DOWRY DEATHS IN INDIA - A LEGAL STUDY

A DISSERTATION TO BE SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF DEGREE OF MASTER OF LAWS

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CERTIFICATE

This is to certify that the, "**DOWRY DEATHS IN INDIA - A LEGAL STUDY**" is the work done by **Utkarsh Rao** under my guidance and supervision for the partal fulfilment of the requirement for the Degree of **Master of Laws** in School of Legal Studies, Babu Banarasi Das University, Lucknow, Uttar Pradesh.

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I understand what plagarism is and am aware of the University's policy in this regard.

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Acknowledging the wide panorama of people who helped and motivated me to complete this project, I am grateful in presenting to you the rare shades of marketing and technology by documenting the project **"DOWRY DEATHS IN INDIA - A LEGAL STUDY"**

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INTRODUCTION

The system of giving dowry to girls in wedding is an ancient Indian custom. It is in fact that portion of the parent's wealth which they wish to give to the daughter. This helps the girls in question and the groom to start a home of ther own. However, it is very sad that this custom has been vitated in our times, and the system has become a menace, a socal evil in our society.

Wedding are no longer happy events, but keep the brides, parents on tenterhooks lest the groom' s fami ly demand unreasonable gifts on the eve of the wedding. In fact, quite often, the greedy groom or his parents do demand gift in cash or kind such as a motor car, video, etc. which the girls parents may not be able to fulfill. Then they are caught between t he devil and the deep sea. Breaking off the wedding at the last minute brings infamy to the girl. Very often false, malicious stories are spread about her so that re-engagement and marriage becomes difficult. Often girls are driven to suicidal lengths beca use of the tension created by such a situation.

Another technique adopted by the boy' s family is not to make unreasonable demands before the wedding, but harass the girl after the wedding to induce her to request her parents to give the gifts they ask for. The girl is taunted at every step and her life is made a virtual hell until she can fulfill the unreasonable demands of her husband and in laws.

Another ploy used by such uncouth people is to pack the bride off to her parents house and are told to come back only if she can induce her parents to give more dowry.

In such situation, the girl has no option but to accede to these demands and urge her parents to fulfill them. Sometimes, when girl knows that ther parents cannot fulfill these demands, they are driven to commit suicide. Even worse is the situation where the in-laws join hands to burn the bride to death, so that the son can be remarried to someone who will get them more dowry. This is the lowest level of greediness, degradation and inhumanity to which a human beng can sink, and it is indeed a very sad comment on the Indian Character, that there are innumerable examples of these happenings. Brides are shamelessly and fearlessly burnt to death to satisfy the greed of such people.

1.1.Dowry System

The Hindu Society is full of a number of evils practices and bad customs such as dowry, which has become a major socal evil against women. Today it is difficult to say how and why this evil custom started? Perhaps it might have originated from the parents desire to give their daughter a shar e of her parental property in the form of dowry. Everyday we see how women have to suffer for the sake of dowry. Day in & day out we read the news of one or another young woman being burnt to death because she could not bring dowry with her. Tort ure of young bride's because of their failure to bring dowry is even more prevalent and they are forced to commit suicide. The result is that the parents of a girl have to make themselves paupers in order to arrange her marriage.

1.2. Statement of the problem

Marriage ceremonies and customs range across cultures and it is good to perform these customs until and unless any custom becomes a socal evil as has happened in the case of dowry. In the early days gifts and presents were given to the bride at the time of her marriage as an auspicious custom. But, in course of time, it became a crude institution resulting in female infanticide, suicide, bride-burning and other indignities and cruelties. In the last few decades, Inda has witnessed the evils of the dowry system in a more acute form than the past.

However, dowry alone is not the sole cause of violence or cruelty done to the married women, but it can't be denied that dowry demands and increasing pressure of pomp and show in the marriages has contributed to considering daughters as a lability or burden and consequent demeaning of valuation of females in society. The custom of dowry has even spread to those communities, which had no such custom in their previous generations. It is a gross failure of anti dowry laws and a sign of their poor implementation. Many legal experts strongly point out the loopholes in the

existing laws related to dowry prohibition. Improper investigations in the beginning stage of such case are also another factor that delays the process of judical proceedings.

It is commonly practiced across the country and in almost all the sections of society. The rich people with their accounted and unaccounted wealth have indulged in the practice of giving and taking dowry as a status symbol. The middle class people of the society are also somehow stretching their economic capacity to perform marriages with great pomp

and show as giving and taking of dowry is considered as a matter of prestige and socal status. Even the economically backward people are also indulged in performing this custom merely because of a wrong belief of socal obligation or the helpless situation of their daughter not getting married without giving Dowry.

A Patrarchal set up is still prevalent in most of the regions of Inda, where the women are not in a position to stand up for themselves. Their voice stays unheard in the public arena. Absence of political cooperation because of socal-monetary limitations is another motivation behind why woman had not possessed the capacity to stand up for herself and secure against this evil practice. This is likewise viewed as the disappointment of male-arranged polity by a few specalists. Because of such disadvantageous condition of women, we neglect to take care of this serious dowry issue even after all consideration and focus on it

1.3. Aims and objectives of the research

The main object of this study is to analyse the existing provisions relating to dowry prohibition and to find out the gaps and lacunae which allow the accused to escape from the punishment for dowry deaths. Moreover, the present study will inquiry into various supporting statutory provisions which were enacted to punish the guilty of dowry death but such provisions are not so capable to provide adequate justice to the society to eliminate this menace. Efforts would be made to give adequate suggestions for strengthening evidentary provisions after taking extensive study of the recent judical trends.

1.4. Hypotheses

The custom of dowry and offences related to dowry are an age old concept. The increasing number of dowry related offences has been a constant area of concern for not only to the law and judicary but it is also affecting the society. But with the passage of time, instead of getting diminished and therefore loosing the significance, this socal evil has deep rooted in the society. The present study is based on the hypothesis that:

Lack of socal will is an impediment in the effective implementation of laws relating to dowry prohibition and as well leads to the misuse of the laws.

1.5. Review of literature

Literature is the essence of a good research. A study cannot be carried without referring commentaries, books, research papers, statutes, lexicons, websites and articles etc on the relevant topic. It is the foremost step to initate a research on a topic that the prevailing literature on the subject has to be thoroughly analyzed in depth. Following sources have been reviewed thoroughly to understand the concept:

P.S. Narayana in his book "Laws Relating to Dowry Prohibition"[1] has covered the meaning, nature of dowry and various laws related to dowry prohibition. The author has aptly remarked upon a significant hurdle in the smooth functioning of laws related to dowry prohibition i.e. the socal conditions in Inda are not favourable for effective implementation of such laws.26 The author has critically analyzed the efficacy of presumptions taken in Indian Evidence Act in the cases related to dowry.

Madan C. Paul in his book ―Dowry and Position of Women in Inda[2]" has discussed ‗dowry' as a modern phenomenon. A conceptual perspective of dowry has been taken by the author and a field study of Delhi Metropolis has been conducted. A socal survey on dowry has been conducted on the basis of cast, religion, educational level, occupation, economic status and quantum of dowry given or taken. It has been observed that there is a close correlation between the different factors such as income of family, educational status, socal obligation in giving and taking of dowry.

