

DOWRY DEATH IN INDIA

Aditya Agarwal
Student of B.A.L.LB
DEPARTMENT- LAW

Uttaranchal University, Law College Dehradun, Dehradun, India.

1. ABSTRACT

Dowry death is a burning issue of the Indian society since years. The unnatural death of newly married young woman or any woman due to dowry is a routine headline of every newspaper. Protection of married women against harassment and cruelty on account of dowry is the responsibility of government. Ban of giving and taking dowry- the Dowry Prohibition Act 1961, is the one which is most commonly challenged since its commencement all over the country. To deal with this section 304-B (Dowry deaths) and 498 - A (Cruelty by husband or in-laws) were incorporated in the Indian Penal code in the mid 1980's. Improvement of educational status of females by educational cum awareness programs along with severe punishments to offenders will be helpful to deal with this social curse.

2. KEY WORDS

Dowry Death, Law, Indian Scenario.

3. INTRODUCTION

Over the years dowry has grown as a deep-rooted social evil. It has become bane for our society. It is the cause of atrocity on women and many unfortunate deaths of young ladies. It is an offence which is heinous, brutal and barbaric. As a consideration for marriage is a matter of standing shame and is totally inconsistent with the dignity of humankind which is succeeded in abolishing trafficking in human beings after centuries of struggle. The Honorable Supreme Court in ***Kamlesh Panjiyar v. State of Bihar***¹ has made the observation:

“Marriages are made in heaven, is an adage. A bride leaves the parental home for the matrimonial home, leaving behind sweet memories therewith a hope that she will see a new world full of love in her grooms house. She leaves behind not only her memories, but also her surname, gotra and maidenhood. She expects not only to be a daughter-in-law, but a daughter in fact. Alas! The alarming rise in the number of cases involving harassment to

¹ (2005)2 SCC 388

the newly wed girls for dowry shatters the dreams. In-laws are characterized to be outlaws for perpetrating terrorism which destroys the matrimonial home. The terrorist is dowry, and it is spreading tentacles in every possible direction.”

The practice of exchanging gifts at the time of marriage, whether in the form of dowry or bride wealth² can be found in almost every culture and has a long history. Dowry Death is a burning problem of the society. It is increasing day by day. It is a big challenge to the society. Dowry Death is a major challenge to the judicial officers to wipe out and also to penalize the culprits.

In this crime, trouble is created by the female themselves against their own sex. Generally the attitude of the bride’s mother is different from that of mother-in-law. Dowry Death or suicide by married women is a result of their being subjected to cruelty by in laws or husband. Every day we see unnatural deaths of newly married women hitting headlines of newspaper. Large number of newly women are burnt alive by their husbands and or in laws or forced by them to end their unhappy life, while a few others are killed first and then burned to hide the crime.

The effects of the dowry system are so far and wide ranging, that they can even be traced back to the womb. This system is the primary cause for female feticide and infanticide as poorer parents get to avoid the lifelong burden of saving up for the dowry for their daughter’s marriage (Krishnamurthy, 1981). The commercialization of marriage and female infanticide is clearly reflected in the movie ‘Matrubhoomi’, in which a reverse dowry system is depicted. The movie shows a society in which there are no women left due to excessive female infanticide, and the men have grown to be so sexually frustrated, that they are ready to pay large amounts of money to get a wife for themselves or their sons. So as soon as the head of the family finds Kalki, they literally buy her from her father, by giving him five lakh rupees and five cows, and marry her to all five of his sons. Kalki simply becomes a source of money for her father, and a sex object for her husbands (Matrubhoomi).

In the beginning there was no word for dowry in the marriage system. In the early marriage system some considerations were made to be offered to the father or other relatives of the bride, “either in the form of the exchange of pride for bride, or of service, or of the giving of property of some kind or other”.

