of proof. Therefore, there had to be strict adherence to the law and

27 In 2003 Indian Penal Code, 1860, s. 506 reads: was made cognizable through a Delhi government notification. It was quashed. Another attempt to make it cognizable was also quashed in 2016. These notifications were issued on the basis of sub-section (1) and (2) of section 10 Criminal law Amendment Act, 1932 which provided the state executives power to modify an offence from not cognizable to cognizable. The High Court of Delhi held that after Cr PC 1973, the power under 1932 Act cannot be used as they are prejudicial to central enactment.

28 (2018) 17 SCC 627. It was a full bench decision.

procedures. The investigation was not only required to be fair and judicious, but must also appear to have been so. The investigation ought not to be in a manner leaving a genuine apprehension in the mind of the accused that it was not fair and *bona fide*.

Section 55 of NDPS Act deals with the "Police to take charge of articles seized and delivered". A plain reading of the provision makes it manifest that it is the duty of the police officer to deposit the seized material in the police station malkhana. Moreover the standing Order No. 1 of 88 issued by the Narcotics Control Bureau in clause 1.13 reads under "Mode and time limit for dispatch of sample to Laboratory" that the sample has to be dispatched to the laboratory within 72 hours.

The value of these provisions have been explained in the case of *Noor Aga* v. *State of Punjab*,[29] under the NDPS Act, it was held :[30]

> The logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance with these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution.

Taking clues from the case of *Noor Aga*, the full bench in *Mohan Lal* observed that:

> The stringent provisions of the NDPS Act, such as Section 37, the minimum sentence of ten years, absence of any provision for remission, do not dispense with the requirement of the prosecution to establish a prima facie case beyond reasonable doubt after investigation, only after which the burden of proof shall shift to the accused. The case of the prosecution cannot be allowed to rest on a preponderance of probabilities.

In *Bhola Singh* v. *State of Punjab*,[31] the same principle was reiterated that:

> the investigation on the very face of it must appear to be so, eschewing any conduct or impression which may give rise to a real and genuine apprehension in the mind of an accused and not mere fanciful, that the investigation was not fair.

Informant as investigator

Mohan Lal relied on common logic, precedents and principles of fairness. On the point of logic the court observed as under:

> It is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would

29 (2008) 16 SCC 417.

30 *Id.,* para 91.

31 2011(11) SCC 653.

> himself at the end of the investigation submit a closure report to conclude false implication with all its attendant consequences for the complainant himself. The result of the investigation would therefore be a foregone conclusion.

The court also directed itself through many precedents. For example *Baldev Singh*[32] related to a prosecution under section 165A of the IPC. It was on general liability under criminal law and not under special legislation. "Nonetheless, it observed that if the informant were to be made the investigating officer, it was bound to reflect on the credibility of the prosecution case." The third precedent was *Megha Singh*[33] which was concerned with the Terrorist and Disruptive Activities (Prevention) Act, 1985. "It was held that the Head Constable being the complainant himself could not have proceeded with the investigation and it was a practice, to say the least, which should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation."

The precedents which did not follow the rule of "informant as investigator" was also discussed in *Mohan Lal*. For example, *Bhaskar Ramappa Madar*[34] concerned a prosecution under section 304B, IPC which also carries a reverse burden of proof where it was held "that the principle "informant not to be investigator" laid down in precedents had to be confined to the facts of the said cases and that the matter would have to be decided on the facts of each case without any universal generalisation.

Similarly in *Inspector of Police, Vigilance and Anti Corruption, Tiruchirapalli, Tamil Nadu* v. *V. Jayapaul*,[35] the court observed as follows:[36]

> We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate.

Mohan Lal tried to distinguish the cases which did not approve the rule of 'informant as investigator' which is not very convincing. Despite conflicting position on the 'informant as investigator' *Mohan Lal* held as under:

> In view of the conflicting opinions expressed by different two Judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided.

32 *State of Punjab* v. *Baldev Singh* (1999) 6 SCC 172.

33 *Megha Singh* v. *State of Haryana* (1996) 11 SCC 709.

34 *Bhaskar Ramappa Madar* v. *State of Karnataka* (2009) 11 SCC 690.

35 2004 (5) SCC 223.

36 *Id.,* para 6.

It was good that the court desired to settle the controversy. The principle used for this purpose was "due process model." The full bench reiterated the *ratio decidendi* as under:

> It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.

