

Dowry System in India

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Abstract

The payment of a Dowry gift, often financial, has a long history in many parts of the world. In India the payment of a dowry was prohibited in 1961 under Indian civil law and subsequently by Sections 304B and 498A of the Indian Penal Code. These laws were enacted to make it easier for the wife to seek redress from harassment by the husband's family. Anti-dowry laws have been criticized by men's rights groups who accuse women and their families of misusing the laws.

In India, there are civil laws, criminal laws and special legislative acts against the tradition of dowry. Someone accused of taking dowry is therefore subject to a multiplicity of legal processes

KEYWORDS: Dowry, Cruelty, Dowry Death, Anti Dowry Legislation, Case Laws

INTRODUCTION

Man and women are two pillars of the social structure. Their roles duties and rights are complementary and supplementary towards each other. If one of the pillar is weak, the other cannot bear the burden of the society and the whole structure of the society shall demolish. But ironically, it has happened and goes on happening. The present society is still under the impression of an age old dogma that women is inferior to men. The crime against women has increased day by day and dowry death is one of them. Dowry has been identified as one of the most killing problem of women in India.

The problem of dowry has been persistent in India and is also rising at a rapid rate and so are the offence related to dowry demands has gone for years together. The birth of children and a number of customary and religious ceremonies often tend to become the occasions of dowry demands. The inability of brides family to comply with these demand often leads to the daughter-in law being treated as a parish and subject to abuse. In the worst cases wives are simply killed to make way for a new financial transaction i.e another marriage.

The sec. 304 B of I.P.C. has been inserted by the Dowry Prohibition Amendment Act, 1986. With a view of combate with increased menaces of dowry death.

The term dowry is defined in the Dowry Prohibition Act. Dowry means any property or valuable security given or agreed to be given either directly or indirectly-

- By one party to a marriage to other party.
- By parents of either party to a marriage or by any other person.

- (1) Devender Kumar Dr., Human Right Woman & law.
edition 2005, page no. 6,7

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History Of Dowry

The ancient marriage rites in the vedic period are associated with kanyadan. It is laid down in dharamsastra that the meritorious act of kanyadan is not complete till the bridegroom was given a dakshina. So when a bride is given over to the bridegroom, he has to be given something in cash or kind which constitute varadakshina.

- Thus kanyadan became associated with varadakshina i.e. the cash or gift in kind by the parents or the guardian of the bride to the bridegroom.
- The varadakshina was offered out of affection and did not constitute any kind of compulsion or consideration for the marriage. It was a voluntary practice without any coercive tones.
- In the course of time, the word voluntary in dowry has disappeared and the coercive element has creft in. it has taken deep roots not only in the marriage ceremony but also post marital relationship.

- (2) [www. Wikipedia. com](http://www.Wikipedia.com)

New Dimension Of Dowry

The pressure of large dowries may be attributed to the general rise in price and the currents obsession with gold and silver the price of which are rising almost everyday. Education has become expensive. Parents who spend a sizeable part of their earnings in education their sons regard them as investment to yields returns.

- They expect to realize the first and the fastest profit at their son's marriage. If there are unmarried girls in the family dowries brought by sons help parents to utilize a part of them in their daughter's marriage.
- The price tag attached to eligible bachelor vary according to the bridegrooms qualification and his status in society
- It may not be out of place to mention that dowry which is a deep rooted social evil appears to be the cause of so many unfortunate deaths of young ladies. It is an offence brutal and barbarous.
- It is generally committed inside the house and more often with a circumstance to give an impression that it was a suicidal death. There will be all round attempt to cover up such offence by the family members rather then to expose it. The government has come forward with legislation from time to time to protect the women and to punish those who commits atrocities on them.