Today Dowry problem has assumed the dimension of a serious problem. Nowadays cash, gold, movable and immovable property utility articles and non-material goods from a part of the package deal under the label of Dowry. “The first campaign of the contemporary feminist movement was against Dowry. Dowry is the sum of all the money as well as other items such as jewellery, car, furniture, and house, etc., given by the bride’s family to the

² Refer to transfer of goods, valuables and sometimes cash from the kin group of the groom to that the bride’. See, Basu, Srimati, (ed.) Dowry and Inheritance (2005) p. 33.

groom and his family. It was in Hyderabad in 1975 that the Progressive Organization of Women organized formal protests against dowry.”

The reason why dowry is still persistent in India is not because it is difficult to enforce the law against it or because the groom’s family is very demanding, but also because the bride’s family continues to bear with it. Despite the widespread awareness of the negative consequences of dowry and the problems caused by it, it is still seen as a way of buying happiness for the bride. Many families believe that giving a large dowry would result in better treatment of the daughter by the groom’s family.

The dowry can be in any form of property or valuable security given or agreed to be given either directly or indirectly by one party in a marriage to the other party, by the parents of either party or by any other person, to either party or to the other person, at or before or after the marriage. Since British rule till date efforts are being put to root out one draconian evil from Indian society that is dowry system but in spite of huge efforts cornered, evil persists in all aspects everywhere in country. Problem is no more confined to one or two states or north Indian states but gained roots in the soil of Southern as well as Eastern states too.³

4. MARRIAGE SYSTEM

Marriage by Exchange:

The early marriage system was in the form of marriage by exchange. For example “if in each of two families there is an unmarried son and an unmarried daughter, they frequently arrange a mutual double marriage without any payments”.

Marriage by Service:

“In some community the bride groom will go and live with the family of his future spouse for a certain time during which he works as a servant. The period of service varies greatly among different people. Sometimes he has to serve after his marriage until a child is born.” The period of service is unintended to test the young man’s ability to work and to show whether he is an acceptable husband and son-in-law.

Marriage by Present:

³ Pallavi Sharma “Dowry system a curse on Indian Society”.

In some communities there is no exchange or service for getting married, but the bridegroom will “offer a small present to his future father-in-law, who returns and gives his objects which remain her personal property.”

Marriage by Return Present:

At the point when the spouse declares his moving toward marriage to his dad, the last takes at least one asset to the lady’s family. Yet “after this the lady of the hour’s dad gives an arrival exhibit, presumably of a similar kind and esteem, and furthermore a proportional measure of sustenance.” The cost for a lady of the hour differs as indicated by the abundance of the invested individuals and the achievements of the lady of the hour, however whatever the entirely paid, the father of the young lady must make an arrival show equivalent to once-a large portion of the estimation of the marriage blessing “with the goal that he doesn’t offer his little girl like a slave.” “The arrival blessing may take the state of a settlement given to the lady of the hour by her dad or guardians or different relatives yet additionally straightforwardly or in a roundabout way profiting her significant other⁴.

Why This Social Evil Prevail in India?

There are a few explanations behind the predominance of the settlement framework, yet the primary one is that it is a vital precondition for marriage. “No settlement, no marriage,” is an across the board fear. The sticker price for the prep is presently greater and bolder. Families mastermind most relational unions, and a man who does not wed for affection learns he can wed for belonging. For this man, and his family, a lady turns into the ticket to alternate way wealth through the arrangement of endowment. There are various things individuals want to have in their own particular houses however can’t bear; they utilize the chance of a child’s marriage to get them. The young lady’s folks don’t challenge this, as they view it as a venturing stone towards higher economic wellbeing and better counterparts for the rest of the kids. Presently the person who is to be hitched is sold in the market. It appears that the general population put their wagers on the folks and who will offer more can wed their little girl to him.

⁴ Ahmad, Nehaluddin (2008). “Dowry Deaths (Bride Burning) in India and Abetment of Suicide: A Socio-Legal Appraisal”. *Journal of East Asia and International Law*. 1: 275.

5. LEGISLATIVE PROVISIONS REGARDING DOWRY PROBLEM IN INDIA.

The evils of dowry system have been a matter of serious concern to everyone in view of its ever increasing and disturbing proportion. Government has been making various efforts to deal with the problem. During the last few decades the evils of dowry system have reserved a keen compose in just about all parts of the country and in just about all sections of the society.

