A STUDY OF THE LAWS REGARDING DOWRY DEATH IN INDIA

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# Abstract

Dowry is the act of demanding and taking of property or other valuables from the family of the bride usually at the time of marriage. While in Ancient India this practice was accepted but now this practice has been acknowledged as a social evil.

Many incidents of death being caused due to demand of dowry also led to this practice not only being frowned upon but also being declared as an offence under the Indian Penal Code as well as the enactment of the Dowry Prohibition Act has further defined what acts are deemed as dowry and what are the punishments for them. In dowry death certain essentials have been provided including the death of wife being caused within 7 years of marriage and the death should be unnatural and was caused due to cruelty and such cruelty being done for dowry.

The dying declaration of the victim is also given importance as evidence and there is also the presumption of dowry death in the cases where the essentials of dowry death is fulfilled. Thus many provisions for prevention of dowry death have been made in the Indian law.

Key words: *Dowry, Dowry Death, Bride Burning, Indian Penal Code*

**Introduction**

In the Ancient India Kanyadanam has been an essential part of the marital rites of the Hindus, where Kanya means daughter and dana means gift The custom of Kanyadaan (giving daughter in marriage) followed by Varadakshina (gift to the bridegroom at the time of marriage) may have given increase to dowry.

It is said that Rishi Karvagave a number of gifts to his daughter, Shakuntala, when she married King Dushyant. It may be assumed that, since there was the prevalence of the practice of child marriages in ancient India, the parents may have given numerous gifts to the girl as she left her maternal home. Nevertheless dowry as it now exists, includes the extraction of cash and material goods from the bird’s parents by the groom and his family.[[1]](#footnote-2)

In modern times, the world has become more progressive and gone are the days of male dominance and the oppression of females, now both are treated the same and are given equal treatment. But India, despite being one such nation which has realized the need of protection of women from cruel treatment, is still facing the problem of dowry and the resultant deaths caused due to it.

The system of dowry is one which has been prevailing in India since many centuries and thus it is deeply rooted in our society as a result of which, it still is a social problem which we are facing and many women are being made to suffer.

Thus the Indian Penal Code, 1860 has been amended to include certain provisions regarding the same and other laws have also been enacted in India by the legislature to protect their interests.

These laws therefore provide the women the much needed protection from such offence and it also provides legal remedy in the cases of dowry. The act of demanding dowry has itself been made into an offence and thus such practice is illegal in India. So, if a woman has a reasonable fear or apprehension in her mind that because of the demand of dowry, she may be subjected to cruelty and injury, she has the right of availing of the protection provided by the law.

Section 304B of IPC provides:

*S. 304B Dowry death.—*

*(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 life.*

Thus the Essential ingredients required to be proved as foundational facts by the prosecution for an offence punishable under Section 304B IPC are (i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances; (ii) such death must have occurred within seven years of her marriage; (iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband; (iv) such cruelty or harassment must be for, or in connection with, demand for dowry.[[2]](#footnote-3)

### Bride Burning

Bride burning as the name suggests is an act in which the bride’s death is caused by burning. Death by burning is one of the most cruel form of pain a person can go through and in the cases of dowry, especially such incidents have occurred several times. Often times, the family of the husband tries to mislead the court by denying such death to be a murder and they try to hide in the defense of suicide. The same was the situation in the case of Prabhudayal v. State of Maharashtra[[3]](#footnote-4), in which the deceased wife was subjected to cruelty because of the demand of dowry and the failure on her part to meet such demand. Her death had been caused by 100% burns and there was also no shouting or crying to be heard. The accused (the husband and his family members) had made no effort to save her and they spectated from the window and they had also not made any hue and cry so as to call others for help. Thus, it was held that it was not a case of suicide but instead was a case of murder.

Also in the case of KundulaBalaSubramanayam v. State of Andhra Pradesh[[4]](#footnote-5), it was held by the Court that the failure on the part of the parents of the deceased in making the transfer of a land in the name of her husband was a strong motive for the accused to have caused bride burning. The court also held that the dying declaration of the deceased was voluntary, truthful and consistent and was also supported by medical evidence and the conduct of the accused all together were consistent with the presumption or the hypothesis of the accused being guilty.

Thus Bride burning has been recognized as an offence under the law and the same has also been upheld by the Judiciary and thus, it has provided justice to the family of the deceased by punishing those who cause such act and it is also made an offence with the object of deterring people from committing such an act.

### Cruelty and Harassment

After the introduction of section 498A of the Indian Penal Code, there was a wide number of complaints made by women regarding harassment and cruelty being committed by the husband and his family but judging by the case laws which have been adjudicated till now it can be seen that the courts have taken a lenient view and thus it gives punishments only in the cases of grave cruelty and harassment, thus section 498A has been defined narrowly.