S. Gokilwani in his book ―Marriage, Dowry Practice and Divorce"[3], has given a comprehensive exposition of dowry and various laws related to dowry.

Veena Talwar Oldenburg in her book ―Dowry Murder"[4,] had pointed out the difference in the states of North Inda and South Inda with regard to the impact of the customs of bride-price and dowry on disturbed sex ratio in these states. The author has critically described the shift of custom of ‗Mul' (a kind of bride price) to ‗Daj' (a custom like dowry) in North Inda. She has also examined the views of other authors on the emergence of dowry and its connection with female infanticide.

Mamta Rao in her book ―Law Relating to Women and Children"[5] has elucidated the gradual change of sacred customs of Kanyadan and Vardakshina into the evil of dowry.

[1] P.S. Narayana, *Laws relating to Dowry Prohibition* (Goga Law Agency, Hyderabad, 2001).
[2] Madan C. Paul, *Dowry and Position of Women in Inda* (Inter-Inda Publications, New Delhi, 1986).
[3] S. Gokilavani, *Marriage, Dowry, Practice and Divorce* (Regal Publications, New Delhi, 2008).
[4]Veena Talwar Oldenburg, *―Dowry Murder*‖54(Oxford University Press, New York, 2002), available atin%201870%20to%20abolish%20this%20practice%20to%20female%20infa nticide&f=false (Visited on April 22, 2023).
[5] Mamta Rao, *Law Relating to Woman and Children* (Eastern Book Company, Lucknow, 2012).

The author has further remarked upon increasing rate of dowry deaths. She has thoroughly discussed the historical background of dowry. Moreover the study tends to analyze the reasons behind increase in dowry deaths and measures to control it.

Ranjana Sheel in her article ―Institutionalization and Expansion of Dowry System in Colonal North Inda[6] has thrived to depict that how growing „Brahmanisation‟ of the society has affected the various forms of the marriage and what is its role in arousal and spreading of practice of dowry. She has explained the eight forms of marriage and origin and evolution of dowry system in these various forms. The various forms of the marriage had a strong impact on origin and growth of dowry system in the ancient Inda.

H. A. Rose, in his article, ―The Development of Bride-Price and of Dowry [7] has compared the code of Hammurabi and the code of Manu in context to the customs of dowry and bride-price. The author has remarked that the code of Hammurabi has not permitted a father to sell his daughter however he was permitted to give her in concubinage with or without dowry. It has considered marriage as contract and no marriage was valid without dowry. The custom of dowry was firmly established but it was not clear that whether it was secured by the contract or not. There were some more rules regarding the entitlement of dowry likewise; on a divorce for misconduct of wife, the husband was entitled to keep the dowry with him. However, if the wife was divorced for infertility, she had complete right over her dowry. The code of Manu also prohibits the selling of daughters. It has not even allowed the concubinage of daughter. Dowry was considered to be a part of a woman‟s „Stridhan‟ and she had full entitlement over the same.

Stephanie Dalley in his Article, ―Old Babylonan Dowries‖[8] ave described the age old Hammurabi‟s Code of Laws related to dowry, prevailing in Babylon. The custom of dowry was well accepted in the law code of Hammurabi. But it was well ensured that the dowry brought by a woman from her father‟s house must not be dishonestly snatched or misapproprated by her husband and in laws. On the failure of marriage, she was well entitled to take back the dowry and use it for her subsequent marriage. On the death of her husband, her in-laws were bound to return each and every article of dowry to her in the same condition as it was brought by her at the time of her marriage. If she died, the right of inheriting her dowry persisted with her sons, father or her parental family and

[6] Ranjana Sheel, ―Institutionalisation and Expansion of Dowry System in Colonal North Inda‖ 32 *EPW* 1709-1718, *available at*: http://www.jstor.org/stable/4405621 (Visited on July 22, 2017).

[7] H. A. Rose, ―The Development of Bride-Price and of Dowry‖ 36 *FOLKLORE* 189-193 (1925)*available at:* http://www.jstor.org/stable/1256331

[8] Stephanie Dalley in his Article, ―Old Babylonan Dowries

not with her husband.

1.6. Methodology of the study

The methodology adopted by and large is Doctrinal Method based on the theoretical investigation to find the answers to the questions posed in the research problem and to verify the hypotheses formulated. The data collected through doctrinal research methodology, it is forming both primary as well as secondary sources. For the completion of this study, the Researcher has tried to analyze the topic by studying various Acts of Parlament and State Legislatures, Case Laws, Books, Law Reports, Journals, Articles, Newspapers, Web references etc. The Researcher has organized the study around the formulated propositions. The Researcher while carrying out the research has relied on secondary sources. Thus Researcher has adopted a uniform mode of citation. The data consists of provisions provided by National Statutes and International Conventions on Human Rights etc., the Constitution, case laws and it includes a critical analysis of the Statutory Provisions, Law Commission of Inda Reports and the provisions of Criminal Procedure Code, 1973. The secondary data contains various research papers, text books, articles by eminent professionals, print as well as electronic meda and from internet source etc., A necessary part of study is the study of global position with respect to criminal justice which has provided the scope for making the study comparative and analytical. The research has also been performed by descriptive method to form a sound base for the further application of the analysis of research. The method has been used to describe the present state of affairs and the different Laws, and their nature, with the main focus being on the Criminal Law dealing with the subject matter of the research. The analytical approach has been followed to make a critical evaluation of the findings of the above stated method. The improvisations and suggestions have been made by this technique. The Researcher has attempted to conduct the research through analysis of secondary sources of data and the study is exploratory as well as explanatory in nature. Thus the present study is mainly analytical and comparative.

1.7. Scope and limitations

This study of "Victim Compensation Under Criminal Justice System – Constitutional And Legal Perspectives" is presented in seven chapters. These chapters are framed in accordance with the research objectives. Thus, the present research work is confined to the compensation to victims of crime with reference to the provisions as to Code of Criminal Procedure 1973 and other Specal Criminal Acts.

CHAPTER – II

DOWRY UNDER DOWRY PROHIBITION ACT

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DOWRY UNDER DOWRY PROHIBITION ACT

2.1. Historical Background

An approved marriage among Hindu has always been considered a kanyadan[9] be it a marriage in any form. According to the Dharmashastra, the meritorious act of kanyadan is not complete till the bridegroom was given a dakshina . In the Brahma form of marriage, this twin aspect of the meritorious act of kanyadan and varadakshina found expression in the enjoinment after decking his daughter with costly garments and ornaments and honoring her with presents of jewels, the father should gift the daughter to expression in the enjoinment after decking his daughter with costly garments and ornaments and honoring her with presents of jewels, the father should gift the daughter to a bridegroom whom he himself has invited and who is learned in Vedas a nd of good conduct. (Manu) (The detailed qualifications and qualities and of the bridegroom were laid down). There are no two opinions that whatever presents were given to the daughter on the occasion of marriage by her parents, relations or friends consti tuted her stridhan. Since varadakshina included ornaments and clothes and cash, one opinion was that this also constituted the property of the bride, i.e., stridhan. It was submitted that, that is an unnecessary twist. In fact, the varadakshina was a present to the bridegroom and obviously it constituted his property. It need not be doubted that then the varadakshina was given out of love and affection and with the feeling of honouring the groom, though its quantum obviously varied in accordance with the financal position of the father of the bride. It was given voluntarily and no compulsion was exercised. It should also be clear that presents given to the bride by way of ornaments, clothes and other articles as well as cash from the side of her father an d husband constituted her stridhan. They were given to the bride by way of love and affection. These were probably meant to provide her with a sort of financal security in adverse circumstances. These two aspects of Hindu marriage, gifts to bride and bridegrooms got entangled and later on assumed the frightening name of dowry for the

[9] A.S. Gupta An approved marriage among Hindu has always been considered a *kanyadan*.

obtaining of which compulsion, coercion, and, occasionally, force began to be exercised, and ultimately most marriages became a bargain.

