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Police investigations: discretion denied yet undeniably exercised

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Abstract

Police investigations involve determining whether a crime has been committed, and if so what type of crime, who has committed it and whether there is the evidence to charge the perpetrators. Drawing on fieldwork in Delhi and Mumbai, this paper explores how police investigations unfolded in the specific context of women's deaths by burning in India. In particular, it focuses on the use of discretion despite its denial by those exercising it. In India, there are distinctive statutes relating to women's suspicious deaths, reflecting the widespread expectation that the bride's family will pay a dowry to the groom's family and the tensions to which this may on occasion give rise in the early years of a marriage. Often, there are conflicting claims influencing how the woman's death is classified. These in turn affect police investigation. The nature and direction of police discretion in investigating women's deaths by burning reflect in part the unique nature of the legislation and the particular sensitivities in relation to these types of death. They also highlight processes that are liable to be at work in any crime investigation. It was found that police officers exercised unacknowledged discretion at seven specific points in the investigative process, with potentially significant consequences for the achievement of just outcomes: first response, recording the victim's 'dying declaration', inquest, registering of the 'First Information Report', collecting evidence, arrest and framing of the charges.

Keywords

police investigation; dowry death; burns; police discretion; medico-legal; India

Introduction

Police investigations are a staple of popular fiction and media reportage, but have seldom been subjected to systematic academic research and inquiry (Newburn 2007). Although a

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few studies have explored patterns of investigations and clear-up of volume crimes (such as burglary or theft) (cf. Burrows and Tarling 1987, Burrows *et al.* 2005), Stelfox and Pease (2005) are right in stating that little research has focused on how detectives process and react to information, or on how they take decisions. The past few years, however, have seen a growing interest in studying how police investigations unfold with a view to informing improvements in them (cf. Innes 2003, Newburn *et al.* 2007, Stelfox 2009). This paper aims to contribute to this body of work. It focuses on police investigations into a phenomenon peculiar to India – dowry deaths resulting from burns. Even though the focus is specific, the findings of the research reflect wider problems related to police investigation.

The custom of the bride's family paying a dowry to her in-laws is prevalent in large parts of India. This payment is ostensibly to compensate the groom's family for hypothetically agreeing to shelter her for life (Ahmad 2008). There are other explanations for the ancient custom. One relates to 'varadakshina'¹: making a gift to the bridegroom to honour him. Another invokes the Hindu Succession Act which does not confer property rights on the female child: this one-time payment of 'streedhan'² is in lieu of her share of the family wealth at the time of her marriage (Sharma *et al.* 2002). Dowry-related violence – of which death by burning is at the extreme of the spectrum – has been a huge problem in India. Rudd (2001, p. 513) calls it 'dowry murder', which refers to 'the killing of a woman, ostensibly for not bringing sufficient dowry to the marriage'. The total number of reported dowry deaths has grown gradually over the years, and remains a significant cause for concern (see Table 1).

A substantial proportion of these dowry deaths are caused by burning, so much so that the term dowry death is almost synonymous with 'bride burning' in popular perception (Bedi 2012, Varma 2012). Yet it is not clear how many of these dowry deaths resulted from burns.

Previous research has estimated that there are between 163,000 and 200,000 annual burn deaths in India (Peck *et al.* 2008, Sanghavi *et al.* 2009). It also finds that burns among women are more common than men, notably between ages 18 and 32 (see for e.g. Ambade and Godbole 2006, Kumar *et al.* 2012). Almost all research on burns in India concludes that, although the number of reported cases is large, they remain under-reported (Sharma *et al.* 2002, Batra 2003, Garcia-Moreno 2009). What is of greater concern is the fact that many fire-related homicides, especially of women, might be disguised as accidents or suicides (Sanghavi *et al.* 2009).

As this paper will make clear, death by burns creates some distinct challenges for investigation. The issue is politically and ideologically sensitive. There are strong interests at stake in how the death is classified, often with competing and changing accounts of the events from those involved. The investigation occurs at the interface between policing and health. Indian law and procedural guidelines in cases of suspected dowry-related deaths are very prescriptive. The colonial legacy of legal mistrust in the police is embedded in 'due process'. The due process model recognises that officers can make mistakes and thus places

¹ A token or gift given to the bridegroom.

² Literally, woman's wealth.

close limits on police decision-making. At least nominally, officers have little choice in how they process suspects (Cihan and Wells 2011). As a result, the police themselves are apt to claim that they have very little discretion in handling dowry-related deaths.

However, our research dispels that myth. It reveals that, despite legal requirements and officers' own perceptions about their lack of discretion, they do exercise considerable discretion in practice, especially if the victim³ is poor, uneducated and relatively powerless. In this paper, we examine police investigations from the perspective of investigating officers. Further, by juxtaposing officer accounts with those of victims and health professionals, we are able to understand more clearly police responses to women victims of burns. Recognition and acceptance of the use of discretion would allow more effective oversight of investigations. This in turn could help increase police efficiency and professionalism and thereby contribute to greater public trust in the police.

Official records indicate that, whereas on average the police charged someone in 93% of dowry-related cases, between 2001 and 2010 only 32.5% of charges resulted in conviction (*Crime in India*, Ghosh and Choudhary 2011). There could be two explanations for this: police investigations may not be sufficiently robust to result in convictions, and/or some other factor might come into play between the time of investigation and the trial or appeal in the courts (a period that can span from two to eight years) to warrant acquittals in these cases. This paper identifies weaknesses in the investigative procedure, whose remedy might deal with one source of attrition.

Methodology

The project was a collaborative effort between clinicians, public health researchers, psychologists and crime scientists. It had two components: interviews with women (and their family members) admitted to two major burns units over two months in 2012, and semi-structured interviews with health care providers and police officers. We chose the largest burns units in two of India's largest cities, Delhi and Mumbai. Members of the research team had previously established work-related connections with the hospital and police in Mumbai. The specialist burns hospital in Delhi was chosen for case comparison.

Three research assistants were attached to the burns units in both hospitals to conduct case studies for a period of 45 days. They spent time in the units and interviewed those admitted women who were capable of interview (with family members in some cases) or family members of those unable to take part in an interview. Interviews were semi-structured and followed a topic guide covering the burns event, its antecedents, immediate care and subsequent care-seeking and medico-legal procedures. In addition, two researchers conducted semi-structured interviews with doctors and nurses, and the first author interviewed police officers. Interviews were conducted in private spaces and were audio-recorded and transcribed in full.

³We are aware of the negative connotations associated with the term victim, but use the term not in a pejorative sense, but to denote a woman who has suffered burns.