(3) Paras Diwan, Hindu Law, Page no. 116,117

Dowry Related Offences Under The Penal Code

In brief there are four situation when a married women is subjected to cruelty and harassment leading to the commission of an offence viz:-

- **Cruelty of women by husband or relatives- 498 A I.P.C.** when her husband or his family members subject the women to cruelty or harassment.
- **Dowry death 304- B I.P.C.** cruelty or harassment inflicted by the husband or his relative for or in connection with, any demand for dowry immediately preceding death of the women by burns and bodily injury or in abnormal circumstances within 7 years of marriage, such husband or relative is deemed to have caused her death and is liable to be punished under sec. 304 B I.P.C. for dowry deaths.
- **Intentional Death of women- 302 I.P.C.** if a person intentionally causes womens death that would be murder, punishable under section 302 I.P.C. and would amount to murder.
- **Abatement of suicide of women- 306 I.P.C.** if the husband or any relative of her husband creates a situation which he knows will drive the women to commit suicide and she actually does so with in a period of 7 years of marriage, the case would fall with in the ambit of section 306 I.P.C.

(4) Ratan Lal & Dhiraj Lal, I.P.C, 5th Edition 2004. Page no. 560-570

Dowry Meaning And Scope

Section 2 of Dowry Prohibition Act, 1961

“Dowry” means any property or valuable security given or agreed to be given either directly or indirectly

- By one party to a marriage to the other party to the marriage , or
- By the parents of either party to a marriage or by any other person, to either party to marriage or to any other person, at or before in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the muslim personal law applies.

Stridhan

Stridhan is generally speaking what a woman can claim as her own property with in a marital household. It may include her jewellery, gifts presented to her during the wedding or later, and the dowry articles given by her family. Gifts given by the parents of the bride are considered ‘stridhan’ i.e. property of the woman, her share of her parents wealth.

Indian Penal Code section 304 B

Section 304B Indian penal code has affirmed that dowry shall have the same meaning as defined in section 2(1) of the Dowry Prohibition Act, 1961.

304-B Dowry Death

Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or 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.

Indian Penal Code Section 498 A

Section 498 A was inserted into the Indian Penal Code in 1983 via amendment:-

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

Whoever being the husband or relative of the husband of a woman subject such woman to cruelty shall be punished with imprisonment for a term which may extend to 3 years and shall also liable to fine.

Cruelty means-

- (a) Any willfull conduct which is of such a nature as is likely to drive the women to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical, of the woman.
- (b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawfull demand for any property or valuable security or is on account of failure by her or any person related to her meet such demand.

Domestic Violence Act, (2005)

Domestic violence includes the demand for dowry :-

Any act, omission, or commission or conduct of the respondent shall constitute domestic violence in case it:-

- Harms or injures or endangers the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse.
- Harasses, harms, injures or endangers the aggrieved person with a view to coercive her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security.

Essential Of Dowry Deaths

A careful analysis of section 304 B Indian Penal Code shows that section has the following essential:-

- Death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances.
- Death should have occurred within 7 years of her marriage.
- The woman must have been subjected to cruelty or harassment by her husband or any relative of her husband.
- Cruelty or harassment should be for or in connection with the demand for dowry.
- Cruelty or harassment should have been meted out to the woman before her death.

Clause (1) of the section 304 B Indian Penal Code defines dowry death and clause (2) prescribe punishment for dowry death .

Acc.to clause (1) of section 304 B, the death of a woman will be designated as 'dowry death' when it is caused:-

- By burns, bodily injury or occurs otherwise than in ordinary circumstances and
- As a result of cruelty, or harassment caused by her husband or her husbands relations or in connection with any demand for dowry.

In case of death of a woman caused under the above circumstance, the husband and the husband's relatives will be presumed to have caused a dowry death and be liable for the offence, unless it is proved otherwise that is too say, the burdon of proof shifts on the part of the accused to prove his innocence unlike other offences wherein the accused is presumed innocent.

It was observed in:-

Raja lal Singh v/s State of Jharkhand 2007 III Cri.LJ 3262(S.C)

That the expression soon before death occurring in section 304 B, Indian Penal Code is an elastic term. It can refer to a perod either immediately before death of deceased or with in a few days or few weeks before death. What is relevant is that there should be a perceptible nexus between death of deceased and dowry related harassment or cruelty inflicted on the woman concerned.

