

“FROM RITUAL TO TRAGEDY”: A CRITICAL ANALYSIS OF THE SOCIO-LEGAL ASPECTS OF DOWRY DEATHS IN INDIA

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ABSTRACT

Dowry death, a catastrophic social phenomenon prevailing in India, involves the unfortunate death of a woman due to harassment or violence perpetrated by her husband or in-laws in connection with a dowry dispute. Section 304-B of the Indian Penal Code criminalizes dowry-related deaths and imposes severe penalties on those found guilty. Complementary provisions are there in the Criminal Procedure Code and Indian Evidence Act in connection with this. The Dowry Prohibition Act, 1961, supplements this by prohibiting the giving and taking of dowry. In spite of these legal safeguards, the effective implementation of such laws faces challenges, such as social attitudes, evidentiary issues, and the multifaceted dynamics within households. Moreover, dowry death is a type of gender based violence. A widespread understanding of the legal aspects surrounding dowry deaths is crucial to assess the efficiency of existing measures. It is the need of the hour to tackle the existing social enigma within the families as well as effectively implement the laws dealing with dowry death.

Keywords: *Dowry death; Dowry; Indian Penal Code; Dowry Prohibition Act; Family; Gender based violence.*

INTRODUCTION

Dowry death is one of the most heinous crimes committed against women in the matrimonial home. The definition of dowry death can be found in the provisions of Indian Penal Code as “Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death¹. Dowry system refers to the durable goods, cash, and real or movable property that the bride's family gives to the bridegroom, his parents, or his relatives as a condition of the marriage. The dowry system is thought to put great financial burden on the bride's family. In some cases, the dowry system leads to crime against women, ranging from emotional abuse and injury to even deaths. It is categorized as a crime under Indian Penal Code. The offence has been inserted in the Indian Penal Code consequent to the Amendment in the Dowry Prohibition (Amendment) Act, 1986². The offence of dowry death was inserted as Section 304 B under chapter XVI of Indian Penal Code, 1860 and the legislative

¹ The Indian Penal Code, 1860 (Act No 43 of 1986), s. 304B

² Inserted by Act 43 of 1986, s. 10 (w.e.f. 19-11-1986).

intention of incorporating this provision in the statute book is to curb the growing atrocities against women, where thousands of young women were being done to death due to failure to pay up dowry demanded. The amending Act has made several consequential amendments in the Criminal Procedure Code and in the Evidence Act, in order to make prosecution of offenders in cases of dowry death more effective. In spite of these penal legislations, crimes against women related to dowry are on the rise.

The objective of this paper is to trace the evolution of dowry system in India, the causes of this evil practice and to analyse how far the legislations aim to prevent dowry death and prohibiting dowry are effective in India. The methodology adopted for preparing this work is doctrinal.

EVOLUTION OF DOWRY SYSTEM IN ANCIENT INDIA AND THE CAUSES OF DOWRY

The ancient Code of Manu sanctioned dowry and bride wealth in ancient India, but dowry was the more prestigious form and associated with the Brahmanic (priestly) caste. Bride wealth was restricted to the lower castes, who were not allowed to give dowry. When dowry evolved in the Vedic period, it was essentially followed by the upper castes to benefit the bride, who was unable to inherit property under Hindu law. To counter this, the bride's family provided the groom with dowry which would be registered in the bride's name. This dowry was seen as *stridhan* (Sanskrit: woman's property). *Kahivat*, within the Vedas says he became wealthy by the dad in law giving him 10 chariots and maids and 1060 cows throughout the wedding ceremony³. In the modern era, the concept of dowry has evolved and Indian families no longer practice the traditional Vedic concept of dowry. This is because with the passage of time, bride price gradually disappeared and dowry became the prevalent form of transfer. In the modern era, the practice of dowry requires the bride's family to transfer goods to the groom's family in consideration for the marriage.