After independence, in a bid to eradicate this evil from the society, two states, Bihar and Andhra Pradesh, which in their keenness to stamp out the evil effects of dowry system which was effecting the vitals of the society, enacted Acts in their respective states. The first step was taken by the government of Bihar and the **Bihar Dowry Restraint Act, 1950** was enacted. It defined "**DOWRY**" as "**anything paid or delivered as consideration of a contract of any betrothal or marriage**" and prescribed limits on the amount to be paid in cash or kind on different occasions excluding voluntary gifts. The giving and taking of dowry were punishable offences but the prosecution for an offence under the act could commence against a person only after giving him a notice to show cause. Similarly, the Government of Andhra Pradesh enacted the **Andhra Pradesh Dowry Prohibition Act, 1958**. It defined "**DOWRY**" as "**any property or valuable security given or agreed to be given as consideration for any betrothal or marriage**". It made the act of giving and taking of dowry as unlawful and any agreement in that regard as void giving or taking of dowry was made punishable offence which was non-recognizable, bailable and non-compoundable.

DOWRY PROHIBITION ACT, 1961

Dowry Prohibition Act, Indian law, enacted on May 1, 1961, intended to prevent the giving or receiving of a dowry. Under the Dowry Prohibition Act, dowry includes property, goods, or money given by either party to the marriage, by the parents of either party, or by anyone else in connection with the marriage. The Dowry Prohibition Act applies to persons of all religions in India.

The original text of the Dowry Prohibition Act was widely judged to be ineffective in curbing the practice of dowry. Moreover, specific forms of violence against women continued to be linked to a failure to meet dowry demands. As a result, the legislation underwent subsequent amendment. In 1984, for example, it was changed to specify that presents given to a bride or a groom at the time of a wedding are allowed. The law required, however, that a list be maintained describing each gift, its value, the identity of the person giving it, and the person's relation to either party to the marriage. The act and relevant sections of the Indian Penal Code were further amended to protect female victims of dowry-related violence. Another layer of legal protection was provided in 2005 under the Protection of Women from Domestic Violence Act.

Amendments to the original Dowry Prohibition Act also established minimum and maximum punishments for giving and receiving dowry and created a penalty for demanding dowry or advertising offers of money or property in connection with a marriage. These enactments punished violence against women by their husbands or their relatives when proof of dowry demands or dowry harassment could be shown.

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005.

The **Protection of Women from Domestic Violence Act 2005** is an Act of the Parliament of India enacted to protect women from domestic violence. It was brought into force by the Indian government from 26 October 2006. The Act provides for the first time in Indian law a definition of "domestic violence", with this definition being broad and including not only physical violence, but also other forms of violence such as emotional, verbal, sexual, and economic abuse. It is a civil law meant primarily for protection orders and not meant to penalize criminally⁵. The act does not extend to Jammu and Kashmir, which has its own laws, and which enacted in 2010 the **Jammu and Kashmir Protection of Women from Domestic Violence Act, 2010**⁶.

INDIAN PENAL CODE, 1860

Keeping in mind the end goal to keep the wrongdoings identified with request of settlement, two changes were likewise made in Indian Penal Code, 1860. By the principal correction another "Segment 498-A" and by the second alteration another new "Area 304-B" was embedded in the Indian Penal Code, 1860.

The new Chapter XX A was embedded by the Criminal Law (Second Amendment) Act, 1983 in the Indian Penal Code, 1860 which makes the demonstration of brutality by spouse or relatives of husband an offense culpable under Section 498-A and peruses as takes after.

498-A. Husband or Relative of husband of a woman subjecting her to cruelty-

Whoever being the husband or the relative of the husband or in law of a woman, subjects such woman to cruelty or harassment or torture shall be punished with imprisonment for a term which may extend up to three years and shall also be liable to pay fine. The cruelty can be either mental or physical torture which drives the women to commit suicide or to cause serious injury, or danger to life or health.