Mohan Lal has made a universal rule (at least for NDPS cases) that an informant can never be an investigating officer. It can result in delay in many investigations. The chances of bias can be checked through many other means. A supervising officer can check such bias. In many places there is a gross deficiency of police officers. The highest ideal of investigation demands that the informant ought not to be an investigator. But a blanket ban is not prudent.

Dowry offence as socio economic crimes

Sixty years ago, in 1959, Dowry Prohibition Bill, 1959 was examined by the Joint Committee of the Parliament which rightly acknowledged that the system of dowry "is not only a great social evil but at times proves fatal to so many innocent girls of poor families."[37] Dowry demand, consistent harassment to wife, economic abuse and death of bride (in the form of murder or suicide) is deep rooted in the greed to become rich overnight. Its global dimension has been recognised. For example, the dowry issue as an economic abuse "is perceived as a growing problem in some communities in Australia. The Victorian Royal Commission into Family Violence recently found that it was a particular concern in Indian, Pakistani, Sri Lankan, and increasingly in Middle Eastern Communities."[38]

V DOWRY DEATH DUE TO ABETMENT: IS THE LAW SETTLED?

Cruelty, violence, suicide and murder to get more money through marriage is the outcome of dowry related issues. While section 304B of IPC does cover suicide by wife, it has created difficulties for advocates of justice especially in those cases where the allegations of harassment for dowry lack dependable evidence. In such cases section 306 of IPC comes in picture but judicial pronouncements on abetment of suicide under section 306 are confusing. Such suicides are indeed the direct result of dowry demands due to which section 113A of the Indian Evidence Act, 1872 was incorporated in 1983. However, unsettled legal position on what amounts to abetment to suicide in dowry cases has weakened the march of law to check the menace of this socio economic crime.

37 Report of The Dowry Prohibition Bill, 1959, Presented On the Nov. 19, 1959, Lok Sabha Secretariat, New Delhi, Nov., 1959.

38 The Senate Legal and Constitutional Affairs References Committee, Practice of dowry and the incidence of dowry abuse in Australia, Commonwealth of Australia (2019).

Among many offences, the offence of abetment raises tough questions because of the subjectivity involved in it. Abetment of wife to commit suicide in particular raises complex questions of causal relationship between the conduct of an accused and the suicide committed by wife. This complexity has led to judicial pronouncements which are subject to criticism. Suppose, a husband demands dowry and has an illicit relationship with another lady, can this be termed as an abetment to commit suicide? Can it be said that the husband "instigated" or "encouraged" wife to commit suicide. "Common sense" would suggest that the illicit relationship of husband was reason for the suicide by the wife. Is this "common sense" also applicable for "legal sense". Legal sense requires proof of *mean rea* and *actus reus* on the part of husband because abetment is a general liability crime. What was the *actus reus* committed by the husband? Was there any positive act committed by him that compelled the wife to commit suicide? Is engaging in an adulterous relationship sufficient to establish positive conduct of the husband? Such adulterous conduct is no more offence.[39] Can the court take into account "course of conduct" rather than one conduct? Will consistent illicit relationships, known to the public fulfill the requirement of that course of conduct which was required by the law?

Extramarital affairs as abetment to suicide

The case of *Siddaling* v. *State of Karnataka Through Kalagi*[40] is one such decision of 2018. For the conceptual clarity of the jurisprudence of abetment, it is essential that facts be narrated here. Siddling (husband-H) and Kavitha (K) married in May 2002. After marriage, the deceased wife suffered two types of cruelty. (i) Money and gold was demanded from family members even after the marriage. (ii) What "pricked" Kavitha was the sad fact that her husband, Siddling, had an extra marital affair with another lady. The wife was disappointed, obviously. She left her husband and returned to her parents house. In June 2002, a Panchayat meeting was held where Siddling admitted his relationship and promised to sever it. A document was also executed by him. The deceased wife came back but the husband Siddaling continued to remain unfaithful. This caused mental agony to the wife. She again went back to parents home in September 2002 where she jumped into a well and committed suicide. The trial court convicted Siddaling and his father under sections 498-A, 304-B, 306 IPC and sections 3, 4 and 6 of the Dowry Prohibition Act, 1961(DPA) .[41]

However, the high court did not find proofs beyond reasonable doubts regarding dowry demands.[42] Therefore, conviction under 304B and DPA was set aside and conviction was upheld under section 498A and 306. The matter came before the division bench of the Supreme Court which convicted him for section 498A and 306

39 A Constitution Bench unanimously decriminalise2020d adulterous relationship under section 497, IPC in the case of *Joseph Shine* v. *Union of India,* 2018.

