
Prevention of Dowry Death and Domestic Violence Against Women under Criminal Justice System: A Legal Study

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ABSTRACT

A dowry is a property which is money, gifts or other valuable things given by the parents at the time of marriage to her daughter and which also demand of the parents of the bride herself, by the groom at the time of marriage. There are numerous reasons why domestic violence against brides with dowry demands occurs in India. These include husbands who have lower levels of wealth and education, are childless, have been married for longer periods of time, have an extramarital relationship, and have been exposed to violence in the past. The bride's husband and his family are responsible for her dowry death as well as her suicide or early murder due to her displeasure with the money and at that period the bride also tolerates domestic violence by her husband and family members. The Dowry Prohibition Act of 1961 was passed in order to outlaw the practice of dowries and to combine the anti-dowry legislation. It also forbade the giving or receiving of dowries and associated offenses. Article 15(3) of the Indian Constitution grants the State the authority to provide specific measures for women, whereas Article 14 guarantees equal rights and opportunity for all. Article 51 (A)(e) calls for the renunciation of acts that denigrate women's dignity. The Dowry death was added to the IPC in 1986 under

section 304-B. To decrease dowry deaths and bridal suicides, provisions under Sections 113 A and 113 B of the Indian Evidence Act and Section 498-A of the Indian Penal Code were implemented. The Protection of Women from Domestic Violence Act, 2005 having been passed by Indian parliament on 13th September, 2005. The role of courts in dowry death and domestic violence matter assumes greater importance and it is very sensitive in those matters. The study discusses the prevention of dowry death of women and domestic violence and evolving the laws under the criminal justice system, as well as current judicial approach and more effective reform under laws is to be suggested.

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1- INTRODUCTION

Any property, cash, or gifts of any sort given or received by the bride's family during the marriage to the groom or his family are collectively referred to as the "dowry." However in India, given dowry or demand dowry is illegal since 1961, but in the present time given dowry is a common custom. Every Woman who enters into matrimonial life has those expectations that her married life would be happy or joyful and also deserve that she get dignified status in her family and social life. But as soon as she entered into married life, she faced dowry greedy people in the In-law's house, who always harass her by demanding the dowry. They do mental harassment, trauma and domestic violence against her inside the family, and never fails to her murder. After marriage, the husband and relatives start cruelty and mental torture against the bride for bring less dowry in her marriage and the domestic violence increases day by day in her life. If the groom and his family feel that they got less dowry in marriage after that they demand additional dowry. All the peoples in her house together harass the women more and makes pressure to bring a dowry to brides and his family. If the bride cannot complete her in-law's demands she suffered heavily and finally, she is motivated to suicide or the other way later bride is brutally murdered by her own husband and his family members. The Dowry Prohibition Act, of 1961, combined the anti-dowry legislation and outlawed the giving or receiving of dowries as well as the practice of dowrying. The Code of Criminal Procedure amended the 1983 and 1986 proviso that harassment or cruelty and killing of a bride can result in the immediate arrest husband and his family.



Sections 174 and 176 of the Criminal Procedure Code address the police's and magistrates' investigations and inquiries into the reasons of unnatural deaths, respectively. Sections 304-B and 498-A of the Indian Penal Code, respectively, deal with punishment for dowry deaths and abuse by the family bride. In cases of dowry death, it is presumed under Sections 113 A and 113 B of the Indian Evidence Act that the woman had experienced abuse or harassment prior to her demise. The Protection of Women from Domestic Violence Act, 2005 having been passed by the Indian parliament for the protection against violence by husband and their family. Article 15(3) of the Indian Constitution grants the State the authority to provide specific measures for women, whereas Article 14 guarantees equal rights and opportunity for all. Article 51 (A)(e) calls for the renunciation of acts that denigrate women's dignity. However, it has recently come to light that some dowry-related laws in India—specifically, section 498A of the IPC and the Domestic Violence Act—are frequently abused. In the case of **Preeti gupta & anr. Vs. State of Jharkhand & anr.** (2010) 7 SCC 667 After section 498-A was contested, the Supreme Court issued an order for a thorough investigation and expressed remorse over the potential abuse of anti-dowry legislation. In this essay, I looked at Indian laws pertaining to domestic abuse and crimes involving dowries, as well as the reasons for dowry-related homicides.