Sampling was purposive. A total of 59 interviews included 33 women who had been admitted during the 45-day period and/or their family members. Of these, 13 were in Delhi and 20 in Mumbai. The remaining 28 interviewees were key informants – 14 clinicians and 14 police officers. Some of these interviews were conducted with two informants together. Equal numbers of clinicians were interviewed in each city and they included three burns nurses, four resident doctors, four consultant surgeons working in burns, surgery and casualty departments, two forensic pathologists and a burns ward aide. Almost all the health practitioners interviewed were on duty in various shifts in the burns wards during the research period. Additionally, one retired consultant with many years of experience in this field was interviewed. Eight police officers in Mumbai and six in Delhi were interviewed. Of these, three were assistant commissioners and the remaining 11 inspectors. Five police stations in each city which had investigated cases of women with burns in the past year were chosen in consultation with the police headquarters of the two cities and officers with relevant investigative experience were interviewed.

Interviews were conducted in one or more languages, including English, Hindi and Marathi. All interviews were translated literally then transcribed, without trying to smooth the edges, neaten and correct the grammar (Alldred and Gillies 2002), as far as possible, during translation. This sometimes resulted in incomprehensible or alien phraseology or incorrect sentence construction, even though what was conveyed made sense in the vernacular and given the context.

The analysis consisted of three main phases: classifying the interview material into codes and categories, identifying and exploring links between various themes and interpreting and analysing emerging links from the data. We used a 'constructivist–interpretivist' paradigm (Denzin and Lincoln 1994) to conduct the analysis, which recognises that social reality is constructed by social actors and that one must interpret this in order to understand the social reality from the perspective of the actors. While the objective is to understand complexities of lived realities from the perspective of those experience it (Schwandt 1994), it is also to draw out some objective generalisations by comparing and contrasting the perceived realities of various actors operating in the realm of the particular research area. We were interested in understanding the relationship between the clinicians and the police in the treatment and processing of victims of dowry deaths resulting from burns, through the criminal justice system.

Police investigation

The legal framework around investigations of burns to women is unique to India.⁴ Burns among women can be accidental or intentional; the latter can be self-inflicted (suicidal) or arise from interpersonal violence (homicidal). Classification of burns among women in the research literature and in official figures does not reflect the contested nature of the incident in the Indian context. In order for the death of a woman within seven years of marriage to be classified as a dowry death, the distinction between homicide and suicide is unimportant, as long as there were dowry-related demands or harassment prior to the incident. On the other hand, there is evidence to suggest that women often disguise homicidal or suicidal attempts as accidental burns, either voluntarily in order to protect the husband (often to ensure that

children are looked after) or because they are under duress from their in-laws. There is anecdotal evidence that kitchen accidents may sometimes be registered as dowry deaths by the natal family of the victim, in order to put pressure on the in-laws for financial aid or support in looking after the children. The socio-legal and cultural complexity surrounding the phenomenon of death by burning makes its classification a fluid and complicated process in which law enforcement agencies play a major part in the way that deaths are officially recorded and investigated. This is unlike other countries. For example, in Sweden the cause and manner of death are gauged exclusively by forensic pathologists in public service (Lindquist and Gustaffson 2002).

In summary, investigating a burns-related woman's death in India involves (1) classifying it as an accident or non-dowry-related suicide; as a homicide associated with dowry-related suicide; as a dowry-related homicide unrelated to suicide; or as a homicide unrelated to dowry, as shown in Table 2 and (2) in the event of homicide, assembling evidence sufficient to charge, prosecute and convict one or more of those responsible for the death.

Among the many duties of police officers in India enshrined under section 23 of The Indian Police Act (1861) is the duty to 'detect and bring offenders to justice and to apprehend all persons whom he is legally authorized to apprehend, and for whose apprehension sufficient ground exists'. The adversarial nature of the criminal justice system has two goals: to punish the guilty and protect the innocent. On concluding their investigation, police officers submit a formal document of accusation known as a 'charge sheet' to the court of law. In the Indian legal system, on the basis of this document the court decides who, among the accused, should stand trial because the *prima facie* evidence is adequate. However, the relevant sections of law under which the accused stand trial are often proposed by police officers and generally confirmed by the court at this stage. The public prosecutor is involved in the investigation after the police present the case in court. While they may, it is not obligatory for the police to take the opinion of the public prosecutor for filing the charge sheet (AIR 2004). Amendment to the Code of Criminal Procedure (CrPC) in 1973 separated the prosecuting agency from the police, which means the public prosecutor has no involvement in the investigation until the charges are presented to the magistrate in the district sessions court (in case of serious offences). This has, in the opinion of some legal scholars, adversely affected the prosecution of cases. Menon (2008) suggests that:

Most police officers as well as some administrators and judges believe that the lack of coordination caused by the separation has resulted in falling conviction and disposal rate, filing of poorly investigated cases, indifferent management of trial

⁴Legal response to dowry-related death by burning: the police response to burns deaths follows India's CrPC 1973. Section 174 outlines the response to suicide, homicide, accident or death under suspicious circumstances, and is applied particularly to women within seven years of marriage. The police are to report the incident to a magistrate (who follows section 176 and is empowered to hold an inquest), and with at least two people from the neighbourhood in attendance to report on the appearance of the body and the apparent cause of death. If the woman has died, section 304 of the IPC addresses culpable homicide not amounting to murder, and section 304B IPC specifies dowry death: the death in suspicious circumstances of a woman within seven years of marriage, provided that it is shown that she was subjected to cruelty or harassment by her husband or his relative in connection with a demand for dowry. The minimum term is seven years. Section 306 IPC addresses abetment of suicide; the minimum sentence is fine and the maximum term 10 years. If the woman has survived, section 498A IPC addresses cruelty by her husband or his relative, cruelty being defined as willful conduct that could drive her to suicide, serious self-harm or ill-health, harassment with a view to the unlawful acquisition of property or valuable security, or harassment when she does not meet such demands. The minimum sentence is fine and the maximum term 3 years.

proceedings including bail, and lack of effective review, particularly at the district level.

Police investigations can make use of the victim's account of the incident where she is able to provide an account; the testimony of other witnesses; physical evidence at the scene where the burns were suffered; and medical evidence relating to the patterns of injury sustained by the woman and any others in the vicinity. This paper focuses on the parts these sources play as investigations of burns deaths, which might turn out to be dowry-related homicides, unfold.

The story

The master narrative (Innes 2007) of police investigation of dowry death cases was pieced together from interviews with police officers as the official dominant discourse. According to the accounts, most investigations followed a similar course. The starting point was the police receiving information in one of three ways – 'We get first information through police control room; or family members, if they are nearby, they tell us; or if she goes to hospital then we get information from the hospital also' (P15, Inspector, Delhi police). Every instance of a burns victim (whether male or female) being admitted to a hospital is by its very nature registered as a medico-legal case and the police are informed. 'There is a police chowki [post] in the hospital ... one constable is present round the clock ... He informs the concerned police station where the incident took place, or from where the victim comes' (P14, Inspector, Delhi police). In case, the victim is admitted to a private medical facility, it is the duty of the hospital to inform the police immediately and officers were confident that these were reported almost without exception. 'They have to report medico-legal cases, it is binding on them ... if the patient expires there and they have not informed the police earlier, then what will they do?' (P3, Inspector, Mumbai police) (Figure 1).