40 (2018) 9 SCC 621. It was a division bench ruling.

41 Decision of trial court, Gulbarga, Karnataka, dated Aug. 19, 2005.

42 Decision of single bench dated June 27, 2007, in CRLA No. 1642/2005, *available at: http://judgmenthck.kar.nic.in/judgments/bitstream/123456789/79778/1/CRLA1642-05-27-06-2007.pdf.* (last visited on Dec. 10, 2019).

of IPC. This conviction was controversial because of the reasoning provided by the court. The *ratio decidendi* can be extracted as under- "appellant continued his relations with another woman. The appellant's illicit relation with another woman *would have definitely created the psychological imbalance* to the deceased which led her to take the extreme step of committing suicide. It cannot be said that the appellant's act of having illicit relationship with another woman would not have affected the ingredients of sections 306 IPC"

The significance of this decision lies in the fact that the law and judicial precedents require the proof of active participation of the accused in the offence of abetment. There are two questions. Whether the conduct of accused husband encouraged or assisted the wife to commit suicide? This will need an overt *actus reus*. Whether the conduct of accused husband *was capable* of encouraging or assisting the wife to commit suicide? This will not require an overt *actus reus* and inferences can be drawn. The suicide and reason of suicide in *Siddaling* is unambigous. But the proximity rule ie there was a proximate connection between conduct of the accused and the sucide, needs to be established beyond reasonable doubts. There was no doubt that Siddaling, the husband, neglected his wife. This is also beyond doubts that money, and gold was exchanged from bride side to groom side. This seems like dowry but the high court declined to admit that it was a dowry transaction. This was because of three reasons. (i) The witnesses were inconsistent on the exact amount. Was the amount given 25000 or 31000 or something else? The high court suspected witnesses because the alleged dowry amount was not matching. (ii) The marriage was solemnised in the place of the husband. The money transferred from the bride side could be for marriage expenses. (iii) The gold given was considered as a voluntary transfer as a part of custom. This is also beyond doubts that he was in relationship with another woman. Adultery may amount to mental cruelty. This is a ground for divorce. But, can it a ground for a penal action, like section 498A? Or can it be a reason for abetment to commit suicide under section 306?

One of the most important precedents on section 306 where a wife dies is *Ramesh Kumar* v. *State of Chhattisgarh*.[43]

As this is a full bench decision, the *ratio decidendi* has binding strength over other judicial determinations. The Supreme Court in *Ramesh Kumar*, observed as under:

> Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out.

Ramesh Kumar also suggests what amounts to abetment and what does not, which is as under- "whether the accused had by his acts or omission or by a continued

43 (2001) 9 SCC 618. It was a full bench unanimous ruling consisting of A.S. Anand, R.C. Lahoti, K.G. Balakrishnan.

course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred." The case also proposes a limitation that if "a word [is] uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation." *Ramesh Kumar* relies on section 107 (1) of IPC for definition of abetment.

In another case, *Bhagwan Das* v. *Kartar Singh*[44] M. Katju, J held as under:[45]

> ...It often happens that there are disputes and discords in the matrimonial home and a wife is often harassed by the husband or her in-laws. This, however, in our opinion would *not by itself and without something more* attract Section 306 IPC read with section 107 IPC. [emphasis added].

However, in our opinion *mere harassment* of wife by husband due to differences per se does not attract section 306 read with section 107 IPC, if the wife commits suicide.

In *Bhagwan Das* case the *actus reus* of harassment was in the form of mental cruelty which can be summarised as under:

(i) Taunt for not bringing sufficient dowry,

(ii) Husband would be married elsewhere,

(iii) Married in 1992 but not able to be pregnant till 1999,

(iv) Birth of girl child,

(v) Husband paralysed because of girl child,

As per *Bhagwan Das* above facts may be sufficient for section 498A (or for 304B). But, for section 306, something more needs to be done for *actus reus*.