Various reasons have been suggested as cause of dowry practice in India. These include economic factors and social factors. Some suggestions point to economics and weak legal institutions on inheritance place women in disadvantage, with inheritances being left only to sons. This leaves women dependent upon their husbands and in-laws, who keep the dowry when she marries. Prior to 1956, including during the British Raj, daughters had no rights of inheritance to their family's wealth. In 1956, India gave equal legal status to daughters and sons among Hindu, Sikh and Jain families, under the Hindu Succession Act. Dowry gave, at least in theory, women economic and financial security in their marriage in the form of movable goods. This helped prevent family wealth break-up and provided security to the bride at the same time. In addition to marriage customs that may influence dowry, social customs or rituals, and parents expectations of dowry are important factors to consider. Dowry in India is not limited to any specific religion. It is widespread among Hindus and other religions. For example, Indian Muslims call dowry as *jahez*, justify the practice in terms of *jahez-e-fatimi*. Islamists classify *jahez* into two categories: The first comprises some essential articles for the outfit of the bride as well as for conjugal life. The other is made up of valuable goods, clothes, jewellery, an amount of money for the groom's family,

³ <http://education.dewsoftoverseas.com/vakilno4/dowryprohibitionact/indroduction.html>

which is settled on after bargaining. The jahez often far exceeds the cost of the baraat and marriage parties. The jahez is separate from cash payment as Mahr or dowry that Sharia religious law requires⁴. Dowry has been a prevalent practice in India's modern era and in this context, it can be in the form of a payment of cash or gifts from the bride's family to the bridegroom's family upon marriage. There are variations on dowry prevalence based on geography and class⁵.

DISADVANTAGES OF DOWRY SYSTEM

a. Gender Inequality

Gender inequality is closely associated to the practice of dowry in many societies. The dowry system, propagates and emphasizes traditional gender roles and stereotypes. It often implies that a woman's worth is measured in material possessions or financial offerings rather than her personal qualities or competencies. This unequal economic pressure contributes to strengthening the idea that men are the breadwinners, while women are perceived as financial liabilities. Families burdened by the expectation of providing dowry may highlight spending on their sons' education and career prospects over their daughters. This can limit educational and professional opportunities for women, perpetuating gender disparities in various fields. Women may face harassment, emotional abuse, and physical violence if their families are unable to meet dowry expectations⁶.

b. Financial Burden:

Dowry can impose a significant financial burden on the bride's family, often leading to economic strain and debt. This pressure can result in families resorting to drastic measures to fulfil dowry demands. The groom's family may have specific expectations regarding the type and amount of dowry they demand. This could include expensive gifts, jewellery, cash, or even property. Fulfilling these expectations can place a considerable financial strain on the bride's family. The financial burden associated with dowry often leads to economic pressure on the bride's family. Families may go to great lengths to accumulate the required dowry, including taking loans, selling assets, or depleting savings. The financial pressure associated with preparing for dowry expenses may lead families to prioritize saving for dowry over investing in the education of their daughters. This can perpetuate a cycle of limited educational opportunities for women.

c. Exploitation and Harassment:

In cases where dowry demands are not met, brides may face harassment, emotional abuse, and even physical violence. The expectation of receiving dowry can create an environment of exploitation within marital relationships. The groom's family may demand a dowry from the bride's family. Failure to meet these demands can lead to various forms of harassment, including

⁴ Abdul Waheed, Dowry among Indian Muslims: ideals and practices, *Indian Journal of Gender Studies* 16 (1), 47-75, 2009

⁵ Chatterjee, Soumi. "Concept and Evolution of Dowry." *International Journal of Humanities and Social Science Invention* 7.1 (Jan 2018): 85-90. [http://www.ijhssi.org/papers/vol7\(1\)/Version-2/M0701028590.pdf](http://www.ijhssi.org/papers/vol7(1)/Version-2/M0701028590.pdf).

⁶ Birodhkar Sudhir, Dowry Sati and Child Marriage, *Hindu Social Customs*, http://www.hindunet.org/hindu_history/sudheer_history/practices1.htm

emotional pressure, verbal abuse, and even physical violence. Brides who are unable to meet dowry expectations may face social isolation and alienation within their marital families. This can lead to feelings of helplessness, depression, and a lack of support. Dowry-related harassment can have a significant impact on the mental health of brides. Constant pressure, abuse, and threats can lead to anxiety, depression, and other mental health issues. In response to the prevalence of dowry-related harassment, many countries, including India, have enacted laws to address these issues. Sections like 498A of the Indian Penal Code criminalize cruelty towards a woman by her husband or his relatives with the intent of extracting dowry⁷.

d. Societal Stigma and Mental Harassment

Dowry-related issues can lead to societal stigma and pressure on brides and their families. Failure to meet dowry expectations may subject the bride to social ridicule, affecting her mental and emotional well-being. Failure to meet dowry expectations may subject the bride to social ridicule, affecting her mental and emotional well-being⁸.