⁵ <http://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf>

⁶ Tribune News Service. "4,157 booked in 2,009 domestic violence cases in five years". Tribuneindia.com

304-B. Dowry Death.

When the death of a married woman is caused by any burns or bodily injury or occurs under abnormal or suspicious circumstances within seven years of her marriage duration and it is clearly shown that soon before her death she was subjected to cruelty or harassment or torture by her husband or any relative of her husband or in laws for, or in connection with, any demand for dowry, such death shall be called as "dowry death", and such husband or relative or in law shall be deemed to have caused her death. Whoever commits dowry death shall be punished with imprisonment for a term minimum of seven years which may extend to imprisonment for life. In *Shanti (Smt.) v. State of Haryana*⁷, The Supreme Court said, In section 304B there is no explanation about the meaning of cruelty but, having regard to the common background of such offences, we have to take that the meaning of cruelty or harassment will be the same as we find in the explanation to Section 498A under which cruelty by itself amounts to an offence and is punishable.

RELEVANT PROVISIONS OF CRIMINAL PROCEDURE CODE, 1973

The Criminal Law Act, 1983 (46 of 1983) made necessary amendment in the Code of Criminal Procedure, 1973 (2 of 1974) inter alia to deal effectively not only the cause of dowry death but also cases of cruelty to married women by their in laws. The relevant provisions of Criminal Procedure Code after such amendment are as under:

SECTION 174. POLICE TO ENQUIRE AND REPORT ON SUICIDE ETC.

Section 174 of the Code of Criminal Procedure is a legal provision that deals with the procedure that the police and the magistrate need to follow in cases of suicide and unnatural death. When a person does not die due to the natural circumstances, a person is considered victim of **unnatural death**. Some of the causes of unnatural deaths are accidental death, murders, animal attack, and complications of surgery, suicide and many more.

Section 174 lays down the duties that a magistrate must do upon intimidation by the police officer of the cases of unnatural death. The police officer is bound to give intimidation to the nearest Magistrate who is empowered to hold inquests, when he receives information regarding the unnatural death of person.

1. The foremost duty of a Magistrate is to determine the cause of unnatural death. The magistrate shall examine and body and upon investigation conclude as to the reason which caused the death of the person. The death may be caused by any reason as mentioned in the Section 174 (1) of CrPC.
2. Since Section 174 is very limited in its scope, therefore it is restricted to the suspicious circumstances that caused the unnatural death of a person and the magistrate

⁷ AIR 1991 SC 1226.

has no scope or authority under this section to trace the person who has so caused the death. In the case of *Radha Mohan Singh v State of Uttar Pradesh*⁸, the Supreme Court held that section 174 is limited in confined to the ascertainment of the apparent cause of death. The magistrate is therefore bound by the limited scope of Section 174 and does not have to trace the person who has caused the death or determine who assaulted the dead person or in what manner or under what circumstances, etc. It is duty of the magistrate therefore to not mention the name of the accused on the inquest report. It will lead to the report being held unsustainable⁹.

3. In case no foul play is found in the death of the person, the dead body must be handed over to the legal heirs of the deceased.

4. In cases where there is suspicion over the death of the deceased, then the dead body must be sent to the Government Medical Officer for post mortem.

5. The magistrate need not examine all the witnesses while performing investigation for a cause of unnatural death. In the case of *Shakila Khader v Nausher Gama*¹⁰, the apex court held that for the purpose of preparing the inquest report, there need not be examination of all the witnesses as the purpose of the inquest is only to establish the cause of death. If a person's name is not mentioned in the inquest report, it does not lead to the assumption that he was not an eye-witness to the incident. An inquest report is concerned with establishing the cause of death and only evidence to establish it needs to be brought out.

6. The report must be prepared by the magistrate in a prescribed format. But if a report is no prepared in a prescribed format, the report cannot be declared as unacceptable.

7. The magistrate must conduct the investigation in presence of two or more respectable inhabitants of the neighborhood. In case when no resident is there on the spot or when no one volunteers to be a witness of the investigation, the inquest report may be prepared without the presence of respectable citizens.

