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DOWRY DEATH WITH SPECIAL REFERENCE TO DOWRY PROHIBITION ACT, 1961

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Abstract:

Dowry is in commonly practiced custom in India. However, it is not legal and it is been prohibited under various Indian laws such as Indian Penal Code, Criminal Procedure Code, Indian Evidence Act. There is a complete whole law pertaining to the prohibition of dowry called Dowry Prohibition Act, 1961. However all the laws appear to be unsuccessful in fulfilling its objective as it is still practiced in our country. Behind every issue there is always some causes attached. It is the same with the Dowry system, various factors of the society and system lead to raise the demand of dowry and this ultimately results into Dowry Death. None can be blamed particularly for the continuance of this system because the lacunas are on the part of all, beginning from the statute itself to its enforcement. Also, it is not followed only by particular religion, instead it is practiced in more than one religion by one or the other name. The paper attempts to highlight the factors, causes, laws pertaining to the dowry system. Along with that it also discusses the stand of judiciary pertaining to the issue with the help of case laws.

Keywords: Dowry, Causes, Laws, Judiciary

INTRODUCTION

Marriage is recognized in the form of a social institution of a civilized social order in which two persons, who are competent to enter into such a union, have pledged themselves to abide by the norms and values of the institution and made the promise to each other that they will maintain a very strong bond for the purpose of sustaining and maintaining the obligations of the marriage. It is the root cause for the continuation and persistence of the human race. In spite of all this there is a likelihood that because of individual incompatibilities and attitudinal differences the promises made at the various occasions of the marriage ceremony may not be fulfilled and come to an end. However, there might be certain circumstances in which the husband and/or his family puts a demand for dowry, which is not fulfilled by the wife or her family and it may often lead a debauched feeling of revenge.

There is no doubting the fact that marriages are made in heaven, but nevertheless there is an active involvement of the mother-in-law, sister-in-law, husband and other relatives in getting the marriage dissolved due to their lust for dowry. Dowry death, murder-suicide, and bride burning are some of the burning symptoms of an abnormal social disease which is prevailing and is an unfortunate development of our present day society. In the past few decades, the dark evils of the dowry system has been witnessed by India in a more acute form in almost each and every part of the country because of the reason that it is practised by almost every section of society; regardless of their religion, caste or creed to which they belong to. It is almost happens on a daily basis that not only are the married women harassed, humiliated, beaten up and coerced into committing suicide by their husbands or in-laws but there are numerous cases in which the brides are even burnt to death because of the reason that their parents are not able to meet the demands of dowry¹.

CONCEPT OF DOWRY DEATH

Speaking of the concept of dowry death, in general terms, we can refer dowry deaths to be the “*death of the bride due to the violence inflicted upon her by the family of the groom in connection with the demand of the dowry.*”

¹ Angela K. Carlson-Whitey, Comment, Dowry Death: A Violation of the Right to Life Under Article Six of the International Covenant on Civil and Political Rights, 17 PUGET SOUND L. Rav. 637, 639 n.11 (1994).



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In recent times, though there has been a change in the perception and mindset of the people with regards to the long prevailing custom of dowry, however, there has been no change in the atrocities which have been caused to woman over the same period of time.

Dowry death is a very serious evil which is prevalent in the society and, thus, it constitutes to be a matter that requires significant concern of the Central as well as State Legislatures. Keeping this into consideration, there was an essential requirement of bringing a specific law with respect to this for the purpose of safeguarding the life and dignity of the newly married wife and for the purpose of protecting her from any direct or indirect harm that may be caused to her connected with the dowry demand and even with respect to the amount of dowry which has been received, in some cases².

A number of laws have been enacted by the government for the purpose, among which The Dowry Prohibition Act, 1961 is the most specific.

However, one can see that on the ground level merely enacting a distinct legislation was not enough and there numerous questions arose with regards to the efficiency and applicability of the provisions of the law on the ground levels.

