

---

## CRITICAL ANALYSIS OF DOWRY SYSTEM IN INDIA

---

Madhuripu Raj & Prachi Anand, Law College Dehradun, Uttarakhand University

### ABSTRACT

Any young man, who makes a Dowry a condition to marriage, discredits his education, his country and dishonours womanhood

-Mahatma Gandhi

Since the ancient period, Dowry system has been prominent in India. The practice of giving valuable securities from the bride family to the groom family, at the time of marriage or before the marriage. At the time of colonial period, it was the only way to get married and in the British era, dowry become mandatory however, as time passed, the system developed into an evil tradition. As a result, it became necessary for the bride's parents to give a good dowry to her in laws, regardless of whether they could afford it or not, as the married life of a girl became dependent upon dowry. Due to a lack of dowry, marriage was impossible. Girls who couldn't afford good dowries demanded by in-laws as they were forced to commit suicide because of the distress, physically and mentally harassment, humiliation, and beaten. They were also being murdered and burnt alive due to incapable to provide dowry. As per the present situation the law prohibiting dowry in any form, continues to be prevalent across all the section of the society, regardless of their caste or class. In the year 1986 new provisions were added in the Indian penal code, Evidence act to curb the increasing number of death. According to the National Crime Record Bureau, India, there is one dowry death in the country in every one hour 13 minutes.<sup>1</sup> Therefore in country, there exist several laws for the protection of women. There is a lack of implementation of laws, as people have become so much greedy and fearless of law. I just want to

---

<sup>1</sup> How Unsafe India is for Women As per the NCRB data published at News18 website, available at <https://www.news18.com/news/india/rape-every-16-minutes-dowry-death-each-hour-ncrb-data-shows-how-unsafe-india-is-for-women-2925445.html> , last seen on 01/10/2020.

highlights the recent case where the woman in Kerala had committed suicide due to dowry demands by her husband as per the evidence founded that husband used to beat her brutally, harassed her because the vehicle he received in dowry was not good. I have a question to all Can we assume a better India where the rights of women are not infringed? We need a stringent law that can set out an example.

**Keyword:** Dowry, valuable, security, bride, groom, marriage, greedy, fearless, evil, curb, suicide, murder, burn, beat, property, status, voluntary, coercive, demand, affection, unlawful, enactment, legislation, prevalent, incapacity, bill, act, eliminate, cruelty, divorce.

## Introduction

Dowry means any property or valuable security given or agreed to be given by the parents of either the bride or the groom or by any other person at, before or after the marriage. The marriages rites in Vedic period is associated with kanyadan and dowry is related to the concept of Kanyadan As per the Dharamshastara where it is written that Kanyadan cannot be considered complete until a bridegroom gets a dakshina in cash or any form of things which is given from bride to groom that result into varadakshina. The varadakshina was not given as a requirement of marriage but out of affection this practice was voluntary, with no coercion action involved. The voluntary element has disappeared from dakshina over time and a coercive element has crept in. Throughout a marriage ceremony and the post-marriage relationship, it has taken deep roots. In the traditional sense, which was intended to be a dakshina for the bridegroom now it is grown out of proportion and has been designated as a dowry. Now days, it has become a commercial transaction. The bride's father purchase the groom in consideration of cash or kind. It is the property which is obtained from the parents of the bride by the parents of groom under the coercion or pressure. It is not the property which comes from the bride family with their love and affection and willingness. Earlier the dowry was given by the bride parents as a love and affection and voluntary now days it took giant shape depending upon the living standards and status in the society. A non-dowry marriage will lower the status. So the law-makers, social reformers had taken the serious note and consequence of the problem and passed an act which is called as "The Dowry Prohibition Act", 1961 which was the first national legislation to deal with the social evil of dowry. Under the act, those who give or take dowries are punishable with imprisonment for a term up to five years, and a fine of fifteen thousand rupees, or the value of the dowry.<sup>2</sup>

## Issues related to dowry

1. Cruelty to the woman: Incapacity to meet the demands of the husband and in laws leads to domestic violence including mental, physical, sexual abuse, death, suicide and harassment. A lots of women are facing harassment, physical abuse and some of them commit suicide or killed by her husband and in-laws due to dowry. Section 498 A of the Indian penal code strictly which says that Whoever, being the husband or the