Clause (2) prescribe a minimum punishment of 7 years of imprisonment which may extends upto life imprisonment in case of dowry death.

To curb the practice of dowry death there is an urgent need to enforce effectively the punitive and preventive measures with iron hands. At the same time the law must be

made more effective. Police should be more watchful with respect to such offences as pointed out by the supreme court in

V.N.Pawar v/s State of Maharashtra AIR 1980 SC 1271

Wife burning tragedies are becoming too frequent for the country to be complacent. Police sensitization mechanism which will prevent the commission of such crimes must be set up if these horrendous crimes are to be avoided. Likewise special provisions facilitating easier proof of such special class of murders on establishing certain basic facts must be provided by appropriate legislation.

Rondula Bala Subrahmanyam v/s State of A.P. 1993 G.LJ(1635)

There has been an alarming increase in cases relating to harassment, torture, abetment, suicides and dowry death of young innocent brides. This growing cult of violence and exploitation of young brides though keeps on sending shock waves to the civilized whenever it happens, continues unabated. There is a constant erosion of the basic human values of tolerance and the spirit of "live and let live."

Lack of education and economic dependence of women have encouraged the greedy perpetrators of the crimes. It is most disturbing and sad that in most of such reported cases it is the woman who plays a pivotal role in this crime against the younger woman, with the husband either acting as a mute spectator or even an active participant in the crime, in utter disregard of his matrimonial obligation.

The need of the hour is to replace hatred, greed, selfishness and anger by mutual love, trust and understanding and if women were to receive education and become economically independent, the possibility of this pernicious social evil dying its natural death may not be a dream and distant reality.

Unnatural death of deceased within seven years of marriage

In satbir singh v/s state of Haryana AIR 2005 3546

The accused was charged and convicted under section 304 B, 408 A and 201 Indian Penal Code for seven years by the trial court.

On dismissal of the appeal and holding the conviction proper the supreme court said that in case of unnatural death of the deceased wife within 7 years of marriage on account of harassment of the deceased for not bringing more dowry the onus lies on accused to rebut presumption under section 113 B of Evidence Act. Defense plea that deceased died of heart attack and not tenable in absence of any evidence showing that deceased was suffering from heart ailment.

State of Karnataka v/s M.V.Manjunathgowda AIR 2003 SC 809

The apex court held that:- "To establish the offence under section 304 B Indian Penal Code the prosecution is obliged to prove that the death of women is caused by any burns or bodily injury or occurs otherwise other than normal circumstances and such death occurs within 7 years of her marriage and if it is shown that soon before her death she was

subjected to cruelty or harassment by her husband or any relative of her husband. Such harassment and cruelty must be in connection with any demand for dowry. If the prosecution is able to prove these circumstances than the presumption under section 113 B of the Evidence Act will operate. It is a rebuttable presumption and the onus to rebut shifts on the accused. Therefore the presumption as to dowry death envisaged under section 113 B of the Evidence Act remains unrebutted.”

Cruelty Meaning

The meaning of cruelty for the purpose of section 304 B has to be gathered from the section 498 A Indian Penal Code.

Cruelty means any willful 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 etc. or harassment coerce to her or any other person related to her to meet demand. Cruelty includes both physical and mental torture. “cruelty and harassment in connection with dowry demand, as stated by the apex court in **Pawan Kumar v.** is proved when demand for scooter and fridge, made soon after the marriage by the husband and his relatives. The deceased failure to meet the demand leading to repeated taunts and mal treatment quarrel taking place between husband and deceased, regretting that it would be difficult to see her face in future, are clear proof of cruelty and mal treatment by husband and family members, the accused was accordingly held liable under section 304 B of Indian Penal Code.”