For the purpose of countering this problem, the Law Commission came into picture and, thus, for the purpose of consolidating the provisions with regards to dowry and all similar connected problems like domestic violence in connection with dowry, presumption of dowry death etc., some sections were inserted in the Indian Penal Code on the recommendation given by the 21st Law Commission in order to make such acts a crime. The crimes related to dowry are not restrained to the limited spheres but it includes within its ambit a vast range of crimes against women. Human nature dictates that every human has certain point of saturation and due to the inhuman treatment meted out to them for a prolonged period of time many brides take the unfortunate decision of ending up their life so that they can get rid of all the torture and anguish that she is subjected to because of her cruel in-laws.

FACTORS AND CAUSES OF DOWRY DEATH

Economic Factors

The Indian inheritance system can be considered as an pivotal economic factor of dowry because the rights of inheritance were reserved only with the sons and the daughters were not given the rights of inheritance in the family's estate. Therefore, for the economic security of the daughter, dowry was given. It was believed that once the daughter is given dowry upon her marriage, she loses the right in family's estate. The another reason of dowry was the financial security of the daughters. The form of dowry changed into the greed of the groom and his family and slowly it became tradition to give dowry. Initially it was given as per the wish of bride's family but later changed as per the demand of the groom's family. Daughters of Jain, Hindu and Sikh derived equal right as of men when Hindu Succession Act, 1956 was passed³.

Social Factors

A major factor contributing to dowry is the structural framework and kinship of marriage in the different regions in India. In the northern parts of the country, usually a patri-local (lives with husband's family) system of marriage is followed, in which the bride is a non-related member of the family. Dowry is encouraged by this system because of the fact the family of the bride is excluded after marriage as a form of pre-mortem inheritance for the bride. In the southern regions, often the marriage takes place within the family of the bride, for instance amongst the close relatives or cross-cousins, and in a closer physical distance to her family and in addition to it, brides may be capable of inheriting land, which enhances her value in the marriage, thereby lessening the prospect of dowry over the bride price system⁴.

² Mohd Umar, Bride Burning in India: A Socio Legal Study, Ashish Publishing House, Delhi, 1998, p. 66-67

³ Reshma and A Ramegouda, Socio Legal Perspective of Dowry : A Study, International Journal of Scientific and Engineering Research; Vol-3, Issue-7 (2012)

⁴ Dalmia, Sonia; Pareena G. Lawrence (2005). "The Institution of Dowry in India: Why It Continues to Prevail". The Journal of Developing Areas. 38 (2): 71–93. doi:10.1353/jda.2005.0018.S2CID 154992591.



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Religious Factors

The dowry system is not limited to any particular religion, it is been found in many religion including Hindu religion. Indian Muslims uses Jahez word for Dowry. It is divide into two parts. The first part comprises of conjugal life and the bride's outfit. The later consist of clothes, jewellery, money, car and other items. Jahez is more expensive than other expense of marriage⁵.

Vague Language of a Statute

Alike other laws the language of the statute regarding the Dowry is vague and that's why it becomes less effective to punish the culprits. Originally the scope of dowry demand was limited to money and property given upon wedding and the act prohibited the gifts after wedding. Therefore, the expansion it section 2 of the Dowry Prohibition Act is needed.

Discrimination Against Woman

Woman faces various form of discrimination on regular basis. However, the strongest of all is the economic discrimination. Women throughout the life remain dependent on man in her life be it father, brother, husband or son. Above this the law also made discrimination against woman as the inheritance rights were in favor of men and not women. In Islamic the daughters are given only one third of the property because the son has responsibility to take care of the parents.

Women are also discriminated at work place as there is no pertaining to equal pay to men and women working at same position. Both the society and the law expect the women to live in the married relation even if it is unhealthy⁶.

LAWS PERTAINING TO DOWRY IN INDIA

For the purpose of prohibiting dowry and preventing dowry related offences we have some laws in force :

1. Dowry Prohibition Act, 1961 – It bans the giving and taking of dowry. The act defines dowry and penalizes it. It gives punishment to any individual giving or taking of dowry. The penalty is to not be under fifteen thousand rupees (Rs.15,000) along with as long as 5 years of detainment or what the Court may deem fit⁷. On the off chance that an individual shows an interest in dowry, he can be made subject to pay a fine of Rs.10,000 and detainment for half a year which might be stretched out to two years⁸. However, the act hasn't been very successful in curbing the rampant issue of dowry in India.