2- DOWRY AND DOWRY DEATH: MEANING AND ITS EFFECTS

In the eye of Dowry and in easy word "valuable security" has the same meaning as that given in Section 30 of the IPC. The term "dowry" generally refers to assets, property, or cash that a bride bestows upon her husband or his family upon marriage. In the Indian tradition, a father wants to see his daughter in the company of a person who stays with her throughout his life, but right from the beginning of marriage, the father gives his daughter as a gift to another person. As duly the father gives his daughter clothes, property, money, costly gifts and other materials to her daughter. A father gives his daughter costly gifts because he wants his daughter's life to full of joy and happiness material life and the in-law's family respects her. But after marriage, she suffers regarding dowry and the harassment and cruelty of her husband and in-laws. It is a bitter truth that women are tortured for dowry by their in - laws humiliated and brutally beaten and domestic violence is brought against them. Dowry is a stigma and wrong tradition in our country and dowry is a major cause of violence against women for many problems against women. Presently, the Dowry is the collective greed of society and the urge to show off their status, wealth and groom's worth in society and this gave dangerous and cruel rise to social evil. Physical abuse, emotional torture, and even the murder of young girls and brides before marriage are some of these offenses. The most common categories of dowry crimes are those involving cruelty

(torture and harassment), domestic violence (physical, emotional and sexual abuse), aiding and abetting suicide, and dowry death (burning and murder of bride).

3- CONSTITUTIONAL PROVISIONS RELATED WOMEN PROTECTION

The Indian Constitution is based on principle of social justice and protecting the human rights. The Constitution gives equality and protection to every citizen in Preamble, Fundamental Rights and Directive Principles of policies. Although, in the constitution there is specific provision has made for the protection of women.

The Article 14 is equality before the law and equal protection of laws it's provided equal rights and opportunities to the Women. The State is empowered under Article 15(3) of Indian Constitution and makes it possible for the state to create special provisions for protecting the interests of women and children. Article 39 (a) of Indian Constitution requires the State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood . Article 39A gives the State the authority to advance justice based on equal opportunity and to advance free legal aid through appropriate laws, programs, and other means. The State is required by Article 42 to establish measures for guaranteeing fair and compassionate working conditions as well as maternity leave. Above all, Article 51 (A)(e) of the Constitution requires every citizen to abstain from actions that diminish the dignity of women. Thus, safeguarding women's rights is required under the constitution.

4- LEGISLATIVE PROVISIONS RELATED WOMEN VICTIM

The most commonly reported offenses against women are in-laws' harsh acts. Bride-beating, domestic violence or the regular demand of dowry causing burning death and suites is an extreme form of violence. The legislature has passed legislation that is opposed to dowries in all respects. Women's rights are safeguarded under the Protection of Women from Domestic Violence Act of 2005 and the Dowry Prohibition Act of 1961. The criminal law, dowry death statute section 304B and section 498A of the IPC were also passed in its current form in 1986. The legislature amended various acts and added numerous new offenses to the list of crimes. The Indian Parliament has enacted the following dowry-related statutes:

1. THE DOWRY PROHIBITION ACT, 1961

In India, the dowry has been a vital part of marriage and has been an erroneous tradition and the demand for dowry has always been kept in most marriages. At the time of marriage, the bride was gifted by his family as cash or an object to his daughter for her honor. After not getting a bride's proper



dowry from the bride's side in marriage, the bride gets very tight and then harassed by her in-laws and is subjected to extreme domestic violence against her, resulting in her being killed by that family for dowry. The said act has been passed by the government of India to abolish the same dowry malpractice. With the goal of outlawing the giving or receipt of dowries, the Indian Parliament passed the Dowry Prohibition Bill on May 20, 1961, and the Dowry Prohibition Act, 1961 (28 of 1961) was notified and put into effect on May 1. This Act makes the practice of dowries unlawful and penalizes both offering and receiving dowries. Giving a dowry, defined by the Act as property, products, or money provided by any partner in the marriage, their parents, or anyone else involved in the marriage, is illegal. The 1986 Act 43 of 1986 made amendments to the 1961 Dowry Prohibition Act.

Under section 3 of the Act, the minimum penalty for taking or encouraging the taking of dowry has been increased to five years and a fine of fifteen thousand rupees. Asking and Demanding a dowry is illegal under section 4 and is punished by a fine of INR 10,000 and a term of six months in jail. Any agreement made with the intention of providing or receiving dowry is null and illegal under Section 5 of this act. Section 7 of the Act gives the following parties the authority to start legal proceedings: (a) the police; (b) the injured party; (c) parents and relatives; and (d) any recognized welfare institution or organization. In an attempt to make the legislation more severe, Section 8 adds new offenses that fall under the categories of cognizable and non-bailable. Additionally, section 8-A specifies that the individual denying the offense has the burden of evidence.