In course of time, dowry became a widespread evil, and it has now assumed menacing proportions. Surprisingly, it has spread to other communities, which were traditionally non - dowry taking communities. Cases have come to public notice where brides, on account of their failure to bring the pro mised or expected dowry have been beaten up, kept without food for days together, locked up in dingy rooms, tortured physically and mentally, strangulated or burnt alive or been forced to commit suicide. With a view to eradicating the rampant socal evil o f dowry from the Indian society, Parlament, in 1961, passed the Dowry Prohibition Act which applies not merely to Hindus but all people, Muslims, Christans, Parsis and Jews.

But the act did not prove effective, and the evil of dowry continued to reign supreme. Several Indian states amended the Dowry Prohibition Act, 1961 with a view to give it teeth, 5 but to no avail. These did not succeed in curbing, much less eradicating, the dowry menace. The Joint Parlamentary Committee on dowry in its report of 1982 has opined that for the failure of the dowry prohibition law, there are two reasons: first, the explanation to Section 2 of the Act excludes all presents (whether given in cash or kind) from the definition of dowry, unless the same were given in consideration of marriage, and it is almost impossible to prove that gifts or presents given at, before, or after the marriage were given in consideration of marriage. The main reason is that no giver of the present will ever come forward to say that he gave the se in consideration of documentary evidence. Suit properties had been for both agricultural purpose and for running a cinema theatre. She should have pre-existing right in property and, as such, after coming into force of the Hindu Succession Act, she would become full or absolute owner of that property .

After the widow becomes the absolute owner, subsequent remarriage would not divest her.

2.2. Dowry and Wedding Presents

The wedding presents by parents, relatives, friends and close acquittances at or about the time of marriage do not come in the definition of dowry, unless there were demanded or agreed to be given in connection with the marriage. Voluntary and affectionate presents are not caught in the definition of dowry and giving and taking them do not constitute dowry offence. The Joint Committee also recommended that it is

neither desirable to put a complete ban on these presents nor does it seem reasonable to prescribe a standard ceiling thereon for different sections of the society for the reasons that it would be neither possible to implement it nor would it be acceptable to the society.

2.3. Application of Dowry Prohibition Act to all communities

The evil of dowry may be rampant among Hindus, but it does not mean that it does not exist among others. The Joint Committee of both the Houses of Parliament has observed : "It is equally prevalent among the Muslims and Christians. Among the Muslims in many parts, there is a custom of giving cash to the bridegroom (popularly known as salami).

CHAPTER – III

DOWRY RELATED DEATH UNDER INDIAN PENAL CODE

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DOWRY RELATED DEATH UNDER INDIAN PENAL CODE

A. General Introduction

Marriages are made in heaven, is an adage. A bride leaves the parental home for the matrimonial home, leaving behind sweet memories there, with a hope that she will see a new world full of love in her groom' s house. Alas! The alarming rise in the number of cases involving harassment of the newly wedded girls for dowry shatters the dreams. In -laws are characterised to be outlaws for perpetrating terrorism which destroys the matrimonial home. The terrorist is dowry which is spreading tentacles in every possible direction.

Mothers-in-law, sisters- in-law, husbands and other relatives are being increasingly involved in the breaking of the wedlock for the lust of dowry. Dowry death, murder, suicide, and bride burning are symptoms of peculiar social malady and are an unfortunate development of our social set up. During the last few decades India has witnessed the b lack evils of the dowry death system in a more acute form in almost all parts of the country since it is practised by almost every section of the society. It is almost a matter of day-to- day occurrence that not only married women are harassed, humiliated, beaten and forced to commit suicide, leave husband, etc., tortured and ill treated but thousands are even burnt to death because parents are unable to meet the dowry demands of in-laws or their husbands. [10]

A study of dowry gives rise to certain questions, one being, is the unfulfilled demand for dowry the only reason for dowry-related violence and death. Dowry violence against a woman may be seen as viewing her as an individual found wanting in some respect. Dowry dispute is used as a garb to undermine the value of the woman herself, of taunting her for the sake of troubling her and showing her inferior place. Kanwaljit Deol, a Police Commissioner who headed the first ever Anti - Dowry Cell and Madhu Kishwar the editor of a popular Indian feminist magazine Manushi, both

[10] Times of India, May 20, 2000.

closely involved with the fight against dowry have each pointed out that the abuse of women over dowry was inexorably linked with the wider issue of marital violence and the general mistreatment of women and not dowry per se. Madhu Kishwar phrases this issue well when she states that criticizing the dowry, like c riticizing her family, is a way of criticizing her, and the package deal that she represents.[11]Thus to some extent it can be held that dowry is only one among many pretexts used by in-laws to legitimize abuse against the woman and her position as such. To lay the sole blame for all harassment and deaths of Indian women at the door of dowry alone would be to run rough shod over a very complex and deep - rooted social malady.

Dowry has been continuing trend in Indian society as we find its mention even in the roots of our history. Rulers in ancient times made this system rampant. Dowry was seen as a status symbol and a prestige issue in those times. The trend continues even today.

The system of dowry is becoming uglier day by day. The parents of a girl have to pay a heavy price in the name of dowry to the parents of the bridegroom, it they want to see their daughters in comfortable position in the family of their in -laws. Exorbitant amount in the form of cash and luxury items are demanded and have to be paid by the bride's parents even if they are unable to afford it. So, the marriage of a daughter means complete financial ruin for her parents.

It has been observed by Shah, J.[12], Daily, the demon of dowry is devouring the lives of young girls, who marry with high hopes of having heavenly abode in their husband's house. In a few cases, the guilty are punished but it has no deterrent effect on mother-in-law or sister-in- law who might have suffered similar cruelty/ tyranny. This deep - rooted social evil requires to be controlled only by the society. The society has to find out ways and means of controlling and combating this menace of receipt and payment of dowry. It appears that instead of controlling payment and receipt of dowry in one or the other form, it is increasing even in the educated class. May be that it is increasing because of accumulation of unaccounted wealth with a few and others having less means follow the same out of compulsion.

[11] Kishwar, M. (1988), "Rethinking dowry boycotts." In: No. 48 (Sep.- Oct. 1988),Manushi, p. 10-13.

[12] Vikas v. State of Rajasthan (2002) 6 SCC 728.

The problem is that even after the payment of heavy dowry there is no guarantee that the bride will enjoy a comfortable life in her new family. Additional demands are constantly made and if they are not met by the parents of the bride, she is subject to physical and mental torture by her in -law. Her life becomes miserable. Greed and violence snatch the pleasure of her life.