2. Indian Penal Code, 1860 - Till 1983, the Indian Penal Code did not contain a particular arrangement to manage cruelty and violence against women inside their marital home and similar related offenses. The guilty spouse and in-laws could be arraigned under the general arrangements of Indian Penal code identifying with murder, attempt to murder, abetment to suicide, causing hurt, assault, outraging the modesty of a woman, use of criminal force and so on⁹.

The Criminal law Amendment Act, 1983 introduced two important provisions related to dowry – Sections 304-B and 498-A.

(i) The Indian Penal Code, 1860 explains what dowry death is and penalises it under Section 304-B. This section was introduced in the code in 1986. The section defines “dowry death” as—

“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 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.”

⁵ Jayapalan, N. Women and Human rights : Traditional Indian Society, Atlantic Publishers, New Delhi, 2002, p. 2

⁶ Madhu Purnima Kishwar, Strategies for Combating the Culture of Dowry and Domestic Violence in India, UN Division for the Advancement of Women, Vienna, 2005, p. 11

⁷ S. 3, Dowry Prohibition Act, 1961

⁸ S. 4, Dowry Prohibition Act, 1961

⁹ K.D.Gour, Text Book on the Indian Penal Code, 4th Edition, Universal Law publication, 2014



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By this section a punishment of imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life has been attached to this offence.

Ingredients of Section 304-B:

1. When a woman dies because of any burns or bodily injury, or it is occurred in abnormal circumstances.
2. Either of the above mentioned circumstances must arise within a period of seven years of the date of the marriage.
3. Soon before she died, cruelty or harassment was meted out to her by her husband or his relatives.
4. Such cruelty or harassment must be connected with the dowry demand.

In case there is fulfilment of these conditions then it would constitute dowry death, and it would be presumed that the death has been caused by the husband and/or his relatives¹⁰.

(ii) Chapter XX-A titled 'cruelty by husband or relatives of husband' of the IPC consists of just one section i.e. Section 498-A which makes the husband or his relatives punishable by imprisonment of 3 years along with fine for subjecting the wife to cruelty and harassment.

3. Sections 113-A and 113-B of the Indian Evidence Act 1872 – According to Section 113-A of the Indian Evidence Act, 1872 when a woman has committed suicide and the question is whether it has been abetted by her husband or any relative of his and it's established that the suicide happened within a duration of seven years from the date of her marriage and her husband or such relative of his had subjected her to cruelty, the court may presume, having regard to all the different situations of the case, that such suicide must have been abetted by her husband or by such relative of the husband.

According to Section 113-B of the Indian Evidence Act, 1872 where a person is accused of having committed the dowry death of a woman and it is established that soon before her passing, such woman had been oppressed by such individual and subjected to cruelty and harassment, or in association with dowry demand, the court will assume that such individual had caused the death¹¹.

4. Sections 176(1) and 174(3) of the Code of Criminal Procedure, 1973: Section 176(1) empowers the nearest Magistrate to hold inquests into the cause of death. Section 174(3) on the other hand says that “when-

- (i) the case is one involving suicide committed by a woman within a period of seven years from the date of her marriage; or
- (ii) the case is related to the death of a woman within seven years of her marriage in such a situation which gives rise to a reasonable suspicion that an offence was committed by some other person in relation to such woman; or
- (iii) the case is one which concerns with the death of a woman within a period of seven years from the date of her marriage and a request in this behalf has been made by any relative of the woman; or
- (iv) a doubt is there with respect to the cause of death; or
- (v) If it is considered to be expedient by any police officer for any other reason, then he shall, taking into consideration such rules as may be prescribed by the State Government in this behalf, forward the body, for the purpose of getting it examined, to the nearest Civil Surgeon, or other qualified medical person who has been appointed by the State Government in this behalf, if the state of the weather and the distance admit of its being so forwarded without danger of any such putrefaction on the road as would render such examination useless.