STATUS OF DOWRY DEATHS IN INDIA: AN OVERVIEW

India's National Crime Bureau reported that there were approximately 8,233 dowry murders in 2012⁹. Many such crimes take place within the four walls of a house and are unreported. Survivors often hesitate to make a statement before a magistrate due to threats, fear or a lack of alternative support. India has by far the highest number of dowry-related deaths in the world according to Indian National Crime Record Bureau. In 2012, 8,233 dowry death cases were reported across India. Dowry issues cause 1.4 deaths per year per 100,000 women in India. According to a 1996 report by Indian police, every year it receives over 2,500 reports of bride-burning. The Indian National Crime Records Bureau (NCRB) reports that there were 8,331 dowry death cases registered in India in 2011. Incidents of dowry deaths during the year 2008 (8,172) have increased by 14.4 per cent over the 1998 level (7,146), while India's population grew at 17.6% over the 10-year period¹⁰.

OFFENCE OF DOWRY DEATH UNDER THE INDIAN PENAL CODE

Dowry Death is an offence, which is separately incorporated under IPC in 1986 as a crime which needs to be separately punished¹¹. The payment of dowry has long been prohibited under specific Indian laws including the Dowry Prohibition Act, 1961 and subsequently by Sections 304B and 498A of the Indian Penal Code.

Section 304B of Indian Penal Code reads as follows:

⁷ Van Willigan J, Channa V. Law, custom, and crimes against women: the problem of dowry death in India. *Hum. Organ.* 1991;50(4):369–377.

⁸ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4394358/>

⁹ <https://ebooks.inflibnet.ac.in/hrdp05/chapter/dowry-law/>

¹⁰ <https://www.statista.com/statistics/632553/reported-dowry-death-cases-india/>

¹¹ Added by the 1986 Criminal Law amendment.

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

Explanation.—For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) *Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life¹².*

The main ingredients of this offence are,

1. The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances.
2. Such a death should have occurred within seven years of her marriage.
3. She must have been subjected to cruelty or harassment by her husband or by any relative of her husband.
4. Such cruelty or harassment should be for, or in connection with the demand for dowry.
5. Such cruelty or harassment is shown to have been meted out to the woman soon before her death¹³.

According to the explanation to Section 304 B the term dowry shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. As per this Section, Dowry means

“Any property or valuable security given or agreed to be given either directly or indirectly

(a) By one party to the marriage to the other party to the marriage or

(b) By the parents of either party to a marriage or by any other person

At or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mehr in case of persons to whom the Muslim Personal Law (Shariat) applies.”

Explanation I- For the removal of doubts, it is hereby declared that any presents made at the time of a marriage to either party in the form of cash, ornaments, clothes or other articles shall not be deemed to be dowry within the meaning of these section, unless they are made as consideration for the marriage of the said parties.

¹² Vibhute, K. I., *P S A Pillai’s Criminal Law*, 327, Lexis Nexis, New Delhi, 10th edition, 2010 .

¹³ Tandon M. P., *Indian Penal Code*, 509, Allahabad Law Agency, Haryana, 26th Edition, 2015

Explanation-II The expression valuable security has the same meaning in Section 30 of the Indian Penal Code¹⁴.

The word cruelty does not explained in this provision. But there is provision in IPC which penalises this act. Matrimonial Cruelty in India is a cognizable, non-bailable and non-compoundable offence. It is defined in Chapter XXA of I.P.C. under Sec. 498A as:

“Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, "cruelty means"—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

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

The main ingredients of the offence are that acts of cruelty committed by the husband or his relatives against the wife. That means any wilful conduct that is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb, or physical or mental health. The term "relatives" includes the husband's parents, siblings, and other relatives. Section 498A is often invoked in cases of cruelty related to dowry demands. If cruelty is inflicted on the woman for not meeting dowry expectations, it falls under this section. Whoever is found guilty under Section 498A may be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Dowry deaths and dowry murder relate to a bride's suicide or killing committed by her husband and his family soon after the marriage because of their dissatisfaction with the dowry. It is typically the culmination of a series of prior domestic abuses by the husband's family. Most dowry deaths occur when the young woman, unable to bear the harassment and torture, commits suicide by hanging herself or consuming poison. Dowry deaths also include bride burning where brides are doused in kerosene and set ablaze by the husband or his family. Sometimes, due to their abetment to commit suicide, the bride may end up setting herself on fire.