Also, some of the judgements of the High Courts of different states have also led to the section being interpreted to define cruelty only in the cases where such cruelty has led to the woman committing suicide which is the exact opposite of the purpose of the section because the reform was made and this section was included in the Penal code to protect women and to punish those who inflicted such cruelty and also did any such act so as to cause grave injury to the life or limb of women and this objective has not been achieved.

In the case of Manjushree Sarda v. State of Maharashtra[[5]](#footnote-6), the husband was convicted on the charge of poisoning his wife and thus murdering her by the Sessions Court but the Supreme Court had acquitted him on the ground of the guilt not being proved beyond reasonable doubt and it held that the wife may have committed suicide out of depression.

In another case, The Bombay High Court has held that to attract the application of section 498A it has to be proved that there was beating and harassment and such act was done with the intention of forcing the wife to either commit suicide or to fulfill the demands of the husband or the in laws, such demand being illegal. The court held in the present case that the prosecution had not proved this and thus the accused were acquitted.[[6]](#footnote-7)

Thus there has not been the fulfilment of the objective with which the section was added in the Penal Code and thus despite there being provisions for prohibiting an act of cruelty, the application of this provision is very narrow and limited.

### Presumption of Dowry

When section 304B of the Indian Penal Code is read with section 113B of the Indian Evidence Act it indicates that there should be sufficient material to establish that immediately before the death of the wife she was subjected to cruelty or harassment. While this is a deviation from the normal course or rule of law, there is made a presumption regarding the dowry death if there is unnatural death of the wife and it occurs within 7 years of marriage.

The intention of such a presumption has been aptly summed up by the Hon’ble Supreme Court in the case ofState of Punjab v. Iqbal Singh[[7]](#footnote-8),in this case the Supreme Court, clarifying the position, observed: *“The legislature intent is clear to curb the menace of dowry deaths, etc., with a firm hand. We must keep in mind this legislative intent. It must be remembered that since crimes are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence is not easy to get, That is why the legislature has by introducing sections 113A and 113B in the Evidence Act tried to strengthen the prosecution hands by permitting a presumption to be raised if certain foundation facts are established and the unfortunate event has taken place within seven years of marriage. Section 113B, Evidence Act provides that the court shall presume that such person had caused the dowry death. Of course, if there is proof of the person having intentionally caused her death that would attract section 302, Indian Penal Code. Then we have a situation where the husband or his relative by his willful conduct creates a situation which he knows will drive the woman to commit suicide and she actually does so, the case would squarely fall within the ambit of section 306, Indian Penal Code. In such a case the conduct of the person would tantamount to inciting or providing or virtually pushing the woman into a desperate situation of no return which would compel her to put an end to her miseries by committing suicide”.*

But the Supreme Court in the case of T. Aruntperunjothi v. State of Pondicherry[[8]](#footnote-9)has also clarified the need of proper evidence and that mere presumption is not enough to prove the guilt of the accused. In this case the question was regarding the death of the wife and whether it was caused in connection to dowry and by the act of cruelty or harassment soon before her death. But there was no evidence to prove such act of cruelty. The Trial Court and High Court had failed to consider the necessary ingredients of the circumstantial evidence, thus the Supreme Court had set aside the punishment of the accused as cruelty or harassment for dowry was not established beyond all reasonable doubt.

Thus while there is a presumption raise, it is not to be blindly applied and make the accused guilty without having evidence to further prove such a presumption. This also helps to avoid punishing the innocent who might be punished based on this presumption and without any evidence.

### Dying Declaration of Victim

When he victim suffers from such an injury that it causes her death, provisions have been made to punish those who are guilty but many times before there death, the victims if they can, also tell as to who had caused her such injury and such declaration of hers is known as dying declaration. The dying declaration of the victim has been accepted as a valid evidence on the ground that the dying victim shall not tell a lie on her death bed and often times, at the direction of the Court, the declaration may also be accepted as evidence even without any corroborative evidence if it is satisfied that such declaration is bona fide true and voluntary and is not tutored or is imagined by the victim.

Thus punishment in such cases can be given even without corroboration. But where the declaration is suspicious, other evidence has to be provided. The reason as to the significance of ding declaration is that the deceased has the right to identify the offenders if she is in a fit state of mind to do so.

In the case of Shripataro v. State of Maharashtra[[9]](#footnote-10), there were eight dying declarations made by the victim all of which were found to be consistent. The victim had told the doctor that her husband had put her on fire by pouring kerosene on her and the doctor had taken note of it, later the Special executive Magistrate had also recorded her declaration after he had ascertained her fitness of mind to give such declaration and later on, the Sub Judicial Magistrate also recorded the declaration of the deceased. Thus on the basis of these facts the Court was convinced that the dying declaration of the victim was true and voluntary and she was capable of making such a declaration and also the dying declaration being consistent in each recording, it was held that the accused was guilty and thus the Court convicted him.