However, even though we have these laws in place, and special efforts have been put in to protect women against a heinous crime such as dowry death, new cases continue to appear. What is even shocking is that the offence is not just prevalent in the uneducated strata of the society, but educated people engage in it as well.

¹⁰ Dirajlal And Ratanlal The Indian Penal Code, 30th Edition Wadhwa and Company Nagpur, 2008

¹¹ Shobha Saxena, Crime against Women and Protective Laws, New Delhi: Deep & deep publication, 2010



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MISUSE OF DOWRY RELATED LAWS

A number of legal provisions and legislations have been made concerning dowry in order to protect women against the social evil of dowry which is prevalent in the society, however, on the other hand, one may take note of and see the fact that numerous and countless instances have been there in which these laws have been misused by women for the purpose of or with an intent of falsely getting their male counterpart and his family members convicted for an offence which they never committed. There are even such cases in which a man was falsely accused by a women for the purpose of defaming him and his family. Following are certain judgments of the Hon'ble Courts in which they have dealt with the issue of misusing Section 498-A of IPC:

In **Savitri Devi v. Ramesh Chandra & Ors.**¹², it was evidently held by the Honourable that *"There has been a serious misuse of the provisions to such a limit that it was striking the foundation of marriage itself and the same was held to be 'Not Good' for the society at large."*

In another important and landmark judgment of **Jasbir Kaur v.State of Haryana**¹³, the following observation was made by High Court of Punjab and Haryana: *"It is known that an estranged wife will go to any extent to rope in as many relatives of the husband as possible in a desperate effort to salvage whatever remains of an estranged marriage"*.

REASONS FOR FAILURE OF DOWRY RELATED LAWS

We can understand the why have dowry death related laws failed so far in abolishing this ghastly crime under the following headings :

The mindset of people – It is simply shocking how despite having several legislations prohibiting the giving and receiving of dowry, people still indulge in practice. The mindset of people is just the same as it was in the past couple of decades. Parents believe that their sons are a trophy that can only be won by a girl whose family is willing to pay the right price for it. Females are still looked at as a burden on their families and are often deprived of opportunities. In earlier times, women were uneducated and therefore, dowry was the only way their parents could ensure that their daughter had some finances to rely on. Since she would be leaving her parents' house and going to her conjugal home where she didn't own anything, dowry would not just make her feel more confident but would also provide her with a certain sense of comfort. It would make her in-laws and husband look at her as an equivalent, thus making dowry a sort of an investment that parents made in their daughter's wedding. However, things are very different today.

Women are becoming increasingly independent being employed with proper incomes. They are no longer people who need to be funded for and very well capable of taking care of themselves. They enter a new relationship as equals and often live with their future partners away from either of their parents after marriage, but the mindset has still somehow not changed. Suppressing women is something that patriarchal societies around the world have more often than not indulged in and it continues to haunt Indian women.

Failure of draconian laws¹⁴ - According to the Dowry Prohibition Act (enacted in 1961 and revised 3 times in the 1980's), dowry is characterized as any property or important security given or consented to be given either legitimately or otherwise by one party to a marriage to the other party or by their guardians or to some other individual at or before [or any other time after the marriage] for the purpose of marriage. According to this law dowry is prohibited yet gifts are permitted. This is one of the main reasons why people get away with giving and taking dowry as they claim the items received as dowry to be mere gifts. No one can ever be sure whether an expensive property given to a groom by the bride's parents was dowry or merely a gift. Over time, people who ask for dowry have also become smarter and often ask parents of the bride to give jewellery and money to her only to take them from her when she goes to live with them.