Similarly in

Venugopal v/s State of Karnataka AIR 1999 SC 146

The appellant husband was held liable for dowry death under section 304 B of Indian Penal Code for creating a situation where by the wife committed suicide within two years of marriage. The fact were of common day occurrence in our social set up. Consent demand of dowry leading to ill treatment, harassment and torture of the wife at the hands of husband soon before her death, lead her to take the extreme step of ending life.

Hans Raj v/s State of Punjab AIR 2000 SC 2324

Apex court held that the term normal circumstances apparently means not the natural death. The death of sunita kumari by suicide had occurred within 7 years of her marriage under mysterious circumstances.

GA. Mohammed Maideen v/s State 2000 Cr. L.J.

The couples happens to be muslims from T.N. the wife died due to hanging and the husband took the plea of suicide, which was rejected both by the lower as well as the High Court in appeal. The husband was sentenced to 7 years of rigorous imprisonment.

(5) Gaur K.D, I.P.C., 4th Edition 2005, Page no. 406-420

Latest News Related To Dowry Death

U P :pregnant women ,infants burnt for dowry September,2012

A pregnant women and her two and a half year old son were allegedly burnt alive by her husband after his dowry demand was not met. Both died on the spot.

Delhi : 4 cases of domestic abuse in 24 hours, September 16, 2012

Three women were found dead in the capital over the past 24 hours in three separate cases of suspected dowry harassment. In a fourth incidents, a woman in Najabgarh suffered 90% burns after her husband allegedly set her on fire, again for dowry.

Bihar : Teacher beaten to death for dowry march 21, 2012

A school teacher in bihar was allegedly beaten to death by her husband and parents in-law who attacked her with stricks for not bringing in enough dowry.

Gurgaon : Woman found dead, harassed for dowry July 6, 2011

Twenty-eight years old Ruchi Bhotan was found hanging from the ceiling fan in her flat in the posh DLF phase 2 area of gurgaon. But while it may seem like suicide, her family alleges that Ruchi was being harassed for dowry by her husband.

(6) Economical and Political weekly, October 2012

Leading cases on Bride Burning and Dowry Death

Lichma Devi v/s State of Rajasthan AIR 1988 SC 1785

In this case pushpa a young bride was constantly harassed and sold by the greedy and dominating mother-in-law for not bringing sufficient dowry to satisfy her greed for wealth. Her son remained a mute spectator to all harassment and cruelty to his wife. One evening her mother-in-law hit her on the head with a pan and later the neighbour saw flames and shout of save. Ironically, the mother-in-law and her husband were hardly disturbed and even refuse to take her to the hospital. In hospital, the deceased made a statement to the doctor that her mother-in-law had poured kerosene and set her on fire, But surprisingly, the session court, Jaipur acquitted the accused of the murder charge. However the High Court in state appeal reversed the order of the lower court and convicted the mother-in-law under section 302 of Indian penal code and sentenced her to death. Owing to the difference of opinion between the session court and High Court regarding the guilt of the accused. The supreme court thought it desirable to sentence the accused for life.

Harbans lal v/s State of Punjab AIR 1996 SC 1186

The apex court held that in case of various infirmities found in evidence of alleged eye witness and when the accused was shown to have been living separately from his wife. The accused is entitled to the benefit of doubt. The appellant therefore cannot be charged of killing his deceased wife by setting her ablaze under section 302 of Indian Penal Code I present case.

Demand of gifts and presents at the time of the birth of the child is not dowry.

The Supreme Court in a recent case----- on 31st January 2008 has ruled that demand for money and presents from parents of married girl at the time of birth of her child or for other ceremonies as is prevalent in society may be deplorable but cannot be categories as dowry to make it punishable offence.

(7) S.N.Misra, I.P.C. 16th Edition 2008, Page no. 328-333

Distinction between dowry death, section 304 B I.P.C. and cruelty, section 498 A I.P.C.