---

<sup>2</sup> Section 3 of the Dowry prohibition act,1961 and it was renumbered as subsection(1) of that section by s.3,ibid.(w.e.f.2-10-1985)

relative of the husband of a woman, subjects such woman to cruelty shall be punished and cruelty means any wilful conduct which is of such nature which result into attempting to commit suicide, causing grave injury or danger to the health or life of the woman, and harassing her when such harassment aims to coerce her (either directly or indirectly) to meet any unlawful demand. Whereas section 304B of Indian penal code defines “Dowry Death”, If a woman dies from any burns or injuries, or dies otherwise than under normal circumstances within seven years after her marriage, and it is proven that just before death she suffered cruelty or harassment from her husband or his relative with demand for dowry, such death are called “dowry death”.

2. Inequality- The practice of dowry put a huge obligation for the bride’s family and people starts thinking that to have a daughter losing money and to have a son is gaining money. The wife goes to trauma and mistreated if the baby conceived is not a male, feticide and infanticide are effect of dowry. As the law prevents pre-natal sex determination greed and fear make people ignored it and deny life. In terms of education girls are marginalized and there are huge restriction imposed on them to stay indoors.
3. Divorces- The saddest thing about society is broken marriages and broken families It is because of illegal practice of dowry, women cannot live together happily due to increasing demand of her in-laws and husband.

### **Social reforms movement against dowry:**

During the 19<sup>th</sup> century social reformer Raja Ram Mohan Roy founder of brahma samaj and Dayananda Saraswati founder of Arya samaj campaign to raise the status of women against the dowry. Meanwhile the Bengali reformer Ishwar Chand Vidyasagar also started campaign against the Brahmins of Bengal because they were enjoying the privilege of marrying any number of wives for the sake of dowry. Moreover, the reformer was the great protagonist of widow marriages and opposed to dowry system.

### **What are the measure taken to prevent dowry:**

Dowry is a problem experienced by all sections of Indian society, but it has become a chronic one particularly among the educated middle classes involved in work. Many women's groups, charitable associations, members of the intelligentsia, and the media have expressed serious concerns about finding legal and reformative ways to combat this social evil. In recent years,

dowry-related crimes and atrocities have fallen as a consequence of social awakening fostered by a variety of groups and organizations. Therefore, let us examine what measures were taken by India before and after independence.

1. In 1939, the provincial government of Sind passed the Sind Deti Leti Act with a view to eliminating dowry's evil aspects nevertheless, the legislation did not have any impact nor did it provide any effect. The dowry system has become increasingly prevalent in almost all parts of the country and in virtually all sections of society during the last few decades.
2. In the year 1950 State governments of Bihar and Andhra Pradesh introduced legislation "The Bihar Dowry Restraint Act, 1950" and "The Andhra Pradesh Dowry Prohibition Act, 1958" for eradicating this evil from the society, but these efforts failed to achieve the objectives for which they were enacted.
3. In 1959, the Dowry Prohibition Bill, 1959 was introduced in the Lok Sabha then it was sent to Joint Committee of both Houses of Parliament. The Joint Committee prepared the report with some amendments in the Bill. Both Houses of Parliament did not agree with the Joint Committee's amendments and the Bill was withdrawn. During the Joint Sessions of Parliament held on the 6th and 9th of May, 1961, both Houses considered the Bill and The Dowry Prohibition Bill was and became an Act - The Dowry Prohibition Act, 1961 (28 of 1961) and it received the assent of the President on 20th May 1961.
4. Moreover, in the year 1986, Indian penal code was amended and a new section 304(B)<sup>3</sup> has been added in it which defines dowry death which says that a woman who have died of burns or other bodily injuries or "otherwise than under normal circumstances" within seven years of her marriage who has been suffered cruelty or harassment from her husband or in-laws before her death in connection with demand for dowry are called as dowry death also in the year 1983 a new section 498A<sup>4</sup> was added which says that when her husband or his family member subjects her to cruelty, harassment, any wilful conduct likely to drive the woman to commit suicide or to cause danger to her life, limb or health, mental or physical or harassment to coerce her or any other person by making an unlawful demand for dowries such as property or any goods commit the offence. Further section 306 talks of the abetment of suicide if a husband