¹² II (2003) DMC 328

¹³ (1990)2 Rec Cri. R 243

¹⁴ Madhu Purnima Kishwar, Strategies for Combating the Culture of Dowry and Domestic Violence in India, UN Division for the Advancement of Women, Vienna, 2005, p. 11



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Sociological, psychological and socio-economic factors : It has been seen that the system of asking for dowry is greater in joint families as a lot of people believe that their influence and guidance on the bride's future child is worth all the money in the world. The belief that the bride shouldn't go empty handed to her new home is often the driving force behind parents offering dowry to the other family. Male chauvinism is something that even women promote and thus, the barbaric practice of demanding dowry continues to spread its limbs in our society.

One of the most critical factors behind the continuing existence of dowry death is the psychological and social conditioning of women. They are taught to listen to their husbands and in-laws and adjust with them. Women are since a very young age trained to be a good wife and daughter-in-law even if that means feeling suffocated or abused. This is often the primary reason why women despite being mistreated and subjected to constant abuse in relation to dowry demands rarely complain against their matrimonial family. To avoid any judgement from the society, they keep suffering quietly, which gives the perpetrators more courage to keep disparaging their rights.

ROLE PLAYED BY JUDICIARY

In the case of **State of Himachal Pradesh v. Nikku Ram**¹⁵, the Hon'ble Supreme Court started the judgment in an interesting manner with the words 'Dowry, dowry and dowry'. The thrice times mentioning of the word 'dowry' was further explained by the Court. The Court held that it is because a dowry demand is made on three occasions:(i) before the marriage;(ii) at the time of the marriage; and (iii) after marriage.

In the case of **Satvir Singh and others. v.State of Punjab and another**¹⁶, it was held by the Supreme Court that for the purpose of invoking Section 304-B it is necessary that the harassment or cruelty must be caused to the woman with a dowry demand "soon before her death".

In **Kamesh Panjiyar Alias and Kamlesh Panjiyar v. State of Bihar**¹⁷, the court made the observation that conjointly reading Section 113B of the Indian Evidence Act, 1872, and Section 304-B of the Indian Penal Code, 1860, gives the description that material must be there for the purpose of showing the cruelty or harassment was meted out to the victim soon before her death.

In the case of **Syam Lal v.State of Haryana**¹⁸, the court held that there cannot be a conviction of the appellant in accordance with Section 304B of IPC and also that the Court cannot invoke the legal presumption that has been given under Section 113B of the Evidence Act due to the reason that there was no evidence of proving "soon before her death".

The Apex Court observed in **Raja Lal Singh v. State of Jharkhand**¹⁹, that the expression "soon before death" mentioned under Section 304B of IPC is an elastic term. This term can either refer to a period which either immediately before death of the deceased or that is within a few days or few weeks before the unfortunate death. However, the relevant consideration is that perceptible nexus must be present between the death and harassment or cruelty in connection with the demand of dowry inflicted upon the deceased woman.

CONCLUSION

Dowry death is a social curse which is a burning issue in the present Indian society. Organized approach by women welfare organizations, police, public servants and judiciary by applying deterrent punishment for dowry deaths culprit. It can be observed that government of India along with Indian judiciary makes co-operative and supportive law to safeguard the life interest and dignity of women and provide further justice to the victim of harassment or cruelty by husband and his relatives. Change in education system led to an improvement in the education status of female and door to door employment service will lesser down dowry deaths. Still, certain corrective measures need to adopt to eradicate or

¹⁵ (1995)Cri LJ 4184 (SC).

¹⁶ (2001) 8 SCC 633

¹⁷ (2005) 2 SCC 388

¹⁸ 1997Cri.L.J1927 S.C.

¹⁹ 2007 III Cri.L.J.3262(S.C.)



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at least curb this social menace of dowry death, but most importantly it needs a public will and commitment to shun away materialistic greed of dowry demands.

In cases to curb the rate of dowry deaths, harassment or cruelty more female police personnel should be inducted so available in a situation relating to unnatural deaths of women. In the interest of proper investigation and justice, the investigation cannot be done below the rank of assistant commissioner. Punishment for abetment of suicide must be raised to up to seven years. A rational and practical approach to the above-mentioned matter will certainly be helpful.

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