But in KishanLal v. State of Rajasthan[[10]](#footnote-11), there were two conflicting dying declarations providing two conflicting versions of the incident and these declarations were after two months of the incident. Also, the accused in her deposition had given the name of the accused but later when she was again deposed by the Magistrate before whom she had made her second dying declaration she had not mentioned the accused at all and thus because of the discrepancies in the dying declaration and the lack of consistency, the Court held that the conviction of the accused cannot be based on the dying declaration.

Thus while the dying declaration is a relevant and important form of evidence having received the recognition by the Courts, it should not be inconsistent, tutored or made on the basis of the imagination of the victim. Thus, Courts have to use this with great caution and care while deciding the cases.

## The Dowry Prohibition Act

The Dowry Prohibition Act was enacted in 1961 with a view to deter the practice of dowry in India and to reduce the incidents of such act but it had failed to properly define the term dowry as only the property given at the time of marriage was regarded to be dowry. As a result it created a loophole of taking the defense of gift for marriage which the act did not identified as dowry and thus the act was not fulfilling its objective and thus it was amended. Now dowry is defined as:

*“Section 2. Definition of `dowry’*.

*In this 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 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 the marriage or to any other person;at or before or any time after the marriage in connection with the marriage of said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.*

*Explanation II.-The expression `valuable security’ has the same meaning as in Sec. 30 of the Indian Penal Code (45 of 1860).”[[11]](#footnote-12)*

The act also provides for the appointment of the dowry prohibition officer and also confers powers on the Government for the regulation of rules. Thus this act facilitates the Indian Pena;l Code in preventing dowry and provides for the punishment for the same.

### Restoration of Dowry

On the death of the Married women one of the biggest question that remains to be answered is, what is to be done of the property which was taken as dowry at the time of marriage?

The Allahabad High Court had decided in the case of Rajeev v. Ram KishanJaiswal that on the death of the wife and her dying issueless, the property which had been given as dowry to her husband shall be returned to the parents of the deceased instead of giving to the husband.

But the act of not providing the Husband with right over the property is not reasonable as it deprives him of his right even when the property was not given as dowry but instead was a gift made to the bride on her marriage. Therefore, the Dowry Prohibition Rules have been made and it provides that if any genuine gift is offered to the bride or the bridegroom at the time of their marriage, such a gift shall be valid and the husband would have the right over it even after the death of the wife. But it provides that such gift should not be in excess of the financial status of the party or parties giving the gift because it raises the suspicion of dowry.

Thus not all the gifts which are made to the couple can be termed as dowry bit inly those which are made on the demand of the husband or the in laws and also in the cases where the receipt of gifts follows certain procedure, the same would not amount to dowry.

# Conclusion

Dowry is a social evil which has been deeply rooted in India and aa such even after many decades of independence, Indian women are still not completely free from this evil. Often times on the failure of the married woman to meet the demand of dowry of the husband and her in laws she is harassed and is made to suffer through cruelty and it has also many times led to women committing suicide or them even being murdered and thus to protect then the Indian Penal Code was amended to include provisions for dowry death. Also the Dowry Prohibition Act was also enacted and has been amended to further take actions for stopping the practice of dowry and while the situation in the country has improved from before but still there is a wide prevalence of dowry and dowry deaths and thus it can be concluded that the objectives of the law regarding dowry deaths has not been achieved to a satisfactory level and there are still many areas in which work is needed to be done.

1. Dowry System in India by Leila Ateffakhr, available at http://www.ijsrp.org/research-paper-0317/ijsrp-p6342.pdf [↑](#footnote-ref-2)
2. Ashok v. State (GNCT of Delhi), CRL.A 433/2013 [↑](#footnote-ref-3)
3. AIR 1993 SC 2164 [↑](#footnote-ref-4)
4. AIR 1993 SCC 1321 [↑](#footnote-ref-5)
5. 1986, CrLJ.453. [↑](#footnote-ref-6)
6. SarlaPrabhakarWaghmarev. State of Maharashtra, 1990, Cr L J. 407. [↑](#footnote-ref-7)
7. 1991, CrLJ, 1893 [↑](#footnote-ref-8)
8. 2006 SCC 528. [↑](#footnote-ref-9)
9. (2000)SCC (Cri), 83. [↑](#footnote-ref-10)
10. (2000) SCC (Cri), 182. [↑](#footnote-ref-11)
11. THE DOWRY PROHIBITION ACT, 1961, (Act No. 28 of 1961) [↑](#footnote-ref-12)