On receiving information of a burns case, the police go to the hospital if the woman has been admitted, and to the scene of crime. They ascertain whether the woman victim of burns was within the first seven years of marriage and take an initial statement from her. Ascertaining the victim's year of marriage (if married) is dictated by section 304B of the Indian Penal Code (IPC), which states that any unnatural death of a woman within seven years of marriage is to be treated as suspicious. Case law and good practice decree that the victim's statement, which in most cases will be her 'dying declaration' (DD), be recorded by the executive magistrate [also known as the Sub-Divisional Magistrate (SDM)].⁵ Another team visits the scene of crime to secure it.

If the victim dies, an inquest is conducted, by the police in Mumbai and by the SDM in Delhi. If there is suspicion or allegation that a crime has been committed, a criminal case is registered. The First Information Report (FIR) is the starting point of every police investigation in India. It is a very important document because courts in India consider it sacrosanct. The FIR is to be used for corroboration and contradiction purposes during trial,

⁵In India, there are two different kinds of magistrates, judicial magistrates and executive magistrates. The latter have some legal powers conferred upon them by the CrPC. More often than not, executive magistrates are revenue officials and are also known as SDMs.

and is very important in establishing the trustworthiness of the prosecution case. The default position on registering the crime was explained by one officer: 'If it is within 7 years of marriage, then when the SDM records her statement, he recommends that we register case under appropriate sections and investigate' (P16, Inspector, Delhi police). In the absence of such clear instructions from the SDM:

If the parents have some complaint – sometimes the parents say that my daughter had some troubles earlier, she might have tried to burn herself as a result. If they say that, then we take the FIR from the parents or the brother. And if absolutely no one is there, then the police officer can lodge the FIR themselves. (P2, Police Inspector, Mumbai police)

The next stage involves taking statements from family members, witnesses (if any) and neighbours. Physical evidence is collected, including photographs of the scene of the incident, and any physical evidence relating to the source of the fire (usually a stove), including the kerosene container, matches (if any), burnt clothes and bits of skin. Sometimes viscera are preserved after the post-mortem to rule out poisoning before burning. Relevant items are sent to forensic laboratories for further analysis. Medical records and post-mortem reports are collected from the hospital. Evidence of previous harassment or dowry demands in the form of letters written by the victim or witness statements are also assembled.

Based on the evidence, giving primacy to any allegation made by either the victim in her DD or her natal family, the police submit charges against named perpetrators under appropriate sections of the law. Officers mentioned that this was not straightforward in all cases. In some, the victim changed her account once or more. In others, the victim's DD described the incident as an accident, but the family alleged cruelty or harassment. Such discrepancies created a difficult situation, but officers agreed that in the end the victim's wishes prevailed. And the police considered as victims both the woman suffering from the burns and her natal family: anyone who for any reason alleged dowry-related harassment or cruelty by the in-laws. One officer summed up the entire investigative process in dowry-related cases as being very clearly victim-led, 'We lodge the cases and we charge-sheet⁶ them. We will go by the statement of the victim or her relatives, blood relations, and not by the evidence' (P2b, ACP, Mumbai police).

Accounts of the investigative process, as we read them, seem straightforward enough; officers claim that at every point in these cases they have very little discretion, with the entire investigation and legal system loaded in favour of the victim. However, delving deeper into the accounts and cross-referencing them with victim and clinical practitioner accounts, it becomes clear that in practice the police do exercise discretion through almost the entire investigation process. In the next few sections, the exercise of police discretion in the investigative process is described at seven different points: getting information and first response, recording the victim's statement, the inquest, registering the FIR, collection of evidence, arresting perpetrators and framing the charges.

⁶In India, the police prepare and submit a formal document of accusation, known as a charge sheet, to the court of law.

Getting information and first response

The first step on receiving information of a burns case affecting a woman includes immediate dispatch to the hospital, if she has been admitted, and/or to the scene of crime. Officers claimed that priority was attached to ascertaining whether the victim had been married for less than seven years and to taking an initial account of the incident from her:

When she is admitted to hospital then there we have a duty constable, he will give information that there is a lady and she has so much burns and she is admitted here. Then immediately the IO [Investigating Officer] and SHO [Station House Officer] will go to the hospital. First he will try to get her statement. If she is not in a position to give a statement, then they will consult the doctor and, if she is in a position to give a statement then immediately SEM, Special Executive Magistrate will be informed. He will come to the spot and record her statement and then the procedure begins from there only. (P16, Inspector, Delhi police)

Officers from the Delhi police suggested that while one officer rushed to the hospital, another team would visit the scene of crime to secure it. If it is determined that there might be some foul play, 'Then the scene of crime is preserved and we all follow, all our staff is there. We inform our crime team to pick up the exhibits and take the photographs etc. and we take stock of the scene of crime' (P12, ACP, Delhi police). In Mumbai, on being asked whether the priority of visiting the victim in the hospital would lead to a delay in securing the place of occurrence, and how that would affect preserving the integrity of the place of occurrence, one officer confidently claimed:

Now in Bombay, the police is reaching the spot within 2–5 minutes, so much mobility has come in Mumbai police. But as far as private houses are concerned, nothing is touched even if there is a small theft, people will not touch ... Even in slum areas, they are more particular than educated people. Educated people think they can do anything, they don't bother. It happens in many places, but in slum and zhopadpatti⁷ areas, neighbours will not touch it because they know that unless police finish their work they are not supposed to do anything there. (P1a, Inspector, Mumbai police)

Another officer contradicted this by saying that a swift response is desirable because, 'If they have done something then the family members try to remove objects from the scene of crime. We have to look for that' (P6, Inspector, Mumbai police). Evidently, officers' opinions were based on their personal experience of investigating such cases.

Officers staunchly maintained that they visited the place of occurrence in every case of a woman suffering from burns and described in detail how they preserve the place of crime and collect physical evidence to 'Match the story to the evidence' (P11, Inspector, Delhi police). However, a victim's brother said that his sister (Surekha⁸) had been set on fire by her husband, but was pressured to say it was an accident resulting from a stove blast, which she did. The police had visited her in the primary health care unit she was initially admitted

⁷Another term for slum.