In *Siddaling* case the Supreme Court considered only one evidence, *i.e.,* extramarital affair. This is shocking to a spouse if another party has such an affair. Is it sufficient for abetment? Or something more is required. If we follow the principles of law that are laid down from various precedents, the prosecution needs to establish *mean rea* and *actus reus* on the part of accused. As per classical rule of interpretation of the law of abetment, the conviction of *Siddaling* under section 306 seems difficult to digest. Therefore the judgement has raised eyebrows.[46] The harassment induced by the suicidal death of a wife at a matrimonial home is very difficult to prove. The Parliament incorporated the "may presume" clause under section 113A. However, there is no reference of section 113A in the judgement. The court relied heavily on the disturbed mental status of the wife due to continued immoral conduct of the husband. Did the court depart from accused oriented interpretation of law and shifted to victim

44 (2007) 11 SCC 205. Wife committed suicide. The High Court of Delhi did not accept charges under section 306 and the case was remitted back to the trial court for section 498A. The Supreme Court upheld the high court order.

45 *Ibid*.

46 Vakasha Sachdev, "Extramarital Affair = Abetment of Suicide? SC Ruling Spells Danger", Feb. 28 2019, *available at:*https://www.thequint.com/voices/opinion/supreme-court-extramarital-affair-abetment-of-suicide-dangerous? (last visited on Dec. 19, 2019).

oriented interpretation? Only this explains the judgement. The high court already blocked any conviction under dowry laws though it was established that the dowry money was given by the family of the bride. But benefit was given to the accused because the amount of money was uncertain. The high court made a very literal interpretation. There was nothing to suggest that the young newly married woman was hypersensitive. It is correct that she had the option to take divorce. But divorce itself is stigmatic in conservative society. The wife found that the husband is unfettered even by the panchayat agreement made in public. In such circumstances she had committed suicide. There is some margin in favour of accused that *mean rea* and *actus reus* could not be proved in strict sense. But such strict requirements are a judicial creation. The court did not allow this grey area to be interpreted in favour of accused. The message is clear. If the immoral behaviour (which is also illegal under civil law) harms someone, such conduct needs to be checked. This judgement will help conviction in those crimes against women cases where the accused is not at all innocent.

Besides section 306, a few lines on conviction under section 498A is desirable. The court did not provide any reasoning for why section 498A is correct law here. The allegation of dowry demand and harassment for that was not accepted by the high court because of inconsistent statements of witnesses on the issue of the *exact* amount given by the bride to groom. Benefit of doubt was given. The only conduct left out was the undeterred illicit relationship of the husband with another woman. Is it mental cruelty? The answer seems yes. It is to be noticed that *Joseph Shine* v. *Union of India*[47] was decided after *Siddaling* which decriminalised adultery. The impact of this judgement is that now a wife can take two actions. One under civil law, i.e. divorce and other under criminal law i.e. cruelty under section 498A. Under section 497 of IPC she was not able to prosecute her husband. But under section 498A she would be able to prosecute her husband. Unlike many cases of dowry which takes sometimes 25-30 years to decide *Siddaling* case took around 18 years to decide.

Omission to inform the police

Dinesh Kumar Kalidas v. *State of Gujarat,*[48] was a case of suicide by wife in 1990. The family members of the deceased wife were intimated. The father and brother of the deceased, who was a doctor by profession, attended the last rites. They did not raise any question. The husband did not inform the police. No postmortem was conducted. The complaint was filed after three months of the incident. Based on this, trial was conducted under sections 304B, 306, 498A, 201, 120B of the IPC and section 4 of the DPA. Sessions court took four years (1995) to convict the accused under 498A and 201 of IPC. The high court took 20 years (2015) to decide the case and convicted the accused under section 201 of IPC. The Supreme Court acquitted the accused in 2018. The case took 27 years and resulted in acquittal. Significance of this

47 (2018) 2 SCC 189. It was a Constitution Bench unanimous opinion which declared s. 497 of IPC as unconstitutional.

48 MANU 2018 SC 0110.

case is substantial as well as procedural. On substantial points, *Dinesh Kumar Kalidas* can be treated as an authority for application of section 201 of IPC not only in those cases where dowry harassment is an issue but in general also because all significant decisions of section 201 is discussed. On procedural points, delay is fatal for which the judiciary should do a soul searching.

Article 136 and dowry cases

Jagjit Singh v. *State of Punjab,*[49] trial court took 1 year to punish under 304B and awarded eight years of imprisonment (2002). The high court took 13 years and reduced the sentence to seven years (2015). It took four years in the Supreme Court (2018) where 8 dates were given. From FIR to Supreme Court it took 17 years, out of which the high court took 13 years.