OTHER STATUTORY PROVISIONS RELATING TO DOWRY DEATH

To strengthen the anti-dowry law and to stop offences of cruelty by the husband or his relatives against the wife, as well to prevent dowry related homicides, some provisions were added to other

¹⁴ Indian Penal Code Sec 30: The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Statutes also. In this context, Indian Evidence Act, 1872 allows for certain presumptions to be made in dowry death cases based on specific circumstances.

Sec. 113-B of Indian Evidence Act states that:

“Presumption as to dowry death- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation- For the purpose of this section ‘dowry death’ shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860)¹⁵”.

In addition to that, Section 113A is also relevant with regard to abetment of suicide of a married woman.

113A. “Presumption as to abetment of suicide by a married woman. —When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation. — For the purposes of this section, “cruelty” shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860)”

These provisions make a presumption the accused is responsible for the dowry death if certain situations are there. These include the fact that the woman has died within seven years of marriage, she has been subjected to cruelty or harassment for dowry, and there is evidence of burns or bodily injury and also, the accused is responsible for abetting the suicide of a married woman when she has committed suicide within seven years of marriage and having been subjected to cruelty by her husband and his relatives¹⁶.

Abetment to suicide is yet another offence relating to Dowry¹⁷. Continuing abuse by the husband and his family with threats of harm could lead to a woman committing suicide. In such situations, the dowry crime even extends to abetment of suicide, which includes all acts and attempts to intentionally advise, encourage, or assist in committing suicide. The impact of dowry can leave a woman helpless and desperate, which can cumulate in emotional trauma and abuse. Dowry related abuse causes emotional trauma, depression and suicide. The offence of abetment to suicide is

¹⁵ Ins. by Act 46 of 1983

¹⁶ K. N. Chandrasekharan Pillai, General Principles of Criminal Law, 211, Eastern Book Company, 2nd Edition, 2011

¹⁷ Indian Penal Code, 1860 Sec.306

significant because in many cases, the accused persons often bring up a defence that the victim committed suicide at her own volition, even though this may not be true in reality.

In *Sushil Kumar Sharma v. Union of India*¹⁸, the constitutional validity of section 498A was questioned on the following grounds:

1. That it has been grossly abused by married women to harass their husbands, in-laws and relatives by instituting frivolous and unfounded criminal proceedings,
2. That it has become an easy tool in the hands of the Police and other agencies to hound the persons with the threat of arrest,
3. That the investigating agencies and the courts start with the presumptions that the accused persons are guilty,
4. That it has been exploited by women and their relatives

However, the Supreme Court, rejecting these contentions, upheld the constitutional validity of section 498A. It held that the mere possibility of abuse of a statutory provision doesn't per se make a provision of law ultra vires the Constitution. In such cases, action and not the section may be vulnerable. The court also opined that it must be presumed, unless contrary is proved, that administration and application of a provision of law is done not with an evil eye and unequal hand. The Criminal Law Amendment Act of 1983 also inserted cl. 3 in Section 174 of the Code of Criminal Procedure, 1973 to curb the increasing incidents of dowry deaths.

Section 174 reads as follows:

Section 174. Police to inquire and report on suicide etc.,

“(1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any); such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

(3) When—

¹⁸ AIR 2005 SC 3100

- (i) *the case involves suicide by a woman within seven years of her marriage; or the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or*
- (ii) *the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or there is any doubt regarding the cause of death; or*
- (iii) *the police officer for any other reason considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.*

*The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate*¹⁹.

This sub-section says that if the death of a woman is caused within seven years of marriage and if there is any reasonable suspicion over the death of the woman that an offence has been committed under Section 304-B and 498-A of the IPC in this regard, the police officer should subject to such rules as the State Government may prescribe in this behalf, send the body for post-mortem examination by the nearest civil surgeon, over the request made by any relative of the deceased woman²⁰.