8. On completion of the report, the magistrate must get such report signed by the police officer who informed him of the death and the other persons as well who was part of the investigation. The report must be then forwarded to the District Magistrate or the Sub-divisional Magistrate¹¹.

⁸ (2006)2 SCC 450

⁹ 1977 AIR 1294

¹⁰ AIR 1975 SC 1324

¹¹ Code of Criminal Procedure, 1973, Section 174 cl. 2

SECTION 176. INQUIRY BY MAGISTRATE INTO CAUSE OF DEATH

When (i) the case involves suicide by a woman within seven years of her marriage (ii) 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 (iii) 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, the police officer will forward the body for autopsy to the nearest medical officer for opinion.

INDIAN EVIDENCE ACT, 1872

IEA Section 113 - A deals with presumption as to abetment of suicide by a married woman

When the question is whether the commission of suicide by 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 her husband or such relative of her husband had subjected 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.

IEA section 113 – B deals with 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 had 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.

Magistrate inquest in dowry death

In dowry deaths, investigating officer plays a very important role to bring out justice as well as on other hand to save the husband or in laws if at all they are not guilty for the offence and are falsely being caught up in trap. He has to investigate every dowry death case with consideration of both mental and physical torture which has been imparted on the victim by the husband and/or in laws over a long period which has ended in suicide by the lady.

Forensic experts and dowry death

Forensic experts come into picture only when dowry death cases are sent to them for post-mortem examination for obtaining necessary opinions. In doctor's view, dowry death cases are like any other unnatural female death cases yet. Forensic expert, as a rule, must try his level best to find out the cause of death only on the basis of scientific facts observed in any given case and not on assumptions or predetermined concept. Firm devotion to the approved code for the conductance of post-mortem in dowry death cases should be observed. Try to find out the cause, nature of death and time since death and other relevant facts from the medico-legal point of view to help justice. Presence of a lady doctor in the autopsy team is must to visualize and explore all angles although each case is unique. Most of the victims are young married women who are usually labeled as accidental deaths, but actually these are not accidental cases but are of homicidal in nature. So it is the principal duty of forensic experts to look for the exact cause of death on the basis of relevant data and diagnostic criteria in scientific manner and approach.

Effective steps to be taken

Ban of giving and taking dowry- The Dowry Prohibition Act, 1961, is the one which is most commonly challenged since its commencement all over the country. There is no disagreement that there is an ever increasing crime against women hands of their husbands and / or in laws. To deal with this section 304 and 498 - A (Cruelty by husband or in laws) were incorporated in the Indian Penal code in the mid 1980's. A re-evaluation of Dowry Prohibition Act, 1961 should be done again as the law has actually failed to control the crimes against women or in effect failed to produce the vital results. Moreover, the Dowry Prohibition Act, 1961 being a special act, usually police do not take steps or take much attention in it, more particularity because offences under the act are treated as cognizable offences for certain limited purposes. Severe punishment is to be given to those who take dowry and harsh laws be framed for dowry related harassment and dowry deaths. Strict laws should also be enacted to disallow remarriages for such men whose wives have been burnt alive and / or the men who have been caught up in dowry deaths till the release of final judgment. Besides, a special task force of police should be constituted ex this purpose, and speedy police investigations should be done. A continuous monitoring is also a must for all registered dowry death cases both at district and high court level so that justice should be delivered at the earliest.

Summary

Dowry death is a burning day to day problem of the Indian society. It should be accepted that wanted result can't be gained by enactment of law alone against dowry. This social curse has to be attacked by a multipronged and organized approach by police, women welfare organizations, reputed public servants, and judiciary and by awarding deterrent punishment to all offenders. Nevertheless, an improvement of educational status of the

females and providing easier job opportunities at the door step or self employment facilities will help to restrict the incidences of dowry deaths. In addition, educational cum awareness programs should be designed right at the time of marriage so as to stop the husband from consuming liquors, drugs or gambling, restricting to monogamy and earning money honestly by sheer hard work rather than developing lust for easy money. In our opinion, a rational and practical approach on the above mentioned matter will certainly be helpful.