Significance of this pronouncement is description of nature of article 136. It was not a case of mandatory appeal nor was any certificate granted by the high court. There was no "sacred right of appeal". The court quoted from two Constitution Bench decisions. First support was from *Govindaswamy* v. *State of Madras.*[50] Any reappraisal of the evidence "particularly, when it has been concurrently accepted by the High Court and the trial court," is not permissible. Special leave is not ordinary criminal appeal and pure question of fact is not examined. For example credibility of a witness cannot be reexamined in the Supreme Court particularly when courts below have accepted it. Under article 136 "something more must be shown." For example, (a) natural justice or (b) rights violation or a misreading of vital evidence or (d) an improper reception or rejection of evidence which has the potential to create prejudice (e) glaring inconsistencies in those evidence which are capable of demolishing the prosecution case (f) error of law or (g) something by which justice itself has failed (serious miscarriage of justice) or (h) the conclusion of the high court is manifestly perverse.[51]

The second Constitution Bench decision was *Pritam Singh* v. *State*.[52] Fazl Ali, J. observed: The Supreme Court is not "ordinary court of criminal appeal and will not, generally speaking, allow facts to be reopened." With the help of other precedents,[53] the full bench summarised the principles of applicability of article 136 as under:

(i) Credibility of witnesses as commended to Courts below is not ordinarily reappraised. (ii) Is there misreading of evidence? (iii) Is there any non-consideration of glaring inconsistency in the evidence which demolishes the prosecution's case?

49 MANU 2018 SC 1057.

50 AIR 1966 SC 1273.

51 The court heavily relied upon *Govindaswamy* v. *State of Madras*, AIR 1966 SC 1273. It was a Constitution Bench decision. All five judges agreed on the principle that article 136 does not call for ordinary interference. However, on the application of this principle, there was a split of 3:2. It was a murder case where testimony of an accomplice was in issue, See also, *Dalbir Kaur* v. *State of Punjab* 1976 (4) SCC 158.

52 AIR 1950 SC 169. It was unanimous decision. It was a murder case and capital punishment was awarded.

53 *Sushil Ansal* v. *State Through Central Bureau of Investigation*, 2014 (6) SCC 173; *Mohd. Ali alias Guddu* v. *State of Uttar Pradesh* 2015 (7) SCC 272; *Ganga Kumar Srivastava* v. *State of Bihar*, (2005)6 SCC 211; *Major Singh* v. *State of Punjab* 2015 (5) SCC 201.

(iv) Are the findings inconsistent with the evidence? (v) Have the courts overlooked striking features in the evidence or is their failure to consider important piece of evidence? (vi) Whether the evidence adduced by the prosecution fall short of the test of reliability and acceptability and it is therefore unsafe to act upon it?" The full bench held that they might be persuaded to take a different view but this cannot be a reason to interfere under article 136. Conviction under 304B and punishment of seven years was upheld.

Outrageous delay and sentencing : *Anusuiya*

In the case of *Anusuiya* v. *State of Madhya Pradesh*[54] within six month of marriage, wife committed suicide by consuming rat poison. It was alleged that her in-laws were harassing her for not bringing dowry in marriage and demanding one Fan and Rs.500/- from her parents. Trial court sentenced mother and husband for seven years under section 306 and three years for 498A in 1992 (three years after suicide). Mother in-law was 50 years old.

High court sentenced both for five years under section 306 and two years for 498A in 2007, (eighteen years after suicide). The case remained in the high court for fifteen years. Mother-in-law was then 64 years. Supreme Court 11 years (in 2018). The bench limited jail sentence for a period of nine months because she is 75 years and "is not keeping well." Husband was given two years punishment because he married the deceased (wife) aunt's daughter and "since then the relations between the two families have become quite cordial."

The reduced sentence informs the complexities of issues of sentencing. On one side, the society insists on exemplary punishment for deterrence and to satisfy the natural urge for vengeance. Justice is a sense of satisfaction that good is done and evil is punished. It seems the bench thought that the victim family is "ok" with the offender husband and mother-in-law as they married another girl of the same family group and relations are cordial. Restorative and reformative theory also give this idea a slight push. Age of the old woman, (offender) and interest of family (accused married again), who must be dependent on him pulls towards human rights theory. In this competing claim of societal interest *vis-a-vis* individual interest, the judicial process has to find a harmonious way out which is a herculean task.