---

<sup>3</sup> Ins.by Act 43 of 1986,sec 10 (w.e.f.19-11-1986)

<sup>4</sup> Chapter XXA (containing section 498A) ins.by Act 46 of 1983,sec.2(w.e.f.25-12-1993)

or his relatives creates a situation which led to suicide of woman under the 7 years of marriage will be fall under ambit of the section 306.

5. Amendment also had been done in the Indian Evidence Act, 1872, a new section 113 (B)<sup>5</sup> had been added as presumption as to the dowry which says that When the question is whether a person has committed the dowry death of a woman. A court shall presume that the person who subjected the woman to cruelty or harassment in connection with the demand for dowry before her death, which caused the death of the woman. The provision is mandatory to the court to believe that he had done death due to dowry demands.
6. Further in the Section 174 Code of Criminal Procedure, 1973 – The amendment act of 1983 mandates the police to inquire<sup>6</sup> and make a report on suicide with having a post mortem report as mandatory when a woman has died due to suicide where the circumstances raising a reasonable suspicion that someone else has committed the death of woman occurred within seven years of marriage.

#### **Judicial review:**

- **Arnesh Kumar vs. State of Bihar:** In this case Supreme Court held that section 498A of Indian penal code was added by the 2<sup>nd</sup> amendment act of Criminal law which states, husband or the relatives of husband whose subjecting the cruelty to Women shall be punished with imprisonment for 3years or may extent further and shall be liable to fine.<sup>7</sup>
- **Inder Raj Malik vs. Sunita Malik**<sup>8</sup>: In this case the judgement was given by Delhi High Court and court held that a person convicted both under Section 4 of Dowry prohibition Act and section 498A of Indian Penal Code does not come under the ambit of double jeopardy under Article 20(2) of Indian Constitution. The prohibition between the two distinguished from each other. In earlier enactment on demand of dowry is punishable, cruelty is not necessary wherein enactment of cruelty is the necessary element for Section 498A of Indian Penal Code. The Delhi High Court has taken a pragmatic approach in the impugned case and said that the word ‘cruelty’ is well defined.

---

<sup>5</sup> Ins.by Act 43 of 1986,sec.12 (w. e .f. 19-11-1986)

<sup>6</sup> Subs.by Act 46 of 1983,sec.3 for certain words(w.e.f.1983)

<sup>7</sup> A.I.R. (2014) 8 SCC 273

<sup>8</sup> 1986 criLJ 1510

- **Reema Agarwal vs. Anupam & others<sup>9</sup>:** In this case the husband commenced second marriage even in the presence of his Spouse who is alive. Such marriage are void. So, the question raised in court was whether the dowry death can be applicable on void marriage? The Court held that yes, this can be applicable even in void marriage and if it would not be applicable than the objective of the Section 304 will fail and the culprit will set free instead of convicted. So, this should be applicable.
- **Hans Raj vs. State of Punjab:** In this case the Supreme Court held that the term normal circumstances means not the natural death.<sup>10</sup>
- **Rameshwar Das vs. State of Punjab:** In this case Supreme Court held that pregnant women cannot commit suicide unless the relationship between husband and wife gets worse that she would be compelled to do so. Accuse liable to be convicted on failure to prove his defence.
- **Pooja Saxena vs. State of Another:** In this case the husband and in-laws of married women were demanding dowry even after receiving Ac and the Car. Even after knowing about the dowry the women got married with him and after sometime when the demands increases she filed case against her in-laws and husband and the learned counsel for the petitioner referred in court under Section 7(3) of Dowry Prohibition Act and the petitioner and her parents were confronted with the situation that either to concede the demand or to face the loss of honour in the society but they concede to the demand of dowry, they cannot be blamed as they were the victims. Section 7(3) comes to rescue of the petitioner and in terms of the aforesaid provision, she cannot be subjected to prosecution for the offence under Section 3 of the Dowry Prohibition Act, 1961.
- **Satbir Singh & Another vs. State of Haryana (2021)<sup>11</sup>:** This is the landmark judgement given by Supreme Court for Dowry death. On 28 May 2021 the court gave 12 guidelines under Section 304B and 306 of Indian Penal Code.
  - 1<sup>st</sup> GUIDELINE: The term “soon before her death” cannot be constructed as immediately before her death”. Trial courts should consider the proper connection or link between dowry death and cruelty or harassment for dowry demand by husband or his relatives.