The police in order to exercise this discretion must fulfill two conditions:

- Death of woman is caused within seven years of marriage.
- A request is made by any relative of the woman in this behalf.

If the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction (the process of decay or rotting in a body or other organic matter) on the road as would render such examination useless, the body may be forwarded to other qualified medical man appointed in this behalf by the State Government.

Sub-section (3) provides that if the police officer has no doubt over the cause of death, he has the discretion of not sending the dead body for medical examination. The discretion must be exercised prudently and honestly²¹.

OFFENCES UNDER DOWRY PROHIBITION ACT, 1961

¹⁹ : <https://devgan.in/crpc/section/174/>

²⁰ Neha Bahl, N K Bahl, Ashwani Pant, Inquest of Inquest Report, 79, Amity International Journal of Juridical Sciences (Vol-4) 2018

²¹ K. N. Chandrasekharan Pillai, R V Kelkar's Criminal Procedure, Eastern Book Company, 3rd Edition, 2011

The Dowry Prohibition Act, 1961 consolidated the anti-dowry laws which had been passed on certain states. This legislation provides for a penalty in section 3 if any person gives, takes or abets giving or receiving of dowry. The punishment could be imprisonment for minimum 5 years and a fine more than ₹15,000 or the value of the dowry received, whichever is higher. Dowry in the Act is defined as any property or valuable security given or agreed to be given in connection with the marriage. The penalty for giving or taking dowry is not applicable in case of presents which are given at the time of marriage without any demand having been made. The Act provides the penalty for directly or indirectly demanding dowry and provides for a penalty involving a prison term of not less than 6 months and extendable up to two years along with a fine of ₹10,000²². Dowry agreements are void *ab initio* and if any dowry is received by anyone other than the woman, it should be transferred to the woman. The burden of proving that an offense was not committed is on the persons charged and not on the victim or her family. Under its powers to frame rules for carrying out its objectives under the Act, the government of India has framed the Maintenance of Lists of Presents to the Bride and the Bridegroom Rules, 1985²³. There are also several state level amendments to the Dowry Prohibition Act.

INTERNATIONAL DOCUMENTS AND PREVENTION OF DOWRY RELATED OFFENCES.

International Documents are also relevant with respect to prevention of dowry related offences. India is a party to several international human rights instruments which provide theoretical remedies to the dowry problems. These international conventions include the Universal Declaration of Human Rights (UDHR), 1948, International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC). International Covenant on Civil and Political Rights, 1966 is one of the central piece of International Bill of Human Rights. Ms. Angela K. Carlson- Whitley in her writings stated that dowry death is against the provisions of ICCPR²⁴. CEDAW codifies the rights most relevant to the discussion of dowry-related violence: the rights

²² Penalty for giving or taking dowry.- If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more:

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years.

(2) Nothing in sub-section (1) shall apply to, or in relation to,—

(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf) : Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

(b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act:

²³ <https://pubmed.ncbi.nlm.nih.gov/12289692/>

²⁴ Angela K. Carlson- Whitley, "Dowry Death: A violation of the right to life under Article six of the International Covenant on Civil and Political Rights, University of Puget Sound Law Review, Vol.17 637 (1994)

of women. However, there are issues of non-intervention and cultural relativism which impede the use of international law to combat dowry deaths.

JUDICIAL APPROACH REGARDING “DOWRY DEATH”

There are significant judicial pronouncements regarding Dowry and related offences. In *Shanti v. State of Haryana*²⁵, the Hon'ble Supreme Court has stated that the term dowry is not defined in Indian Penal Code. However, it has been defined in the Dowry Prohibition Act, 1961 as “any property or valuable security given or agreed to be given either directly or indirectly -by one party to the marriage to the other party to the marriage; by the parents of either party to a marriage by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties”. In view of the aforesaid definition of the word “dowry” any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed.

Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. It has been decided in *Union of India v. Garware Nylons Ltd*²⁶

A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood²⁷.