Delay in higher courts

However, there is one aspect where there is judicial failure in this case. From 1989 to 2018 the wheel of justice dragged for around 29 years. Trial court took three years while the high court took 15 years (2007) and the Supreme Court took 11 years. The record of this case suggests that out of 29 years, 26 years (85%) time was taken in the higher courts. 50% time was taken in the high court (MP) while 35% time the case was in the Supreme Court. In the Supreme Court there were a total eight orders given between 2008-18.

54 MANU 2018 SC 0035.

Such inordinate delay is insensitive on the part of the judiciary. It was an incentive to the accused and an institutional insult of the victims. The bench dealing with such delays at the high court or the Supreme Court ought to ask its research team to find reasons of delay. Such a research team is available in the Supreme Court. The Indian Law Institute, New Delhi can also serve this purpose. A research team should be set up in all districts. Each district can associate the law colleges in their jurisdiction to convey them the reforms at district level. The administrative head of a district from the high court can be ex- officio chairperson of such districts with district judge as *ex-officio* member. This research team should consist of dean/ head of the law college (or his nominee). Students ought to be involved in such research activity to find reasons of delay. To begin with, all cases of crimes against women. The team will give its reports every six months before the administrative judge of the high court who will place before it to the chief justice of the high court either to discuss with the state administration or to pass suitable order. Such collaborative exercise will bridge the gap between law teaching and practice. It will also provoke some research at district level.

E-court for better research

In this case (*Anusuiya*) there are allegations of dowry demand. Cruelty under 498A has been established. Why was there no conviction under section 304B? The decision of the Supreme Court is silent on it. This researcher tried to find the high court order which is a difficult task. Thankfully in this judgement the details of the high court are mentioned. It is a judgement/order dated February 14, 2007 passed by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 419 of 1992. Why a link of this judgement cannot be made available on the Supreme Court website? Indeed on the Supreme Court website there is a box called earlier court detail. Here the case number, date of high court decision is provided. But except information about decision, the decision is not available. If you go to High Court Madhya Pradesh website the first challenge is to find the "case type". The case type mentioned in the Supreme Court decision is "Criminal Appeal". In one website of a high court in a state, it is CRL. A while in other it is CRA. The case cannot be located easily. Free text does not work most of the time in most of the websites. The government and the judiciary should improve access to relevant judgements and documents.

Minimum content of a judicial decision : *Sangeeta Agrawal* case

What should be the minimum content of a judgement on section 482 of Cr PC 1973? Is it necessary to narrate facts in brief and to examine facts? Is it not enough if a decision states the laws laid down through various precedents and then decides the case. *Sangeeta Agrawal* v. *State of Uttar Pradesh*[55] is a case where charges were framed by sessions court under sections 498A, 304B of the IPC, 1860 and section 3/ 4 of the DPA. The charges were challenged in the high court with the prayer to quash it under section 482 of Cr PC 1973 which the high court refused to do. The Supreme Court quashed the order of the high court making following observation:

55 MANU 2018 SC 1377.

> On perusal of the impugned order, we find that the Single Judge has only quoted the principles of law laid down by this Court in several decisions relating to powers of the High Court to interfere in the cases filed under Section 482 of the Code from Para 2 to the concluding para but has failed to even refer to the facts of the case with a view to appreciate the factual controversy, such as, what is the nature of the complaint/FIR filed against the appellants, the allegations on which it is filed, who filed it, the grounds on which the complaint/FIR/ proceedings is challenged by the appellants, why such grounds are not made out under Section 482 of the Code etc.
>
> We are, therefore, at a loss to know the factual matrix of the case much less to appreciate except to read the legal principles laid down by this Court in several decisions.

The Supreme Court laid down the minimum contour of a judicial decision as under:

In our view, the single judge ought to have first set out the brief facts of the case with a view to understand the factual matrix of the case and then examined the challenge made to the proceedings in the light of the principles of law laid down by this court and then recorded his finding as to on what basis and reasons, a case is made out for any interference or not.

In our view, this is the least that is required in every order to support the conclusion reached for disposal of the case. It enables the higher court to examine the question as to whether the reasoning given by the court below is factually and legally sustainable.

Judgement writing is one of the big problems of the judicial process in India. It has two aspects. Form of the judgement and content of the judgement. There is no uniformity in writing judgements. Some judges write with heads and sub heads. Some begin with issues while others begin with facts. Some write philosophical introductory notes. As it is a subjective matter it is unwise to suggest any set pattern, form or the content of a judgement. But certain things are too basic to explain. Facts and all significant arguments of both sides should be recorded because they make everyone aware of the case and precedents. Issues should be mentioned preferably in the beginning because issues determine the relevance of judgement. Major heads and subheads help like issues, facts, arguments, principles of law, decision, summary, operative part *etc* makes the judgement more readable, organised and meaningful.