⁸Not her real name.

to and taken her account of a stove blast and had logged the matter as an accident. The victim later wanted to change her statement, but she had been referred to the specialist unit in the city and her family was not interested in informing the police of her desire to change her statement until she got better. The fact that the police did not return for a couple of days while Surekha was in hospital indicated that they had clearly not visited the place of occurrence (where no stove had blasted) and therefore had made no attempt to substantiate claims that the burns were the result of an accident. The matter only received attention when her family members made the effort to contact the police and insisted that her amended statement be recorded. Thus, it appears that where no allegations against the in-laws are made, or if the woman insists that the burns were accidental, the police may or may not choose to visit the place of the incident or look for corroborative evidence. Some officers talked about instances in which, after visiting the scene of the fire and suspecting foul play, they persuaded the victim or her family to register a case. While one officer claimed that 'If we see foul play then it is our duty to register the case' (P16, Inspector, Delhi Police), implying that officers can and do register the offence *suo moto* (at their own discretion), even if neither the victim nor her family members are willing to do so. Another said, however, that 'Circumstantial evidence is not decisive evidence, that may be supporting evidence, but you cannot use it to make any decisions' (P11, Inspector, Delhi police), implying that there must be allegations or statements to support the classification of any burning act as a crime.

Recording the victim's statement: DD

One of the first actions by police officers on first contact with the victim is to ascertain whether she is married and if so, for how long. The law decrees that any unnatural death of a woman within seven years of marriage is to be treated as suspicious and is to be investigated by a SDM (section 304B IPC and section 176CrPC). Following these legal requirements, the victim's statement, which in most cases becomes her 'DD', has to be recorded by an SDM:

For the DD we always inform the SDM [Sub-Divisional Magistrate]. We try to ensure that the statement is done in the presence of the SDM, whether it is within 7 year of marriage or however many years – for the DD we always try that the SDM only should record. If we feel that she is going to die very soon and she wants to tell us something and we do not have that much time then the IO tries to record her statement in front of the doctor or tries to get the doctor to record it. Many times, the doctors themselves ask and write on the MLC [Medico-Legal Case]. In the alleged history, the doctor writes whatever the patient tells him. (P15, Inspector, Delhi Police)

This was confirmed by one of the senior doctors:

The provisions of the law say if any female or any person gives any history before death, and even though the dying declaration is not recorded by magistrates or by the police, the history is noted down by the doctors on their record sheet. And if that patient dies before taking proper dying declaration by magistrates, this history is only next to the information given as equivalent to dying declaration. (M1, Doctor, Mumbai)

When asked whether there was any difference in the evidentiary value placed on a DD recorded by the SDM compared with one recorded by the doctor, one officer (P13, Delhi police) felt that the courts gave equal weight to either, but another officer replied, 'We have so far not gone to the doctors for getting the statements recorded. They refuse so we have never done that' (P12, Delhi police). Officers' views on doctors' involvement in recording DDs depended on their personal experience of engagement with doctors over their career. However, the reluctance of doctors to record the DD in the absence or delayed arrival of the SDM was a recurrent theme in most police interviews. One officer in Mumbai explained:

these municipality doctors are so busy, they have such a heavy work load and so many patients are coming in that, this means they would have to keep going to the court and all that if they record the dying declaration. So that is why they hesitate a little. If there is absolutely no other choice then they sometimes do record it, it is not as if they absolutely don't, but it is rare. (P2, Inspector, Mumbai police)

What was clear from all the interviews was that DDs recorded by the police had least credibility in court and were ideally the last option. 'It may be possible the SDM may not reach in time ... then the first statement is taken by us only – and we get the doctor to countersign that statement. If the doctor countersigns it then its validity is increased' (P15, Inspector, Delhi police). 'But if the doctor does not do it, then there is an option that anyone, an independent person, public person, if he is available there you can make him a witness there that this statement was recorded in front of me and that is equally important' (P11, Inspector, Delhi police). Another officer was convinced that, 'If it [DD recorded by the police] is attested by a GO [Gazetted Officer] or a Class I [Government] officer, then it would be more credible' (P13, Inspector, Delhi police).

The courts have ruled that a DD be recorded by a magistrate in the first instance.⁹ In the absence of this, a DD recorded by a 'neutral' third party carries a greater evidentiary value¹⁰ than one by a police officer. This indicates that the police are taken to comprise an 'interested party' and therefore not to be trusted to record the victim statement either impartially or truthfully.¹¹ One disgruntled officer in Mumbai said:

For a DD, if the police take the statement, then it does not have evidentiary value ... because nobody trusts the police. Whichever system, whoever, no one has faith in the police. They feel that the police is a demon dressed in khaki uniform. Everyone feels like that, so there is more faith in the tehsildar.¹² Whatever the tehsildar does is correct. Ok, he is not an interested party. But the police can also be like that. (P3, Assistant Inspector, Mumbai police)

Another officer expressed frustration that sometimes the process of recording the DD is not as straightforward as laid down in the law, because even key actors want to avoid having anything to do with the police and courts:

⁹Bombay High Court, *Santosh Dadu Sapkale Vs. The State of Maharashtra* 2009: 22.

¹⁰Himachal Pradesh High Court, *State of H.P. Vs Vinod Kumar*, 1994: 18.

¹¹Kerala High Court, *Johnson Vs State of Kerala* 2002: seven citing Supreme Court, *Laxmi Vs Om Prakash and Others*, 2001: 6; <http://www.indiankanoon.org/doc/1621496> [Accessed 8 February 2013].

¹²A district official in India in charge of revenues and taxation.

Generally the doctor does not endorse the statement and every person wants to avoid this process. If the SDM was not legally bound to do so under 176 CrPC then even he would not do it. No person wishes that tomorrow he will have to go to court as a witness. (P14, Inspector, Delhi)

One officer in Mumbai felt that, 'The most regrettable thing in all this for me is that where there is a burn case, we have good intentions that she should get justice, but none of the other authorities are bothered' (P3, Inspector, Mumbai police).

The process of recording the DD did not always end with the statement by the patient. Many interviewees talked about instances when more than one DD were recorded, where later versions contradicted an earlier version. One interviewee explained the situation:

At times the patient may change her statement after a week. You understand because initially the in-laws were there so she kept mum. And later on her parents came and they started forcing her to talk '*sach bolo*' [speak the truth] so they come out with the truth and sometimes they [keep] mum. It sometimes happens that they say yes my husband burnt me and then she will then say later I got burnt while cooking, when they know that the husband is going to mistreat her and the kids. So these things keep happening but yes there are changes in statements. (SK2, Doctor, Delhi)

Such contradictions have serious implications for the investigation and any subsequent prosecution. Several police officers referred to cases they had investigated where the woman changed her statement from initially saying her burns were accidental to later accusing her in-laws of harassment. We asked one officer which of her two statements were to be taken into cognisance in such cases. He replied that, 'The offence was being made in the last DD. First she did not say anything, in this case the last one only made out an offence'. When asked, 'If it had been the other way around, if she had earlier said it was an offence and then changed her mind, then what would carry more weight?', the officer replied:

No, she would not be able to say this later because we would have already registered an offence. When she first says that something happened with me, then she can say anything later on, that is a matter for later on. (P12, ACP, Delhi Police)

This clearly implied that, regardless of the number of statements made and changed by the victim, the statement that made out that an offence had been committed would be the basis for registering a case. What was not made explicit was the discretion officers could exercise in deciding whether or not to inform the SDM, to record subsequent statements. Unless the victim's family was adamant or had some degree of influence, the victim might die before having the opportunity to make a new statement. Though the system made provisions for capturing the victim's desire to change her statement:

If she wishes to change the statement we make a note on the indoor case paper with date and time, saying that this is the time that the patient has stated her wish to change her statement. And her initial statement was so and so, and now she wishes to say that the cause of burns was so and so. And, put signature, date and time, and usually ask one of the nurses or someone to sign as a witness. And the judge said

that this would still be accepted as a statement from the patient. (M3, Doctor, Mumbai)

There were no enforcement mechanisms to ensure that the correct procedure to record the victim's changed statement would be followed in all cases. Often doctors were aware that the patient would like to change her initial account, but would not have the time to do more than make a note on the file. One clinician said, 'Clinicians basically are not so much interested to help in police agencies. They feel that it is, it is only their duty to inform the police, not to see that all the medico-legal procedures are carried out' (M1, Consultant, Mumbai).

If no case was registered, victims could fall through the criminal justice net. Police officer interviewees insisted that the family of the victim would ensure that the police followed up and did all that were necessary where there was any suggestion of foul play. Our research showed that in cases where the victim's family was either powerless or unwilling to lobby the police to take action, for example in Surekha's case, perpetrators would not face any criminal sanctions. A consultant in Delhi made a specific point of mentioning the problems involved when patients were admitted to the burns unit from other states and jurisdictions:

Those cases which are registered in Delhi for them, the police comes and they take the statement whatever. Anything outside Delhi, the local police does not come. Unless and until the parents of the lady insists or maybe pay him money. Then they will pursue it, otherwise they don't. Then, say she is from Saharanpur, so Saharanpur police constable will come. And that fellow takes ten days to come. You cannot make an IV person [person who is on IV drip] to survive for ten days. So in that case what happens specially those cases the person who is doing it goes scot free. (SK 2b Consultant, Delhi)

One doctor said that sometimes the family insists that the victim wants to change her statement:

And if they insist we have no problem, we just have to inform the police. Again, the police have to take a call on this, whether they think it is appropriate or not appropriate, but they take a call on that. (SK4, Consultant, Delhi)

This indicates a key point at which police discretion may affect the conduct and outcome of their investigation.

Officers were aware that:

A statement of the victim, if there are 2 or 3 statements of the victim, the case is over there only. There are contradictions in the victim statements, the allegation part is also doubtful so courts don't accept the testimony of such victims. Though it is a dying declaration or whatever, but there are 2 or 3 dying declarations so doubt is there right from day 1 in the mind of the court ... and the benefit of doubt is given to the accused. (P2b, ACP, Mumbai police)

This might influence their willingness or otherwise to record multiple DDs.

Inquest

Although the legal requirements relating to dowry death are the same throughout India, they were enacted differently in the two cities studied. Under section 174 of the CrPC (1973), the police are empowered to conduct an inquest into any suspicious or unnatural death and submit a report to the executive magistrate, except in cases of an unnatural death of a woman within seven years of marriage. In the latter case, it is specifically stated that the inquest is to be carried out (under section 176 CrPC) by the nearest magistrate. This was the standard procedure according to police officers interviewed in Delhi:

there is not very long and wide procedure for Inquest, the SDM will come and write down statements of two or three people, he has to fill up a form ..., he fills it, then he makes a request to the doctor to conduct the post-mortem and the inquest is done, and the rest we will do. (P11, Inspector, Delhi)

In contrast, in Mumbai officers interpreted section 176 CrPC to mean that in the case of a woman dying within seven years of marriage, her statement has to be recorded by a magistrate, but it did not necessarily imply that the inquest has to be conducted by the magistrate. When asked about it, one officer said, 'No we don't, it is not compulsory we only have police inquiry under 174. Is it under 176 CrPC? [opens his copy of the CrPC] ... It might be under special circumstances'. He sounded surprised when informed that in Delhi a magisterial inquest in every case of death of a woman within seven years of marriage was usual – 'It is? It might be their local interpretation. Here it does not say it clearly' (P4, Inspector, Mumbai police).

There were, thus, differences in the way the law was interpreted and operationalised in the two cities. If a large, high-profile metropolitan police force can use discretion in a matter as important as conducting the inquest, it seems likely that more rural police forces in other parts of the country are liable also to diverge from the standard practice.

Registering the FIR

Although a majority of officers interviewed in both cities felt that the police have powers to register the case, the preferred option was to wait for the SDM's recommendation to avoid all controversy:

We can register, we don't have to wait for the SDM, but we do so because we are the police, tomorrow no one should question our credentials [though he perhaps meant intentions], so it is better if they also come and it is done properly. That is practical. (P12, ACP, Delhi Police)

From the accounts of officers, the balance of probability in these cases appeared to weigh in favour of registering a case if there was any evidence or allegation of an offence, either by the victim, any of her family members or neighbours, or if the physical evidence suggested some foul play.

When asked what was given more weight while deciding whether to register a criminal case – the victim's account, forensic or physical evidence or her parents' account, especially if they contradicted each other – one officer said:

In those cases, we give priority only to that in which an offence can be lodged. We cannot digest that. If someone says that this has happened and that is an offence, so either we have, whatever material we have on record, even if she is saying that it did not happen like this, even then we have to register a case and investigate. And then whatever comes forth we see. But if we get any statement of a cognizable offence, then we will register that. (P12, ACP, Delhi police)

Officers asserted that they had no choice but to register a case if any interested party made an allegation against the husband or in-laws.

They claimed their actions were victim-led, but also said that they had been proactive in cases where they felt that 'justice' required it. There is no discretion where the magistrate recommends that a case be registered. However, in cases where discrepancies in evidence arise (for example, between accounts of the event or between the physical evidence and the accounts of the event) and the victim either cannot or does not make any allegations in her DD, clearly officers have to make a judgement about whether or not a crime was committed. Our findings suggest that this discretion may sometimes act against the victim's family's interests. A forensic consultant in Mumbai said that he had to intercede several times on behalf of a victim's family to ensure that the police recorded the facts correctly and took appropriate action:

I can call the mother and father of the deceased ... and if they feel that there is something fishy in that, or something ... er ... which they feel they are not heard by someone, so I can ask them to give an application to me: I'm not an investigating officer, but I'm a public servant here ... I am working for delivering of justice to any deceased ... we write on paper to the IO and if they do not pay heed to us I see that right from top bosses a copy is sent ... As an expert related to criminal justice system it is my duty to inform you: it is up to you whether you are investigating or not. (M1, Consultant, Mumbai)

Without such conscientious public servants, victims may fall through the net following police use of their discretion.