There are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is “at any time” after the marriage. The third occasion may appear to be an unending period. But the crucial words are “in connection with the marriage of the said parties”. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of “dowry”. Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage²⁸. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But it

²⁵ (1991) 1 SCC 371

²⁶ AIR 1996 SC 3509

²⁷ *Appasaheb & Anr. v State of Maharashtra*, AIR 2007 SC 763 at p. 767

²⁸ *Satvir Singh and others v. State of Punjab and another*, AIR 2001 SC 2828 at p. 2834

should have happened “soon before her death”. The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression.

The legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry related harassment or cruelty inflicted on her²⁹.

In *Pawan Kumar v. State of Haryana*, 1998 (3) SCC 309, the Hon'ble Supreme Court has laid down the ingredients necessary to attract section 304B, IPC which are as follows:-

- (1) death of a woman is either by burns or by bodily injury or other wise than under normal circumstances;
- (2) it should be within seven years of marriage;
- (3) it should also be shown that soon before her death she was subjected to cruelty or harassment by husband or any relative of husband.
- (4) Such harassment or cruelty should pertain to demand for dowry.

In *Kesari Madhav Reddy v. State of A.P.*, the father of the deceased at the time of her marriage with accused husband had agreed to pay Rs. 80,000/- towards dowry and also supply articles worth Rs. 6000/- but at the time of the pooja held at the house of the accused, he paid Rs. 40,000/- and promised to pay the balance amount after the accused and the deceased had lived happily and peacefully for about one month. The accused were, however, not happy with this arrangement and they told the deceased to bring the balance amount and for that purpose would beat and abuse her. Even though father of the deceased spent money on accused husband's operation for appendicitis and after his discharge from the hospital he took his wife with him to the matrimonial home, but the demands for the balance amount of dowry etc. were renewed by the accused sometime in the year 1999. It appeared however that the demands for dowry still continued and the deceased and the couple had an on-off relationship with each other over a period of time. On the 19th April, 2000, when the parents of the deceased met her she stated that she had been administered a beating by the accused and that she was not being provided any food by them, on persuasion the husband even promised that they would not harass the deceased any further. Though the same day, the accused husband asked for Rs. 2,000/- to purchase a table fan upon which the father promised to give it to him later. Though, on the 20th of April, 2000 at about 8:00 am the deceased came running out of her matrimonial home with burn injuries raising a hue and cry and fell down finally succumbed to injuries in a hospital. In this dying declaration, the deceased clearly stated that her husband was always abusing her and that she had been set afire by him. The dying declaration was made as per given procedure had been recorded after the doctor had given a certificate of fitness. It is true that there is no reference whatsoever to the fact that kerosene oil had been poured on her but we have absolutely no reason to doubt the statement made by the deceased and recorded by a

²⁹ Ibid

Magistrate. We also see that insofar as in-laws were concerned she clearly did not say anything about their involvement with the burning incident on the 20th of April, 2000. The SC finally held the accused husband convicted under S. 302 IPC and awarded him a life sentence under that provision. Though, the acquittal of in-laws was maintained.

The Nisha Sharma dowry case was an anti-dowry lawsuit in India. It began in 2003 when Nisha Sharma accused her prospective groom, Munish Dalal, of demanding dowry. The case got much coverage from Indian and international media. Nisha Sharma was portrayed as a youth icon and a role model for other women. The case ended in 2012, after the court acquitted all accused. The Chief Justice Magistrate observed that Nisha was in a relationship with another person Navneet, who she really wanted to marry.

SUGGESTIONS FOR STRENGTHENING THE EXISTING LEGAL SAFEGUARDS

Reasons behind huge dowry demands are counted by experts mainly the lack of economic rights of woman, denial of property rights and basic civil rights such as right of marriage of own choice, land rights and education. Social and mental set up also works behind it such as in Indian society girls are considered a liability while boys as assets. Culturally sons are preferred. This accords a secondary social status to women. The social attitude of the people should be changed for an effective improvement in the existing system. Dowry being a socio-legal problem cannot be tackled by law alone unless members of the society come forward and actively co-operate with the law-enforcement agencies³⁰. Non- Governmental Organizations can be actively participating in empowering women for changing their attitude towards the dowry system. Addressing the link between dowry and harassment involve not only legal measures but also social awareness campaigns, education, and advocacy for gender equality³¹. Eliminating the practice of dowry and raising awareness about the legal consequences of harassment are essential steps in creating a more equitable and safer environment for individuals involved in marriages.