The custom of dowry started with the giving of presents to the young woman entering upon marriage by her immediate family members and relatives as an expression of love and affection. It was given voluntarily and no compulsion was exercised. But today dowry has become a monstrous evil. When a budding young girl gets married, she is uprooted from her sweet home and transplanted in her husband's house. There, she lives in real hell amidst the jeering, harassment and physical violence from her in-laws in connection with dowry. Here, her ambition turns ambiguous, budding desires turns fading petal, blooming life turns drooping leaves, soaring dreams turn drowning reality.

We come across the reports regarding do wry deaths, mentioned in the newspapers daily. An accurate picture is difficult to obtain, as statistics are varied and contradictory. In 1995, the National Crime Bureau of the Government of Inda 13 reported about 6,000 dowry deaths every year. In 2007 dowry deaths under Section 304B of IPC have been reported total of 8093 by National Crime Record Bureau, New Delhi14. A more recent police report stated that dowry deaths had risen by 170 percent in the decade to 1997. All of these official figures are considered to be gross understatements of the real situation. Unofficial estimates cited in a 1999 article by Himendra Thakur “Are our sisters and daughters for sale?” put the number of deaths at 25,000 women a year, with many more left maimed and scarred as a result of attempts on their lives. 15

Some of the reasons for the under-reporting are obvious. As in other countries, women are reluctant to report threats and abuse to the police for fear of retaliation against themselves and their families. But in India there is an added disincentive. Any

[13] National Crime Record Bureau, New Delhi.

[14] Ibid., p.

[15] http://www.wsws.org/articles/2001/jul2001/ind-j04.shtml

attempt to seek police involvement in disputes over dowry transactions may result in members of the woman's own family being subject to criminal proceedings and potentially imprisoned. Moreover, police action is unlik ely to stop the demands for dowry payments. [16]

The anti-dowry laws in India were enacted in 1961 but both parties to the dowry—the families of the husband and wife—are criminalised. The laws themselves have done nothing to halt dowry transactions and the vio lence that is often associated with them. Police and the courts are notorious for turning a blind eye to cases of violence against women and dowry associated deaths. It was not until 1983 that domestic violence became punishable by law.

Many of the victims are burnt to death—they are doused in kerosene and set on fire. Routinely the in-laws claim that what happened was simply an accident. The kerosene stoves used in many poorer households are dangerous. When evidence of foul play is too obvious to ignore, the story changes to suicide—the wife, it is said, could not adjust to new family life and subsequently killed herself.

Research done in the late 1990s[17], revealed that many deaths are quickly written off by police. The police record of interview with the dying woman—often taken with her husband and relatives present—is often the sole consideration in determining whether an investigation should proceed or not. As Vimochana 6 (a) was able to demonstrate, what a victim will say in a state of shock and under threat from her husband's relatives will often change markedly in later interviews.

Of the 1,133 cases of "unnatural deaths" of women in Bangalore in 1997, only 157 were treated as murder while 546 were categorised as "suicides" and 430 as "accidents". But as Vimochana activist V. Gowramma explained: "We found that of 550 cases reported between January and September 1997, 71 percent were closed as ' kitchen/ cooking accidents' and 'stove - bursts' after investigations under section 174 of the Code of Criminal Procedures." The fact that a large proportion of the victims were daughters-in-law was either ignored or treated as a coincidence by police.

[16] Ibid.

[17] Vimochana, A Women's Group in the Southern City of Bangalore.

Figures in Frontline indicate what can be expected in court, even in cases where murder charges are laid[18]. In August 1998, there were 1,600 cases pending in the only special court in Bangalore dealing with allegations of violence against women. In the same year three new courts were set up to deal with the large backlog but cases were still expected to take six to seven yea rs to complete. Prosecution rates are low. The results of one court are reported as "Of the 730 cases pending in his court at the end of 1998, 58 resulted in acquittals and only 11 in convictions. At the end of June 1999, out of 381 cases pending, 51 resul ted in acquittals and only eight in convictions." [19]

Young married women are particularly vulnerable. By custom they go to live in the house of their husband' s family following the wedding. The marriage is frequently arranged, often in response to advertisements in newspapers. Issues of status, caste and religion may come into the decision, but money is nevertheless central to the transactions between the families of the bride and groom.

The wife is often seen as a servant, or if she works, a source of income, but has no special relationship with the members of her new household and therefore no base or support. Some 40 percent of women are married before the legal age of 18. Illiteracy among women is high, in some rural areas up to 63 percent. As a result they are isolated and often in no position to assert themselves.[20]

Demands for dowry can go on for years. Religious ceremonies and the birth of children often become the occasions for further requests for money or goods. The inability of the bride's family to comply with these demands often leads to the daughter- in-law being treated as a pariah and subject to abuse. In the worst cases, wives are simply killed to make way for a new financial transaction—that is, another marriage.

A recent survey of 10,000 Indian women conducted by India's Health Ministry found that more than half of those interviewed considered violence to be a normal part of married life—the most common cause being the failure to perform domestic duties up to the expectations of their husband's f amily.

[18] Ibid.

[19] Frontline Volume 16 - Issue 17, Aug 14 - 27, 1999.

[20] Ibid.

The underlying causes for violence connected to dowry are undoubtedly complex. While the dowry has roots in traditional Indian society, the reasons for prevalence of dowry - associated deaths have comparatively recent origins.

Traditionally a dowry entitled a woman to be a full member of the husband's family and allowed her to enter the marital home with her own wealth. It was seen as a substitute for inheritance, offering some security to the wife. But under the pressures of cash economy introduced under British colonial rule, the dowry like many of the structures of pre -capitalist India was profoundly transformed.

Historian Veena Oldenburg in an essay entitled "Dowry Murders in India: A Preliminary Examination of the Historical Evidence" commented that the old customs of dowry had been perverted "from a strongly spun safety net twist into a deadly noose". Under the burden of heavy land taxes, peasant families were inevitably compelled to find cash where they could or lose their land. As a result the dowry increasingly came to be seen as a vital source of income for the husband' s family.

Oldenburg explains: "The will to obtain large dowries from the family of daughters-in-law, to demand more in cash, gold and other liquid assets, becomes vivid after lea fing through pages of official reports that dutifully record the effects of indebtedness, foreclosures, barren plots and cattle dying for lack of fodder. The voluntary aspects of dowry, its meaning as a mark
of love for the daughter, gradually evaporates. Dowry becomes dreaded payments on demand that accompany and follow the marriage of a daughter."

What Oldenburg explains about the impact of money relations on dowry is underscored by the fact that dowry did not wither away in India in the 20th century but took on new forms. Dowry and dowry-related violence is not confined to rural areas
or to the poor, or even just to adherents of the Hindu religion. Under the impact of capitalism, the old custom has been transformed into a vital source of income for famil ies desperate to meet pressing social needs.

A number of studies have shown that the lower ranks of the middle class are particularly prone. According to the Institute of Development and Communication, "The quantum of dowry exchange may still be greater among the middle classes, but

85 percent of dowry death and 80 percent of dowry harassment occurs in the middle and lower stratas." Statistics produced by Vimochana in Bangalore show that 90 percent of the cases of dowry violence involve women from poorer fa milies, who are unable to meet dowry demands.