In the absence of a clear allegation, officers said that they tried to reconcile the physical crime scene and medical evidence with victim accounts and took *suo moto* action if they felt there was some foul play. But our research revealed that in the case of one victim of a homicidal attempt to set her on fire, there was no FIR registered because:

Her father in-law says that. Don't register the FIR ... I said why should we harass them [in-laws], we will do according to the wishes of daughter, if she says I have to go there [to her marital home], why FIR? Why should we break her home? ... We thought why waste her [life/marriage], if anything happens then it is all wasted, we have to do something, we had done the marriage for 5 lakhs.¹³ (R1b, father of patient Aarti, Delhi)

¹³A lakh is a unit of measurement in India which refers to 100,000.

We take it in this case that the physical evidence at the place of occurrence and the burn patterns did not tally with the victim's account of accidental burns, but the police chose to wait for an allegation before they would register a case. Black (1970) showed that the victim's willingness to prosecute was a major influence on the police's willingness to investigate. Further, police invested less effort in following up on domestic violence cases, since in many of these cases the victims chose not to pursue formal action once the crisis had subsided.

Officers admitted:

We lodge the cases and we charge-sheet them. We will go by the statement of the victim or her relatives, blood relations and not by the evidence because there are a lot of agencies getting into it, women's activists and Mahila Aayog,¹⁴ they will say police are involved. NGOs will come and they will say you have not done it, so it is – you invite allegations otherwise. Then if you are so firm on it then you have to face the music also, maybe at the end of the day, you will come out clean but you have to face lot of music then. You have to give explanations, everybody, right from senior officers to government, everybody will keep asking you, why are you [doing this]? Then they will start finding out ulterior motives, 'you have some motive there, you are getting some money from them', whatever. 'Or you want to favour them', whatever. So they will blame morally also. (P2b, ACP, Mumbai police)

Collecting evidence

Investigative decisions in dowry-related cases were victim-led according to officer accounts (as shown in the above quotation, P2b, ACP, Mumbai police). However, discretion over the weight to give to the wishes of the victim and to other evidence still remains with the police.

Some officers appeared to be meticulous in the collection of evidence at the scene, but not all were as thorough in their description:

What was the form of the fire, how the soot is formed – you know when a person burns while alive, there is soot that goes upward with the breath. Now here if I have set myself on fire in this room and have locked the door with the latch then there should be no soot on the inside rim of the latch there will be no blackening. If it is unlatched then there will be some blackening. So we check these things. You must see this minutely. (P11, Inspector, Delhi police)

Police discretion in investigation and evidence collection might be influenced not only by the situation and perpetrator characteristics, such as age and demeanour, but also victim and offence characteristics. Bynum *et al.* (1982) suggest that some victims, especially women, might be viewed as being vulnerable and therefore 'deserving' of police attention. Similarly, the type of offence, amount of evidence and extent of harm done would also influence the police decision to conduct a follow-up investigation. In the case of women victims of burns, the injury caused is horrific: 'these are not nice cases, because after you see them mentally it

¹⁴Women's commission.

is very demoralizing' (P3, Inspector, Mumbai police), the woman quite vulnerable, and in most cases the presence of physical evidence is quite unambiguous. One officer said:

Sometimes it is very difficult for us to decide which of the victim's statement is correct. And then we have to act on what is in her best interest. We don't act on what the truth is, we act on what is in her best interest. If she wants that a case should be registered, we register the case, we don't see whether she is lying, or what are the circumstances on the spot. Somebody has been burnt, then the circumstances will be different; if it is an accident, it could be different; if it is a burst of the stove, it could be different. But even if those circumstances are existing and she says otherwise, we will take that otherwise into account. (P2, Inspector, Mumbai police)

The officer seemed to suggest that he and others like him would act in the victim's 'interests' regardless of the evidence, indicative of the use of discretion. When asked how they would resolve a situation in which the victim's account did not match up with the evidence, one officer replied, 'No, we see that, but we are helpless, we cannot do anything. We are the prosecution side, you cannot bring contradiction on record' (P12 ACP, Delhi Police).

This brings us to another crucial aspect of police investigations: the desire to collect evidence that will support the prosecution case. This often meant that officers would be reluctant to record statements or collect physical evidence that would contradict the accusation, because they believed their job was to try to ensure that the prosecution was successful. Maintaining the master narrative that they have no choice in the investigation process, one officer said:

As far as we are concerned, we are investigation agency, we have no powers to decide what is wrong and what is right. We do the full investigation and present it in front of the court saying these are the facts, you have to apply your judicial mind and decide what is correct. Allegations are made and counter allegations are made so the judge has to decide. (P11, Inspector, Delhi police)

However, several officers-related stories show that they actively downplayed or disregarded evidence that would weaken the prosecution case. Innes's (2007) research on homicide investigation in the UK suggests that:

In assembling their accounts of how and why particular crimes happened, detectives are effectively working to an implicit template. They are aware of the fact that the legal frame establishes certain points to prove when constructing a prosecution case, and that there are certain features and characteristics that tend to make a story about a crime plausible and believable. (p. 267)

Similarly, interviews with police officers indicated that they believed their job was primarily to support prosecution rather than to conduct an unbiased investigation. Officers' desires to fit the details of a particular incident to an accepted criminal narrative were influenced either by a chivalrous desire to support the victim's cause or their fear that they might be accused of corruption and misdeed, especially by the courts. The twin themes of (1) feeling under attack by superior officers, media, the public, politicians and the courts and (2) often taking

actions merely to protect themselves against accusations and allegations ran through every police interview:

The result is that parents think, our daughter is now gone and he has behaved rudely with us and we don't want to have any connection with that family, so why should we not do something to give them maximum trouble? Her family thinks like that and the police have no option. If we try to take what actually happened, then you know madam, you are such a senior officer, we have to fight so much against it. Strictures are passed and immediately people are suspicious, that is why police have to register these cases ... otherwise there are complaints against the police officer to the Commissioner or Home Minister that this officer has taken money and not recorded a case and all that. It is a dowry death case, but still that party was very strong and they are trying to suppress the case, etc. and that and this officer's integrity is doubtful and all that they say. At that time what protection do the police have? (P4, Inspector, Mumbai police)

Officers' fears that action taken by them that strengthened the defence case would be viewed adversely by judges is borne out, for example, by the Punjab and Haryana High Court,¹⁵ which had no difficulty in accepting that evidence presented in favour of the accused in a dowry death case was obtained under false premises by the police. Officers are in awe of the power of the courts, especially the higher courts, to pass strictures against them for perceived malpractice. One officer expressed his frustration at police inability to respond robustly to allegations of misconduct:

But we cannot speak in the High Court and our PP (Public Prosecutor) cannot understand anything even after telling, they are so stupid that they cannot understand even after we tell them and they don't even have time for 5 or 10 minutes to talk to us, they have so many cases ... Then the court thinks that the police have done something wrong. The main strictures that are passed in the High Court, they are passed for this reason. (P5, Inspector, Mumbai police)

It was the experience of some of the doctors interviewed that police officers' versions of events sometimes differed from the doctor's version because:

Somewhere, the police is also responsible – that whenever they take statement, if they do it with mala fide intention, it is not for all, but some do it. They will not take down the proper history in the words ... they will just ask the victim, oh, you sign on this. So, in that pain, in that ... how can she read there – 90 per cent are illiterate, not able to read. They will say, yes, whatever you have said we have written in this. But that may not be true also. (M1, Consultant, Mumbai)

Part of the explanation for the police practice of writing standard statements on behalf of the victim, in set language and style, and asking her to sign it arise from what Innes (2007) describes as the tendency to assign the incident to one of several 'master narratives' early on in the investigation. Thereafter, the narrative structure determines the key points at issue and what sorts of evidence to collect and where. By pigeonholing the case within a limited range

¹⁵Punjab and Haryana High Court, *Chhaju And Others Vs State Of Haryana*, 1989: 12 <http://indiankanoon.org/doc/264624> [Accessed 5 February 2013].

of master narratives, the police often set their investigation moving in particular directions and towards fixed conclusions; albeit, under the illusion that they are actually supporting the victim's version of events. This is not to deny that there may sometimes be mal intent or corruption, only that a subset of apparently perverse and inexplicable police actions can be well-meaning. Previous research has shown that police officers in India tend to justify questionable actions, from manipulating paperwork to killing an alleged criminal in contrived shootouts, as being morally justifiable so long as the intention was good (Belur 2010). In the same vein, anecdotal evidence from officers interviewed in this research revealed that they often selectively shape accounts and collect (or do not collect, as the case may be) evidence ostensibly to support the victim's interests. In the process, they compromise the integrity of the investigation.

Arrest

The decision to arrest those alleged to have committed dowry-related violent offences was presented as given:

We police have very little choice to decide, which names should appear in the FIR – in order to prove that they were not there, that kind of negative investigation has to be done and officers don't want to do it. Otherwise we don't get evidence and then we are asked why are you interested in removing them from the FIR? So we arrest – a shortcut method is you arrest them, let them be released from court. (P6, Inspector, Mumbai police)

Arrests are a powerful tool to harass the in-laws, because in dowry-related offences bail is rarely granted and cases may only come to trial two to four years later. It is, therefore, not uncommon for the arrested persons to remain in prison, while under trial, for a long period. However, in this as in other matters related to the investigation, discretion is exercised. One officer talked about a case in which, in his opinion, the husband and uncle of a woman who had set herself ablaze were in no way responsible for the situation, but had been named as perpetrators in the FIR. The officer did not find any evidence to connect the husband with the incident but since he had been named in the FIR, he submitted a charge sheet but chose not to arrest him. Other officers also mentioned that when very old in-laws or distal relatives were named as perpetrators, they often decided in consultation with their senior officers not to arrest them to spare them discomfort and loss of freedom.

Charging the alleged perpetrators

The police play a vital role in deciding which sections of law are relevant for charging the accused, based on the evidence collected. Given the intensity and fluidity of the inter-personal, familial and social dynamics in cases where dowry-related homicide is at stake, the classification is often disputed.

The legal nuances involved in establishing whether the death of a woman within seven years of marriage was dowry related or the result of harassment have been tricky to resolve and there is little agreement, even within legal circles, on the issue, as evidenced by the number of appeals upheld by the upper courts revising the verdict of the lower courts.¹⁶ Charging decisions by the police are substantively important for determining prosecutorial decisions

(Phillips and Varano 2008) and these recommendations can have serious implications for delivering justice.¹⁷ Police charging decisions have been largely ignored by scholars with few exceptions, but deserve to be studied as part of the wider range of discretionary choices made by officers to understand the full complexity of police decision-making (Phillips and Varano 2008).

Officers in Delhi said that they were more inclined, including both sections 304B and 306 IPC (covering both homicidal and suicidal dowry death, and suicidal death resulting from cruelty or harassment by in-laws) as long as there was some allegation of harassment from the in-laws.¹⁸ They showed some awareness of the legal position expounded by the Delhi High Court, which advised that charges should be framed under all possible sections so as to enable the court to make a final judgement without being handicapped by the absence of particular charges.¹⁹

Officers in Mumbai were less inclined to charge under section 304B IPC, as in their experience demand for dowry was not a key factor in most of the burns deaths they saw and, unless explicitly stated by the victim's family, did not form part of the master narrative. In the experience of these officers, most of the cases they had dealt with were suicidal in nature, where the woman allegedly set herself alight because she was frustrated, angry or the victim of domestic abuse. During one interview two officers, an inspector and an assistant commissioner in Mumbai with over 20 years of policing experience, said:

ACP: In Maharashtra there are not so many – where they have actually set fire to kill – that 4–5 people have held her, they pour kerosene ... There are very few cases, very, very few. Maybe one or two.

P2: I have not seen any in my years of service.

ACP: No, nor have I. (P2 and P2b, Inspector, ACP, Mumbai police)

However, interviews with victims and practitioners suggested that there is a certain reluctance on the part of the victim or her family to accuse the in-laws of homicidal intent even if it is true because either they believe they will survive and go back to the same marital home or they are concerned about the upbringing of the children (if any). A consultant doctor in the burns ward in Delhi said:

Some patients are like they say that this has happened with me and my in-laws have threatened me to not let them [the police] know about the incident. The in-laws say 'We won't look after your child if you open your mouth.' So because of fear the

¹⁶See for example *Pramila Patnaik and Others Vs State Of Orissa* 199, Indian Kanooon - <http://indiankanoon.org/doc/1781959/>; *Bajrang and Others Vs State of Rajasthan*, 1997, Indian Kanooon – <http://indiankanoon.org/doc/209769/>; *Goverdhan Shobnath Bind Vs State Of Madhya Pradesh* 2007, Indian Kanooon – <http://indiankanoon.org/doc/581900/>, [Accessed 19 January 2013].

¹⁷See for example *Dinesh Mehta Vs the State of NCT of Delhi* 2007 where the court found that the evidence did not support a charge of 304B but that 'An alternative charge under Section 306, IPC also is required to be framed against him. The Trial Court shall proceed to frame such alternative charge against the petitioner under Section 306, IPC and proceed further in accordance with law'. Such a decision would mean a great deal of additional time and resources would be spent in framing and then prosecuting the accused under the appropriate charges.