---

<sup>9</sup> A.I.R. 2004 S.C. 1418

<sup>10</sup> A.I.R 1985 S.C.R 1040

<sup>11</sup> [https://main.sci.gov.in/supremecourt/2009/70857/70857\\_2009\\_31\\_1501\\_28042\\_Judgement\\_28-May-2021.pdf](https://main.sci.gov.in/supremecourt/2009/70857/70857_2009_31_1501_28042_Judgement_28-May-2021.pdf)

- 2<sup>nd</sup> GUIDELINE: Section 304B of Indian Penal Code must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand.
- 3<sup>rd</sup> GUIDELINE: The prosecution must be at first establish the existence of necessary ingredients for constituting offence under Section 304B. Once these ingredients are satisfied, the rebuttable presumption of causality, provided under 113B of Evidence Act operates against the accused.
- 4<sup>th</sup> GUIDELINE: Section 304B does not take pigeonhole approach in categorizing death as homicidal or suicidal or accidental. Section 304B should be interpreted in wider sense.
- 5<sup>th</sup> GUIDELINE: Due to the precarious nature of Section 304B, read with Section 113B of Indian Evidence Act, judges, prosecution and defence should be careful during conduction of trial.
- 6<sup>th</sup> GUIDELINE: It is a matter of grave concern that, often trial courts record the statement under 313, CrPC in a very casual and cursory manner. It ought to be noted that the examination of an accused under 313, CrPC cannot be treated as a mere procedural formality, as it based on the fundamental principle of fairness. This aforesaid provision incorporates the valuable principle of natural justice “audi alteram partem” as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes a duty on court to question the accused fairly, with care & caution.
- 7<sup>th</sup> GUIDELINE: the court must put incriminating circumstances before the accused and seek his response. A duty is also cast on the counsel of the accused to prepare his defence since the inception of the trial with due caution, keeping in consideration the peculiarities of Section 304B of Indian Penal Court, read with Section 113B of Evidence Act.
- 8<sup>TH</sup> GUIDELINE: Section 232, CrPC “ If after taking the evidence for the prosecution, examining the accused & hearing the prosecution & defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal”. Such discretion must be utilized by the trail courts as an obligation of best efforts.
- 9<sup>th</sup> GUIDELINE: once the trial court decides that the accused is not eligible to be acquitted as per the provisions of Section 232, CrPC, it must move on & fix hearings

specifically for ‘defence evidence’ calling upon the accused to present his defence as per the procedure, which is also an invaluable right provided to the accused.

- 10<sup>th</sup> GUIDELINE: Trial courts need to balance other important considerations such as the right to a speedy trial. In this regard, we may caution that the above provisions should not be allowed to be misused as delay tactics.
- 11<sup>th</sup> GUIDELINE: Presiding Judge should follow guidelines laid down by the Supreme Court while sentencing & imposing appropriate punishment.
- 12<sup>th</sup> GUIDELINE: The menace of dowry death is increasing day by day. However, it is also observed that sometimes family members of husband are roped in, even though they have no active role in commission of the offence & are residing at distant places. In these case, the court need to be cautious in its approach.

### **Conclusion:**

The sole purpose of enacting the Dowry Prohibition Act was to stop offering and taking of dowry. The main aspect of this problem is the word or material dowry was never the problem. Rather than that it was the unreasonable demands that arise violence and non-fulfilment of those demands led to increase in the problem.

So, dowry is good unless it is been given as a gift by bride’s parents to her and if groom’s parents are demanding money as ‘dowry’ than that is completely illegal.