The first law that forbade dowries was the Dowry Prohibition Act of 1961. A specific amount of punitive and preventive measures are outlined in the statute. The practice of dowries is deeply ingrained in society across all social classes, which is a sad reality. When the police fail to act promptly and file a complaint on time, there is a lack of enforcement of the law. However, people as well as are not aware of the legislation.

In **Inder Sain v. State 1981** Cri LJ 1116 (Del) the Hon'ble Court described the Dowry and its time. According to the court, "consideration" is limited to a person's intent, motivation, and reward for being married. As a result, it cannot include any property that is requested or received after marriage. In order to avoid a narrow reading of the Act, the phrase "any time after the marriage" has been introduced in place of "after marriage."

Sanjay Kumar Jain v. State of Delhi (2011) 11 SCC 733 "In India, the demand of dowry is a big slur and curse on our society, democracy," the Hon'ble Court declared. The frequency with which



such regrettable and abhorrent cases of dowry deaths occur in our culture is inexplicable. Every effort needs to be taken to stop and lessen the growing threat of dowry death.

Pratibha Rani v. Suraj Kumar (1985) 2 SCC 370 The Hon'ble Court ruled that obtaining bride articles would be considered a criminal breach of trust, which is punished by section 405 of the Penal Code.

Reema Aggarwal v. Anupam (2004) 3 SCC 199 The Hon'ble Apex Court ruled that the legitimacy of dowry demands in relation to null and void marriages was addressed. In this case, the court decided that the idea of dowry is associated with marriage and therefore only married individuals are covered by the dowry death rules.

Rajinder Singh v. State of Punjab (2015) 6 SCC 477 the Supreme Court held that the dowry protection act, 1961 of section 2 "any property or valuable security significance of "any" the word include of width and would, therefore, include within it property and valuable security of any kind whatsoever for the section 304-B, 306 and 498-A IPC and also explained the term "soon before death".

Kamesh Panjiyar v. State of Bihar (2005) 2 SCC 388 the Hon'ble Supreme Court has outlined the essential elements of dowry death (section 304B, IPC) as: (i) The death caused by burns or bodily injury or otherwise than under a normal circumstance. (ii) It is within seven years of her marriage. (iii) The cruelty or harassment by her husband or any relative. (iv) Demand of dowry. (v) Before the death such cruelty or harassment has been suffered by the woman.

Prabha Tyagi vs. Kamlesh Devi (2022) 8 SCC 90 -It is held in the case that it is not mandatory for the aggrieved person, when she is related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family, to actually reside with those persons against whom the allegations have been leveled at the time of commission of domestic violence.

Rajnish vs. Neha (2021) 2 SCC 324 case is regarding the maintenance in matrimonial matters under DV Act or Section 125 Cr.P.C. In this case the Supreme Court has issued directions for the payment of interim maintenance and the guidelines to be adhered to in establishing the quantum of maintenance in matrimonial matters. The liability discussed in this matter upon the husband.

2. DOWRY PROHIBITION (MAINTENANCE OF LIST OF PRESENTS TO THE BRIDE AND BRIDEGROOM) RULES 1885

The said rules have come into force on 02.10.1985, it has prescribes that list of gifts, and other items should be made and kept. Where the death of a women is caused by any burns or bodily injury within 7 years of her marriage and shown that soon before death she was subjected to cruelty or



harassment by her husband or any relatives is known as dowry death and punishment is for not less than 7 years but which may extend to life term imprisonment.

3. THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

The Protection of Women from Domestic Violence Act, 2005 was passed by the parliament of India on 24th August, 2005 and it came into force in the year 2006. Domestic violence against women in India includes any form of violence suffered by an own relative but typically is the violence suffered by a woman by male members of her family or relatives. Although Men also suffer from Domestic violence, the law under IPC 498A specifically protects only women. Domestic violence included the following acts of violence 1. Physical violence cause physical harm as a result of unlawful physical force. 2. Sexual violence performed on an individual without their consent. 3. Psychological violence which causes psychological harm to an individual. 4. Economic violence. This act deals with every type of domestic violence, whether physical or mental, which takes place against women, because of male dominance.