¹⁸The ingredients of the two offences could not be clearly distinguished and therefore the appropriate offence and sections of the law were a matter for the judiciary to decide.

¹⁹Delhi High Court, *Dinesh Mehta Vs State of NCT of Delhi*, 2007, Indian Kanooon – <http://indiankanoon.org/doc/1387411> [Accessed 23 January 2013].

patients do not say what actually happened. This happens very often with the ladies. (SK1, Consultant, Delhi)

Lack of relevant data makes it impossible to generalise whether these apparently different charging practices in the two forces arose out of geographical differences in demands for dowry or out of differences in local police sub-culture.

Discussion

Three distinct themes emerge from this study. First, the lack of police discretion in the investigation of dowry death cases is a myth. Second, the investigation of these cases is ostensibly victim-led, but is often influenced by a variety of other factors. Third, investigation is constrained by the medico-legal context of the cases in question, where clinicians are often reluctant to engage with the police either because they are too busy or because systemic arrangements are such that as expert witnesses, their expert opinion is sought only at the trial stage of criminal proceedings, and not before.

Figure 2 shows a number of factors influencing the exercise of discretion. We were able to infer some from events. Others were mentioned by police respondents to justify their decisions.

Corruption, laziness and ineptitude are often suspected and if present may adversely influence the exercise of discretion in any setting and in relation to the investigation of any crime (Verma 1999, Kumar Narayana 2002, Unnithan and Tare 2011). Professional competence is likewise a recognised prerequisite for the proper exercise of discretion regardless of setting or crime type. The 'interesting' influences on the exercise of discretion turned up in this paper refer to less-widely acknowledged sources of perverse exercise of discretion, which are liable to be produced in the contexts and conditions that face police investigations of deaths by burning women in the early years of marriage in India.

Interviews and anecdotal evidence revealed that well-meaning officers considered their job to be furthering the victim's interests and supporting the prosecution case above all else, whilst protecting themselves and their service from allegations of improper action. A universally shared feature of policing is that policemen's work is not just a way of life but a vocation to be pursued with evangelical zeal (Reiner 2000). This subcultural feature along with police preference to be 'efficient rather than legal when the two norms are in conflict' (Skolnick 1975, p. 231), and in India, their conception of themselves as 'social workers' pushing the boundaries of legality for the 'greater good' (Belur 2010) makes for a dangerous cocktail that often results in well-meaning officers either overdoing or ignoring certain legal and procedural requirements. There is a need for introspection within police organisations and wide public discussion about what can and should reasonably be expected from the police.

Legal and procedural guidelines ostensibly restrict police discretion, in this case in the investigation of dowry death cases. But it is equally true that discretionary decision-making is inherent and unavoidable in police work. And since, 'it would be neither practical nor prudent to attempt to establish a policy or procedure to address every possible situation that

an officer may face' (Alpert and Noble 2009, p. 244), there is a need to correct the narrative denial of discretion and to achieve a wider acceptance within and beyond police circles that discretion is inevitable. Only then can the terms under which discretion is to be exercised be made explicit and officers held accountable for the way they exercise it.

A key difficulty in the investigation of many crimes, including in the dowry deaths focused on in this study, relates to mistrust in the police and the ways the police adapt to this mistrust. Police exercise of discretion has the potential to alienate the public and lose their trust if perceived to be unfair or illegitimate. Policing in a democracy is accomplished with the help of public consent and cooperation which arises not only out of obedience to the law and fear of punishment but also because law enforcement is perceived to be fair and unbiased (Skogan and Frydl 2004). Public confidence in police legitimacy is based on trust and regaining lost trust is seldom easy (Smith 2007). Our study revealed that denial of discretion is one, ultimately untenable, strategy used by the police to try to increase trust in them: they claim simply to be doing what is expected of them.

Police leadership, politicians, media, the general public, health workers and the courts in this particular instance neither trust the police nor expect them to be impartial. There are two outcomes. First, cooperation between clinicians and investigating officers is undermined and this can have an adverse effect on the overall case outcome. Second, the frustration and low self-esteem produced by distrust of police leads them to exercise their (unacknowledged) discretionary powers of investigation, mainly in order to cover themselves and avoid allegations, departmental inquiries or court strictures. This again subverts the quality of the investigation and can result in miscarriages of justice and waste of public resources and time, ironically further tarnishing the professional reputation and perceived integrity of the force.

Conclusion

This paper has attempted to fill a gap in the literature on decision-making in police investigations. We studied police investigations of a peculiar crime, dowry death as a result of burns in India. Special legal provisions ensure that unnatural deaths of women within the first seven years of marriage resulting from burns or other causes are subject to scrutiny, and procedural guidelines are laid out to regulate police response to these deaths. If there is any evidence of dowry-related harassment or any allegations to that effect are made by the victim or her natal family, the police are expected to register a case and investigate. Legal rulings make explicit the expectation that the police will collect the requisite evidence and charge the named accused persons for prosecution. It is then for the courts to adjudicate.

As medico-legal cases, the investigation of dowry deaths resulting from burns presents specific challenges. We were interested in understanding how police investigate these cases and the role, if any, of medical and forensic evidence. The research was based on interviews with victims and/or their close family members, health practitioners and police officers in two cities in India. Officers indicated that these investigations were victim-led and that they had very little discretion in deciding how the investigation would proceed. The master narrative of dowry death investigations also allowed little room for discretion. However,

officer accounts themselves, as well as accounts of the victims and health practitioners, revealed that more discretion was exercised than either officers realised or accepted. Often, misguided but well-meaning discretionary decisions resulted in unprofessional and biased investigations. One of the barriers to more professional police investigations is the denial of discretion per se, but the root of the problem lies in the distorted police perception of their role and in the wider distrust and suspicion of the police in India.

The issue of discretion and discipline is a ubiquitous one in policing. Discretion may be denied by the police when accused of acting improperly ('we were just following the rules') and attempts to deny the police discretion are sometimes made by administrators where that exercise is deemed to be used unwisely or corruptly ('police are there to enforce the law, following proper procedures'). The public are faced with an organisation that purports to be disciplined and rule-following, but within which discretion has, perforce, routinely to be employed. The particular circumstances surrounding the investigation of dowry deaths in India bring these general issues into sharp relief.

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Figure 1. Master narrative of investigation of woman with burns.

Figure 2. Factors influencing police discretion.

Table 1**Recorded dowry deaths in India.***(Crime in India 2011).*

Year	2006	2007	2008	2009	2010
No. of deaths	7618	8093	8172	8383	8391

Table 2
Categories of women's death by burning.

	Accident	Self-inflicted	Inflicted by third party
Dowry-related	N/A	Dowry-homicide	Dowry-homicide
Non-dowry-related	No crime	Suicide	Homicide