Section 304 B Indian Penal Code and Section 498 A of Indian Penal Code have been added in the code to punish dowry related crimes. The provisions are not mutually exclusive. However the scope of the two section are different. For example:-

SECTION 304 B

- Under section 304 B of I.P.C. It is the dowry death that is punishable and such death should have occurred within a period of 7 years of the marriage.
- Cruelty or harassment of a married woman would attract section 304 b of I.P.C.
- Under section 304 B of I.P.C. punishment may extend upto imprisonment of life with a minimum of 7 years of imprisonment.
- There is no explanation about the meaning of cruelty under section 304 B of I.P.C.

SECTION 498 A

- Under section 498 A of I.P.C. cruelty by husband or relative of husband is punishable and there is no period of limitation of 7 years provided for prosecution in some cases.
- Under section 498 A of I.P.C. cruelty as such is punishable.
- Under section 498 A of I.P.C. punishment may extend to 3 years of imprisonment and fine only.
- The explanation clause to section 498 A of I.P.C. gives the meaning of cruelty.

Dowry Legislation

The social reformers of the nineteenth and early twentieth centuries have striven hard for the abolition of various social evils including the evil of dowry system. Long before India gained independence, then provincial government of sind passed an enactment known as “ Sind Deti Leti Act, 1939” with a view to deal effectively with the evils of dowry system. The state government of Bihar and Andhra Pradesh enacted “ The Bihar Dowry Restraint Act, 1950” and “ The Andhra Pradesh Dowry Prohibition Act, 1958” for the respective states but both these enactment failed to achieve the objectives for which

they were enacted. Finally on 24th april, 1959 introduced the Dowry Prohibition Act,1959 in the Lok Sabha. After some discussions, the bill was referred to a joint committee of both the houses of parliament. Ultimately the Bill was considered at the joint setting of both the houses of parliament held on 6th and 9th May, 1959.

The Dowry Prohibition Act, 1961

The Act consists of only ten sections,

Section 1, pertains to the title extent of territorial jurisdiction and commencement of the Act.

Section 2, defines dowry as any property or valuable security given or agreed to be given either directly or indirectly.

Section 3, provides penalty for giving or taking dowry for five years imprisonment and fine not less than rupees fifteen thousand.

Section 4, provides penalty for demanding dowry which shall not be imprisonment for less than six months but which may extend to two years and with fine which may extend to ten thousand rupees.

Section 4-A, provides for a ban on advertisements and make such acts punishable with imprisonment for the maximum term of six months which may extend to five years or with fine up to rupees fifteen thousand.

Section 5, deals with the invalidity of an agreement for giving or taking dowry.

Section 6, provides that the dowry by way of gifts or presents shall be for the benefit of the wife or her heirs.

Section 7 and 8 pertaining to cognizance of cases and offences, have already been dealt with in detail earlier.

Section 9, provides the rule making power of the central government.

Section 10, deals with the repeals.

PUNISHMENT FOR DOWRY DEATH

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 life

Conclusion

In last after considering the origin of Dowry, offences related to Dowry, Dowry Death, essential of Dowry Death it has been safely concluded that where injuries as found on the person of the deceased could not have caused her death, the offence would not attract the mischief of the section 304 B. Violence against women takes many forms. More often women are harassed, abused, forced to commit suicide and sometime burned alive in a brutal manner for not bringing

sufficient Dowry. The alarming rate at which Dowry Deaths are taking place almost all over India is indeed a matter of shame for us. With a view to combating the increasing menace of dowry death, a new section 304 B was inserted in the Indian Penal Code by the Amendment Act, 1986.

Section 304 B provides where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of her marriage, the accused should be punished according to the Indian Penal Code provision.

REFERENCES

1. Devender Kumar Dr., Human Right Woman & law. 1st edition 2005, page no. 6,7
2. www. Wikipedia. com
3. Paras Diwan, Hindu Law, Page no. 116,117
4. Ratan Lal & Dhiraj Lal, I.P.C, 5th Edition 2004. Page no. 560-570
5. Gaur K.D, I.P.C., 4th Edition 2005, Page no. 406-420
6. Economical and Political weekly, October 2012
7. S.N.Misra, I.P.C. 16th Edition 2008, Page no. 328-333