There is a definite market in India for brides and grooms. Newspapers are filled with pages of women seeking husbands and men advertising their eligibility and social prowess, usually using their caste as a bargaining chip. A "good" marriage is often seen by the wife' s family as a means to advance up the social ladder. But the catch is that there is a price to be paid in the form of a dowry. If for any reason that dowry arrangements cannot be met then it is the young woman who suffers.

One critic, Annuppa Caleekal, commented on the rising levels of dowry, particularly during the last decade. "The price of the Indian groom astronomically increased and was based on his qualifications, profession and income. Doctors , charted accountants and engineers even prior to graduation develop the divine right to expect a ' fat' dowry as they become the most sought after cream of the graduating and educated dowry league."

The other side of the dowry equation is that daughters ar e inevitably regarded as an unwelcome burden, compounding the already oppressed position of women in Indian society. There is a high incidence of gender- based abortions—almost two million female babies a year. One article noted the particularly crass billboard advertisements in Bombay encouraging pregnant women to spend 500 rupees on a gender test to "save" a potential 50,000 rupees on dowry in the future. According to the UN Population Fund report for the year 2000, female infanticide has also increased dramatically over the past decade and infant mortality rates are 40 percent higher for girl babies than boys.

Critics of the dowry system point to the fact that the situation has worsened in the 1990s. As the Indian economy has been opened up for international investment, the gulf between rich and poor widened and so did the economic uncertainty facing the majority of people including the relatively well - off. It was a recipe for sharp tensions that have led to the worsening of a number of social problems.

One commentator Zenia Wadhwani noted: "At a time when India is enjoying

unprecedented economic advances and boasts the world' s fastest growing middle class, the country is also experiencing a dramatic escalation in reported dowry deaths and bride burnings. Hindu tradition has been transformed as a means to escaping poverty, augmenting one' s wealth or acquiring the modern conveniences that are now advertised daily on television." [21]

Domestic violence against women is certainly not isolated to India. The official rate of domestic violence is significantly lower than in the US, for example, where, according to UN statistics, a woman is battered somewhere in the country on average once every 15 seconds. In all countries this violence is bound up with a mixture of cultural backwardness that relegates women to an inferior status combined with the tensions produced by the pressures growing economic uncertainty and want.

In India, however, where capitalism has fashioned out of the traditions of dowry a particularly naked nexus between marriage and money, and where the stresses of everyday life are being heightened by widening social polarisation, the violence takes correspondingly brutal and grotesque forms .

Incorporation of Section 304B and 498A in the Indian Penal Code

Section 304B

In view of the increasing dowry deaths and the demand of the society to check such inhuman acts being meted out upon women, in 1986 a new offence known as "Dowry Death" was inserted in the Indian Penal Code as Secti on 304B by the Dowry Prohibition (Amendment) Act, 1986 with effect from November 19, 1986. The provisions under Section 304B, Indian Penal Code are more stringent than that provided under Section 498 A of the Penal Code. The offence is cognizable, non - bailable and triable by a court of Session. In view of the nature of the dowry offences that are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence necessary for conviction is not easy to get. Accordingly, the Amendment Act 43 of 1986 has inserted Section 113 B in the

[21] http://www.wsws.org/articles/2001/jul2001/ind-j04.shtml

Evidence Act, 1872 to strengthen the prosecution hands by permitting a certain presumption to be raised if certain fundamental facts are established and the unfortunate incident of death has taken place "within seven years of marriage".

Perhaps, the period of seven years, has been considered cut off period for the reason that a marriage is complete after the bride and bride-groom have taken seven steps before the sacred nuptial fire. One step being considered equivalent to one year. The period of seven years has also been fixed for bigamy under Section 494, IPC to exonerate the husband or wife for marrying again during the lifetime of such husband or wife, if at the time of the subsequent marriage the other party is continuously absent from such person. [22]Therefore, the period of seven years, as explained by the Supreme Court in Iqbal Singh[23], is considered to be turbulent one after which the legislature assumed that the couple would have settled down in li fe. Section 113B of the Evidence Act 24states that if it is shown that soon before the death of a woman such woman has been subjected to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person has caused the dowry death under Section 304B, IPC. The burden of proof of innocence accordingly shifts on defence.

Section 498A

In 1983, to check cruelty to women by husbands and parents- in-law, rampant in an unprecedented scale in the country, a new Chapter, XXA, entitled : ' Of cruelty by Husband or Relatives of Husband' [25] was added in the Penal Code. In addition, a consequential amendment to the Evidence Act was also made, shifting the burden of proof of innocence on the part of the accused as against prosecution in the case of abetment of suicide by a married woman and a wife's death within a period of seven years of marriage – Sections 113A and 113B of Evidence Act, 1872. [26]

An idea about the gravity of the problem can be had from the large number of reported cases of cruelty and torture by the National Record Bureau during 1997 the

[22] Tolson v. Tolson, (1880) 23 QBD 168.

[23] AIR 1961 SC 1532, 1537; Shanti v. State of Haryana, AIR 1991 SC 1532.

[24] The Evidence Act, 1872, Section 113B Presumption as to Dowry Death. Inserted byAct 43 of 1986 Sec. 12 (w.e.f. 5.1.1986).

[25] Inserted by Act 46 of 1983, Section 2.

[26] Inserted by the Criminal Law (Second Amendment) Act, 1983, Sec. 5 vide Cr. P.C., 1973, Section 198A, a court can take cognizance of the offence upon police report or upon a complaint by party or women's parents, brother, sister, etc. The offence is non-bailable. 113A and 113B of Evidence Act, 1872 have shifted the burden of proof on the accused.

number was 36592, in 1998 - 41376 and 1999 – 43823, in 2007 - 75930 respectively that demonstrate an increase of 5.9 per cent. [27]The object of this chapter is to punish a husband and his relatives who torture and harass the wife with a view to coerce her or any person related to her to meet any unlawful demands or to drive her to commit suicide. To make the offence more deterrent, Section 498A prescribes a sentence of three years and also fine for the husband or the relatives of the husband of a woman who subject her to cruelty.[28]

The recent availability of such data has now enabled researchers to examine some of its implications for women. The study scrutinizes official data provide by the National Crime Record Bureau (NCRB). Some startling facts emerge from the analysis of data.

The Analysis of data pertaining to State of Haryana regarding cruelty against women during the year 2003 -06. It shows that the crime u/s 498-A, IPC reported in all India as well as in the state of Haryana during 2003 - 2006. It is observes that the crime u/ s 498 -A, IPC i.e. Cruelty Against of women by husband and relatives of the husband reported an increase of in the state of Haryana from 3 .19–3.48–3.55–3.57 respectively from the year 2003 - 06 as compared in respect of percentage to all India registered cases u/ s 498 - A, IPC from year 2003 - 06. The available data indicates an increasing trends during the last Four years i.e. 2003 - 06 in state of Haryana.

Further, if we analyze the percentage of crime u/ s 498 - A, IPC in proportion to the total IPC crime committed under IPC in India and in the state of Haryana during 2006. Then the percentage of crime committed u/s 498 - A, IPC in the state of Haryana is more then the average percentage of all India.

[27] Crime in India – 1999, Crime Record Bureau, Govt. of India, p. 202.
[28] L.V. Jadhav v. Shankarrao Abasaheb Pawar, (1983) Cr LJ 1501 : AIR 1983 SC 1219.