Dowry offences and mutual compromise

Family disputes lead to criminal cases on husband and wife. If they reach a compromise and amicably resolve their issues, should the criminal cases like the Dowry Prohibition Act, 1961, or 498A be quashed. In the case of *Bitan Sengupta* v. *State of West Bengal*[56] a significant development can be found. Husband allegedly slapped wife for dowry. He was convicted under section 498A by a judicial magistrate. Husband appealed before the sessions court. Pending appeal both husband and wife arranged

56 (2018) 3 SCC 121.

mutual divorce which was granted. Both requested the trial court to allow withdrawal of cases. The trial court did not consider the withdrawal application and confirmed the punishment. The high court also refused to quash the conviction order under section 482 of Cr PC because of two reasons (i) that the high courts do not have power like article 141 and (ii) the husband has already been convicted and then divorce proceedings were initiated. The Supreme Court quashed the conviction by rightly declining to accept the reasoning of the high court. On first reasoning of the issue of absence of power of the high court similar to those under article 141, the Supreme Court reminded the high court that section 482 is sufficient in itself. The precedential authority quoted by the Supreme Court is *B.S. Joshi* v. *State of Haryana*,[57] which is relevant to quote here:

> There is no doubt that the object of introducing Chapter XX-A containing section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counter productive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XXA of Indian Penal Code.

The operative part or the law laid down in *B.S. Joshi* in context of section 498A or dowry issues is as under :

> In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code.

Why should matrimonial compromise be encouraged?

In those cases where both spouses approach a court that they have arrived at a compromise, "it becomes the duty of the court to encourage *genuine* settlements of matrimonial disputes."[58] The judiciary has advanced two chief reasons for it. (i) The chances of conviction of the accused is reduced substantially. The trial is likely to be inconsequential as the reasonable likelihood of the accused being convicted is negligible. The wife will either refute the harassment charges or will argue "temperamental differences and implied imputations". (ii) "fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different courts."[59]

57 (2003) 4 SCC 675. It is a division bench decision. The issue was "the scope and ambit of power under section 482 in relation to matrimonial disputes."

58 *BS Joshi* case.

59 *G.V. Rao* v. *L.H.V. Prasad* (2000) 3 SCC 693.

B S Joshi further says that "The hyper-technical view would be counter productive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XXA of Indian Penal Code."

This reasoning of compromise, though meritorious, has one problem. The powerful party will pressurise other parties for compromise. Therefore, the courts have to be careful. Another point is, should such logic be extended to rape cases where a compromise is reached?

Sundar Lal v. *State*,[60] the High Court of Uttaranchal has placed reliance on the decision of the Supreme Court in *Sher Singh @ Pratapa* v. *State of Haryana*.[61] This author in the survey of 2015 has mentioned that *Sher Singh @ Pratapa* is a precedent which needs to be ignored. The reliance is not safe as *Sher Singh @ Pratapa* has overlooked principles of criminal jurisprudence and precedents of coordinate as well as higher bench on the interpretation of reverse onus clause.[62]

VI CONCLUDING REMARKS

The cases as surveyed indicate that the judicial process is still struggling with due process model and crime control model. This is natural because the judges differ in their approach to deal with cases. A scientific certainty is a myth but a reasonable certainty is possible. This can be done by considering all significant precedents. The lawyers of the parties are not able to provide all relevant decisions either because they are not aware of or because of their professional compulsions. Therefore, in all cases where there are apparent controversy, the idea of *amicus curiae* needs to be incorporated. Not only advocates but academicians and law institutes ought to be involved in the judicial process. For example, in *Siddaling* case the court ought to have discussed other relevant cases though the decision is correct. *Mohan Law* seems to have made a general rule on the controversy whether an informant can be an investigator which does not sound to be good. Delays in higher courts need to be addressed. In many cases more than half of the time is consumed in higher courts. The number of hearings can be reduced and technology should be used in the judicial process as much as possible.

60 Decided on Jan. 12, 2018.

61 AIR 2015 SC 980.

62 See, Anurag deep, "Interpretation of Statutes" LI *ASIL* 766-767 (2015).