Madhu Purnima Kishwar, in her presentation of report in the Expert Group Meeting on Strategies for Combating the Culture of Dowry and Domestic Violence in India opined that, there are flaws in the existing Dowry Prohibition Laws³². She pointed out that voluntary gifts are allowed under Dowry Prohibition Act. In most cases, at the time of marriage, a girl's parents will say or at least put up the show that whatever they are giving is out of love for their daughter and, therefore, voluntary. However, as soon as strains develop in the marriage and it reaches a breaking point, and the girl's family decides to take legal recourse, the very same gifts of love are termed as dowry given under pressure of demands from the groom's family. Thus even when marital troubles may not be connected to tussles over dowry, women's families tend to register cases using the draconian provisions of the anti-dowry law when the marriage heads towards a breakdown.

³⁰ Baig, Dr. Reshma Ahamed, *Dowry as a Socio-Legal Perspective* (November 17, 2012). International Journal of Scientific and Engineering Research, 2012, Available at SSRN: <https://ssrn.com/abstract=2177342> or <http://dx.doi.org/10.2139/ssrn.2177342>

³¹ Mamta Rao, *Law relating to Women and Children*, Eastern Book Company, 3rd edn. 2012 p.63

³² <https://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/experts/kishwar.dowry.pdf>

SUGGESTIONS TO CURB THE MENACE OF DOWRY DEATH BY TAKING VARIOUS MEASURES

Prevention of the evil of dowry death and other dowry related offences will be possible only by taking measures like wide range of community awareness, strict enforcement of the legal provisions for deterring potential offenders.

Expedite legal proceedings related to dowry deaths are essential to provide timely justice to the victims and their families. Awareness programmes in the grass root level of the community are required for effective implementation of laws. Conduct widespread awareness campaigns to educate communities about the legal consequences of dowry-related offences and the importance of gender equality.

Utilize various media channels to disseminate information about the harmful effects of dowry and promote positive societal attitudes. Establish helplines and support services for individuals facing dowry-related harassment, providing counselling and assistance to the affected persons. Set up community-based support centres to offer guidance and help to victims of dowry-related violence.

Promote education for women, encouraging them to pursue higher education and professional careers, empowering them economically and socially. The Government and NGOs can facilitate skill development programs to enhance the employability of women, making them financially independent.

Community level empowerment is also required and communities may take steps to organize workshops and discussions within communities to challenge traditional beliefs and promote gender equality.

Encourage the adoption of alternative marriage traditions that do not involve dowry, emphasizing mutual respect and partnership. Media representation that avoids glorifying or normalizing extravagant dowry practices in popular culture.

The Social justice department may establish mechanisms to monitor and report incidents of dowry harassment and violence. Implement measures to protect whistleblowers and encourage them to report instances of dowry demands and violence.

Collaborate with international organizations to share best practices in addressing gender-based violence and dowry-related offences. Support research studies to understand the root causes and dynamics of dowry-related violence, guiding evidence-based policy and program development.

CONCLUSION

Although Indian laws against dowry have been in effect for decades, they have been largely criticised as being ineffective. Despite the Indian government's efforts, the practice of dowry deaths and murders continues to take place unchecked in many parts of India and this has further

added to the concerns of enforcement. There is criticism by women's groups that India's dowry harassment laws are ineffective because the statutes are too vague, the police and the courts do not enforce the laws and social mores keep women submissive and docile, giving them a subordinate status in the society.

Further, many women are afraid to implicate their husbands in a dowry crime simply because the Indian society is viewed as having conditioned women to anticipate or expect abuse and in some sense eventually, endure it. While the laws give great powers, they are not effectively enforced by the police or by courts. It can take a minimum of ten years for a case to go to court and even once in court, husbands and in-laws end up getting away with extortion or even murder because the women and their families cannot prove 'beyond reasonable doubt' that they are the victims of such crimes, as there are rarely any outside witnesses. Moreover, when deaths occur through bride burning, evidence itself is usually lost in flames. Dowry death and Cruelty are the two most heinous crimes against women in India. In spite of the plethora of laws enacted to protect women from these harassments, the condition of women is still in danger because of the lack of proper enforcement. The need of the hour is to create awareness among common people for raising their voice against dowry.

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