CHAPTER-IV

RELEVANT PROVISIONS OF CODE OF CRIMINAL PROCEDURE AS APPLICABLE TO DOWRY RELATED DEATHS

CHAPTER-IV

RELEVANT PROVISIONS OF CODE OF CRIMINAL PROCEDURE AS APPLICABLE TO DOWRY RELATED DEATHS

A. Introduction

Section 304 - B Indian Penal Code is a new substantive offence added to the offences against woman. It is settled law that substantive law has no value unless it is regulated by a fair and proper procedure. Criminal law deals both with preventive and procedural law. The code not only contains the provisions as to how trial shall be held but at the same time it contains the provisions as to how the investigation and arrest of the accused shall be conducted. Through it may be argued the introduction of new offence dowry related death punishable under section 304 - B, Indian Penal Code, is violative of the rights of the accused being ultra vires the constitution particularly article 20(1) of the Constitution prescribing the rule of double jeopardy but in view of the increasing rates of death of brides for lust of dowry this section was all necessary and the Parliament has rightly enacted this specific substantive offence (304B IPC) and made part of the Penal Code. This amendment introducing section 304B in the Indian Penal Code, necessitated the amendment in the Criminal Procedural Code, therefore, it was amended to secure mandatory post- mortem examination of a bride if she dies within seven years of her marriage otherwise presumption can safely be drawn against the husband and other relatives of husband. However, discussion will be carried out wherever relevant for seeking aid under the offence of dowry related death and dowry related .

B. Amendments Introduced in the Code relating to relevant law

Not only by Act of 1983,498A created a new offence in the Indian Penal Code, Section 174, Criminal Procedure Code was also amended by the same Act (Section 3) to secure post- mortem in case of suicide or death of a woman within seven years of the

marriage. Keeping in view the legislation has also amended and inserted sections 113 - A and 113 - B in Indian Evidence Act for raising the presumption of dowry suicidal death and dowry related death.

C. Investigation in Dowry related cases

Section 154 Cr. P.C. speaks of an information relating to the commission of a cognizable offence to an officer -in-charge of a police stations. After the information is reduced into writing the officer-in-charge of a police station may, without the order of a Magistrate Investigate any cognizable offence under section 156 Cr. P.C. Any magistrate empowered under section 190 Cr. P.C. may also order such an investigation as above mentioned. The officer-in-charge after receiving information of a cognizable offence shall proceed in person or shall depute one of his subordinate officers not being below such rank as the State Govt. may, by general or special order prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and if necessary to take measures for the discovery and arrest of the offender. Under section 161 of Cr. P.C. any police officer making an investigation may examine orally and person supposed to be acquainted with the facts and circumstances of the case. it was held in Mohd. Jainal Aladin v. State of Assam [29] that the investigating officer has to perform his duties with the sole object of investigating the allegations and in the course of the investigation he has to take into consideration the relevant material whether against or in favour of the accused.

It is the duty of the investigating officer to record the version given by the opposite party i.e. complaint and also to proceed with the investigation on the case on the basis of version and cross version. Investigation does not mean to prosecute the accused person by any means. It is the duty of the investigating officer to verify the statement or disclosure of any relevant materials to arrive at a conclusion that the witnesses are telling nothing but truth. Further, it was held that when in regard to the same incident, there are two versions one of the complaint party and other by the opposite party, the police hav e to record the statements of both the parties and on the basis of the material collected by them have to come to the conclusion which party has to be challaned.

[29] *Moh. Jainal Abedin Vs. State of Assam*, (1997) 2 Crimes 660 (Gau).

Further, in the case of Mohd. Jainal Aladin v. State of Assam ,[30] it was held that investigating officer has to perform his duties with the sole object of investigating the allegations and in the course of investigation he has to take into consideration the material whether against or in favour of the accused.

The observations made above are relevant so far as the investigation in dowry- death and dowry related cases in concerned as many times accused responsible for the death of the bride and attempt, to present a twisted version by concealing the true facts and try to convert the case of unnatu ral death to a natural death. Therefore, investigation in such like cases assumes great importance as the fate of many person depends on the mode of investigation.

(a) Further investigation (S. 173(8) Cr. P.C.

In case of K. Uma Maheshwari v. Addl. Director General of Police[31], it was held that express power is provided to police officers-in- charge of police station, in section 173(8) to further investigate matter when fresh facts came to light. Further investigation contemplated under section 173(8) on f resh facts by officer-in- charge of police station after taking cognizance by Magistrate on basis of investigation report does not amount to reinvestigation but it is continuation of earlier investigation. Investigation officer in such cases can file supple mentary challan (Police Report).

In case of Shaji Vs. State of Kerala [32] it was observed that police submitted report under section 173(2) Cr. P.C. Magistrate took cognizance. Magistrate is competent to order further investigation and taking cognizance of offence on the basis of police report filed under section 173(2).

(b) Examination of witnesses by police (S. 161 Cr. P.C.)

Section 161 Cr. P.C. authorizes the investigating officer to record the statement of witnesses during the course of investigation. Police officers being interested in the success of their case many times record the statements of witnesses sometimes without even informing the persons to whom these statements relate to. Sometimes the investigating officers fail to mention the important causes relating to the facts of the case or sometimes due to inefficiency and because of biased attitude or extraneous

[30] *Moh. Jainal Abedin Vs. State of Assam,* (1997) 2 Crimes 660 (Gau)

[31] *K. Uma Maheshwari Vs. Addl. Director General of Police.* CID 1(2003) DMC 348.

[32] *Shaji Vs. State of Kerala*, 2003 (4) RCR (Criminal) 66 (Kerala) (D.B.)

reasons they intentionally conceal the material facts and do not record them in the statements of witness though actually brought to their notice by these witnesses. Therefore, the courts instead of giving credibility to these statements mostly rely upon the statements of witnesses what they actually depose on oath before the Court. This section runs as under: -

- Any police officer making an investigation under this chapter, or any police officer not below such rank as the State government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.
- Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.
- The police officer may reduce into writing any statement made to him the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

[Provided that statement made under this sub - section may also be recorded by audio-video electronic means.] [33]

(c) Arrest of Accused in Dowry related death and dowry related cases.

Under Section 41 Cr. P.C. any police officer may wit hout an order from a Magistrate and without a warrant, arrest any person --

Who commits, in the presence of a police officer, a cognizable offence;34

against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offece punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if following condition are satisfied, namely :-

The police officer has reason to believe on the basis of complaint, information, or

[33] Inserted by Act 5 of 2009, Section 12 (w.e.f. 31-12-2009).

[34] Subs. by Act 5 of 2009, Section 5.

suspicion that such person has committed the said offence;

The police officer is satisfied that such arrest is necessary-

- to prevent such person from committing any further offence; or

for proper investigation of the offence; or

- to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or
- to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or
- as unless such person is arrested, his presence in the Court whenever required cannot be ensured and the police officer shall record while making such arrest, his reasons in writing.

[Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub - section, record the reason in writing for not making the arrest .[35]

Though all the offences related to dowry and dowry death (as per Schedule 1 of the Code of Criminal Procedure) such as 498A, 405, 406, 302, 304 - B, 306 and 307 Indian Penal Code etc. are cognizable and non bailable and any person involved in these offences can be arrested without a warrant.