4. INDIAN PENAL CODE, 1860

A. Dowry Death under Section 304-B IPC:- The offence under section 304-B defines “Dowry Death” is the death caused to a woman by burns or bodily injury, or under unnatural circumstances within seven years of her marriage, where it is shown that she was harassed or put to cruelty by husband or his relatives in relation of dowry the punishable with a term of seven years to life imprisonment. The offence is cognizable, non-bailable and trial by Sessions court.

B. Satbir Singh v. State of Haryana AIR 2005 SC 3546 the Hon’ble Supreme Court held that the prosecution is able to establish the ingredients of section 304-B, IPC the burden of proof of innocence shifts on defence.

C. Rajbir @ Raju & Anr vs The State Of Haryana AIR 2011 SC 568 the Supreme Court, directed all the trial Courts in India to ordinarily add Section 302 of the IPC to the charge of section 304-B IPC of the same act, so that death penalty can be executed in such monstrous and brutal cases against women.

D. Cruelty on woman by Husband or Relatives under Section 498A IPC:- Section 498-A applies against husbands or husband's family members to protect cruelty against women victims. It is both the manner of physical and mental. Harassment for Dowry by family members of the husband or by the husband is a crime under Section 498A of the IPC. Section 498A covers any and all intentional Cruelty and behavior against a woman that forces her to attempt suicide or puts her life, limb, or overall health at risk. It punishable with imprisonment up to three years and fine.



In **Arnesh Kumar v. State of Bihar** (2014) 8 SCC 273 the Supreme Court gave important directions before arrest under section 498A of IPC as follow:- 1 Police not to arrest without a warrant unless feels necessity and fulfillments of all parameters laid under section 41 of Cr.P.C. 2. All Police officers follow section 41(1)(b)(ii) Cr.P.C provisions. 3. The magistrate while authorizing the detention of the accused shall peruse the report furnished by the police. 4. The decision not to arrest has forwarded to the magistrate within two weeks that arrests not made under offence referred. 5. When, such a person, at any time, fails to comply with terms of notice or unwilling to identify himself then the police may arrest for offence mentioned in the notice.

E. Death of women under Section 302 IPC: – If a person intentionally causes woman death then punishable under section 302 IPC.

F. Abetment of Suicide of Woman under Section 306 IPC:- If husband and his relatives create a situation which led to the suicide of woman within seven years of marriage fall within the ambit of section 306.

5. INDIAN EVIDENCE ACT, 1872

Abetment of Suicide to married Women for the purpose of Dowry: Indian Evidence Act under Section 114B talk the principles of presumption in relation to the abetment of suicide by married women by the demand of dowry. The essentials of Section 113B are identical to the essentials of Section 113A of the Indian. Section 113B established presumption that death has taken place within seven years of marriage and if it is shown that soon before the death of a woman such woman subjected to cruelty or harassment for, or in connection with any demand for dowry death under section 304B IPC.

5- CRIMINAL JUSTICE SYSTEM AND WOMEN AGAINST CRIME

Women in our country are unevenly affected by crime and face significant challenges within the criminal justice system. Generally, the most common crimes women experience in their routine life include dowry deaths, domestic violence, beating, abuse, sexual harassment mental trauma and trafficking. It is a black truth that increasing the number of crimes against women has a bad impact on our society. India is currently facing serious challenges in this regards. However, the government and the Courts are in favor to reduce the crime ratio and to give speedy justice to the victim's women and punishing the criminals with day-to-day hearings. Despite all arrangements, the crime ratio against women regarding dowry-related crime is increasing day to day and the difficulties of women are not



stopped. Although women's rights and security within the Indian criminal justice system have been a matter of vital concern for many years. In India, Indian Penal Code, Criminal Procedure Code and Evidence Act and Domestic Violence Act and other special criminal laws has comprehensively amended to include dowry as a punishable offence.

6- CONCLUSION AND SUGGESTION

The problem of Dowry and associated domestic violence can be resolved by organizing a legal awareness program in every local area. The youth person should promise themselves that they would refuse to be sold in their marriage and they should become decided to choose their partner in life in a true manner. It is the youth of this country who can help stop it by not supporting such social evils. It is also necessary to scrutiny the present law against violence and Dowry and to make amendments for effective laws. Conducted the training and seminar, related Dowry and domestic violence against women, for the NGO's must be promoted, who are working in women's welfare field. Awareness among women and their families through social awareness campaigns which can definitely help in creating widespread awareness against the evil of dowry and dowry-death. Parents should give him a better education, better opportunity and a good environment before the marriage of his daughter. India as a country needs change in its existing mindset so as to push back against the iniquitous custom of dowry.

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