However, as required by section 8 of the Dowry Prohibition Act, arrest of the persons for the offence provided by the Dowry Prohibition Act can only be made under section 42 Cr. P.C. and the requirement therein is t hat such arrest cannot be made except with a warrant or an order of Magistrate. Section 8 of the Dowry Prohibition Act, 1961, runs as under: -

(d) **Sec. 8 : Offences to be cognizable for certain purposes and to be nonbailable and non- compoundable –**

The code of Criminal Procedure, 1973 (2 of 1947) shall apply to offences under this Act as if they were cognizable offences- for the purpose of investigation such offences; and

[35] Inserted by Code of Criminal Procedure (Amendment) Act, 2010

for the purpose of matters other than-

- matters referred to in section 42, of that code; and
- the arrest of a person without a warrant or without an order of magistrate.
- Every offence under this Act shall be nonbailable and non - compoundable.
- Section 2(c) of the Code of Criminal Procedure, 1973, defines "Cognizable" means an offence for which and cognizable case means a case in which, a police officer may, in accordance with First Schedule, or under any law for the time being in force arrest without a warrant.

If the offence is cognizable, the police can arres t a person alleged to have committed the offence without any warrant. However, the person who is alleged to have been involved in a dowry offence punishable under the Dowry Prohibition Act can be arrested only when a Magistrate has ordered for his arrest. The purpose of this provision is obvious. It has been seen that when a dowry offence takes place, the people from one side want to implicate every member of in-laws of the bride against whom offence is alleged to have been committed.

D. Anticipatory Bail

(a) Anticipatory bail **(S. 438 Cr. P.C.)**

Section 438 Cr. P.C. authorizes the High Court or the Court Session to grant bail to accused on certain conditions, if they are able to convince the Court about their false accusation and their apprehension of arrest in any cognizable offences. After registration a case under cognizable offence the police sometimes tries to act as ultimate master by apprehending any person and subject him to humiliation and harassment in the police station etc. This section provides a remedy against the hostile attitude of the police at the instance of some powerful persons or for some other extraneous reasons to involve respectable persons falsely. But the courts only grant anticipatory bail when it is fully convinced that no pri ma facie case is made out from the material collected during investigation by the police or if it appears from the face of what is produced before the court at the time of presentation of application for anticipatory bail that the

accused have been roped i n falsely.

(b) S. 438 – Direction for grant of bail to person apprehending arrest-[36]

(1) Where any person has reason to believe that he may be arrested on an accusation of having committed a non- bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

the nature and gravity of the accusation;

(i) the antecedents of the applicant including the fact as to whether he has previously undergo imprisonment on conviction by a court in respect of any cognizable offence;

(ii) the possibility of applicant to flee from justice; and

where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail.

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub- section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in -charge of the police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(1A) Where the court grants an interim order under sub - section(1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing the final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence

[36] Sub Section (1) substituted by the Cr. P.C (Amendment) Act, 2005

necessary in the interest of justice.

When the High Court or the Court or the Court of Session makes a direction under sub section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including:-

- a condition that the person shall make himself available for interrogation by a police officer as and when required;

- a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

- a condition that the person shall not leave India without the previous permission of the court; such other conditions as may be imposed under sub section (3) of the section 47, as if the bail were granted under that section.

If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrants in conformity with the direction of the court under sub section (1).

(c) Anticipatory bail not to be allowed in dowry related death cases;

In recent case of **Manoj Aggarwal** *v.* **State of Chhattisgarh** [37] Hon'ble Chhattisgarh High Court while observing the facts of the case held that the plea that the court has no power to grant anticipatory bail in case punishment with death or imprisonment for life viz. an offence under section 304B of Penal Code cannot be accepted. The power can be exercised by a court in a given case where there is reasonable apprehension that a person is likely to be arrested in connection with

[37] *Manoj Aggarwal Vs. State Chhattisgarh*, 2003 Cr. L.J. – 3519.

nonbailable offence the real test is not an accusation under a particular provision or section, but whether in the opinion of the court, 'it is a case' for exercise of powers under section 438 of Cr. P.C. Thus, what is required to be seen is not the ' Section' under which a particular person is charged but the facts and circumstances involved in the case.

In the present case under section 304B Penal Code, considering the fact that immediately after the unfo rtunate incident all the relatives of the deceased had given signed statements that there was neither any settlement of dowry nor any demand made nor had the deceased wife ever complained about any ill- treatment or torture, the High Court granted anticipatory bail for a limited period. It was further directed that within a period of 30 days from the date of their arrest and release on bail pursuant to this order, the applicants shall move an application under section 439 of Cr. P.C. for grant of regular bail. If, however, they fail to make such an application within the said period of thirty days, the order of anticipatory bail shall become inoperative on the expiry of the said period of thirty days.

(d) Anticipatory bail granted to accused living separatel y from husband:

In **Jatto Bai** *v.* **State of Punjab**[38], it was observed that main accused (husband & father-in-law) were already arrested and interrogated. Thus it was held that it be not necessary to interrogate other accused (mother-in-law) and Sister-in-law) in custody and anticipatory bail was allowed to both.

In the case of **Om Parkash** *v.* **State of Haryana** [39] bail in dowry death was allowed to father, mother and brother of husband on the plea that they lived separately and had no occasion to meddle in demand of dowry. It was observed that the merits are to be adjudicated during trial of the case.

In the case of Neelam Saxena Vs. State of Haryana 40 the Hon'ble High Court granted bail to the husband's sister (sister -n- law) who is residing separately and no a llegation was attributed to her in the FIR.

[38] *Jatto Bai Vs. State of Punjab,* 2000(1) RCR (Cr.) 444 (P&H).

[39] *Om Parkash Vs. State of Haryana, 2003(1) RCR (Cr) 216 (P&H)*

[40] *Neelam Saxena Vs. State of Haryana 1(2000) DMC 33 (P&H)*

(e) Anticipatory bail allowed in case of vague allegations.

In case of Gajjo Devi Vs. State of Haryana [41] in a dowry related death case there was allegation of demand of dowry and pouring Kerosene oil against husband. Bail allowed to mother-in- law who was in custody for 11 months. There was a vague allegation of demand and beating against her.

In case of **Shyam Sunder** *v.* **State of Haryana**[42], it was observed that allegations against accused (i.e. husband' s younger brother, sister and brother's wife) of general nature. Anticipatory bail allowed to them.

There are certain conditions in which the Anticipatory bail should be allowed e.g.

- Bail to petitioners not named in the FIR – Des Raj Dang Vs. State of Pb. II (221) DMC 627 (P& H)
- Pre-arrest bail can be allowed pending final disposal of bail application – Parminder Singh Vs. State, 1 (2000) DMC 191 (Delhi).
- Bail allowed on account of suppression of important documents and case – diary – Kamla Bai Shriwas Vs. State of Chhattisgarh, II (2002) DMC 428 (Chhattisgarh).
- Delay in lodging FIR- Sukhpal Vs. State of Raj., II(2000) DMC 575 (Raj.)
- No allegation against accused at the time of inquest Sushil Vs State of Chhattisgarh, I (2002) DMC 250.
- Accused initially found innocent should be granted Anticipatory bail – Dr. Subhash Kholia Vs State of Raj. I (2002) DMC 19 (Raj.)
- Filing of charge sheet is not a ground to reject anticipatory bail- Bharat Chaudhary & Anr Vs. State of Bihar & Anr, (2003) SCC (Cr.) 1953.
- Recovery of dowry articles is no ground to deny anticipatory bail – Anil Mehra Vs. State of UT Chandigarh, II(2000) DMC 235.
- Bail in complaint case after cancellation of report by police - Ajit Singh vs. state of Haryana, II (2000) DMC 95 (P& H)
- Seven days notice in writing in case of non- registration of FIR- Prem Wati Vs.

[41] *Gajjo Devi Vs. State of Haryana 2002(4) RCR (Cr.) 579 (P&H)*

[42] *Shyam Sunder Vs. State of Haryana, 1999(3) RCR (Cr) 708 (P&H).*

State (NCT of Delhi), II(2001) DMC 701

- In certain conditions, Anticipatory bail should not be allowed e.g.
- Anticipatory bail is not to be allowed in case of issuance of nonbailable warrants – Dr. Ebenezer Vs. State of Karnataka, 2003(1) RCR 284.
- It should be rejected when investigation not yet complete- Ranjana Vs. State, I(2002) DMC 288 (Karnataka)
- Cancellation of bail on the ground that earlier statement was given under pressure – Madhukar Deorao Kulkari, I (2002) DMC 769 (Bombay)
- Grand of bail without notice is not just – UoI Vs. Yusuf Razak Khanani and Ors, 2003 SCC (Cr.) 1963.
- It is not maintainable before Sessions Court after it is rejected by High Court – Suresh Chand Vs. State of Raj. I(2002) DMC 159.
- No Anticipatory bail after arrest – Gurbaksh Singh Vs. State of Pb., 1980 SCC (Cr.) 465.

E. Regular Bail

Bail for offences relating to dowry death and dowry related offences; (Section 304B, 498 - A, 302, 306, 406, 506 IPC and 3 Dowry Prohibition Act)

Offences relating to dowry an dowry related deaths are nonbailable offences. Bail cannot be claimed as a matter of right in nonbailable offences. It depends upon the discretion of the Magistrate or the Sessions Judge to grant or not t o grant bail to persons involved in these offences. Section 437 of code of Criminal Procedure relates to bail in nonbailable offences.

F. Blanket Bail

It has been held in important case of Gurbaksh Singh v. State of Punjab 43 that if a direction is issued under section 438(1) to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever", such a direction would amount to a 'blanket order' of Anticipatory bail, an order which serves as a blanket to cover or p rotect any every king of

[43] *GUrbaksh Singh Vs, State of Punjab, AIR 1980 SCC (Cr.) 465, 488-489.*

allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which, no concrete information can possible be had Such a 'blanket order' of anticipatory bail is not contemplated by section 438 as the section re quires that the applicant must have reasonable grounds to believe that he might be arrested for having committed a non- bailable offence. Moreover, such a ' blanket order' would cause serious interference with both the right and duty of the police in the matter of investigation. Such an order would become a charter of lawlessness and a weapon to stifle prompt investigation into offence which could not possibly be predicated when the order was passé. Therefore, the Supreme Court has held that a ' blanket order' of anticipatory bail must take case to specify the offence or offences in respect of which alone the order will be effective.

Bail to Juvenile under section 439 Cr. P.C. in dowry related death

In the case of Hardip Singh v. State of Punjab [44] it was held by the Punjab & Haryana High Court that denial of bail to a juvenile can only be allowed only under exceptional circumstances. It may have been an altogether different matter if the juvenile had committed heinous crime lime rape and murder and belonged to a family with a history of criminal acts and unlawful behaviour. In such an eventuality denial of bail may have been justified but it would be totally unjustified in the present case. Further, it was observed that the question the Court should have put to itself was whether detention of a juvenile would be more detrimental to his moral, physical or psychological health as opposed to his release on bail and return to the security of his home and love to his family. The court completely misdirected itself by denying bail to the juvenile. The juvenile has already suffered incarceration in this case since April, 2001. It is true that the juvenile is being detained in Borstal Institution and Juvenile Jail but even so the grounds for denying the bail are not valid. A juvenile should be in the care and custody of his extended family and even if his parents are in custody as appears to be the case herein. Further, it was held that offence under section 304B IPC is such an offence where quite often even a comparatively meek and a mild person can get involved when the complainant casts the net wide enough to name the entire family including married sister -in-law of the deceased and unmarried siblings of the husband of the deceased, and in some cases even juvenile relatives. Therefore, it does not

appear to be a case of juvenile who will be looked down upon as a depraved person the

[44] *Hardip Singh Vs. State of Punjab,AIR 2002(1) RCR (Cr.) 401 =2002(1) CC Cases394 (P&H)= II(2002) DMC 76.*

society if released on bail.

CHAPTER – V

APPLICABILITY OF LAW OF EVIDENCE TO DOWRY RELATED DEATHS

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A. Introduction

The increase in the rate of brides' burning, be fore the year 1983, made victim to the lust of greedy in-laws was very fast. Everyday there were reports in the newspaper that one or the other bride was burnt alive or such circumstances were created by the husband and other relatives in the matrimonial home, that the bride takes the extreme step to put an end to her life. In order to meet the constant demand in and outside, the Parliament ultimately brought an amendment in the Criminal Act whereby Section 498 - A was incorporated in the Indian Penal Code whereby a new offence was created. This offence related to cruelty to a woman by the husband and other relative s. Simultaneously, by the same amendment under Section 174 of the Code of Criminal Procedure, 1973 (Section 183) (46 of 1983) it was made mandatory to secure post-mortem in case of a suicide of death of a woman within seven years of marriage. Section 498 - A was added to the Indian Penal Code which empowered the court to take cognizance of the offence punishable under Section 498 - A, Indian Penal Code, upon a complaint aggrieved by the offence, or by her father, brother, sister, etc. But these amendments hardly cut any ice and cruelty to the woman continued and this hardly improved the situatio n of the woman. The Parliament, had to amend the Criminal Law by Act No. 43 of 1986 (.w.e.f. 19.11.1986) which brought a new Section 304B describing dowry related death, a st ringent provision in the Indian Penal Code, whereby minimum punishment to the husband and other relatives responsible for dowry death was provided as seven years which may extend to imprisonment for life. But it was very difficult to give the true effect and right implementation to this new provision. The reason being that dowry offences are committed in secrecy where direct evidence was hardly available.

In view of the aforesaid amendments, the Evidence Act too was to be altered to include Section 113 - A and Section 113 - B whereby presumption was to be drawn against the persons involved in offences punishable under Section 498- A and 304B, Indian Penal Code.

B. What is Evidence ?

As per Section 3, under the column, ' Interpretation Clause' word 'Evidence' has been defined as under : -

- All statements which Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;
- All documents including electronic records produced for the inspection of the court; such documents are called documentary evidence.

What Constitute Direct Evidence and Circumstantial Evidence?

(a) Direct Evidence

Direct or positive evidence is that evidence which is about the real point in controversy. All illustration could be cited here as ' A' is tried for causing grievous hurt to B with a club. C deposes to the effect that the he saw the accused, inflicting the blow, which caused the grievous hurt. A is tried for setting fire to the house, B deposed that he saw A setting fire to the house. In other words, direct or positive evidence depends upon the

eyewitness account deposed by the persons in whose presence theactual occurrence took place.

(b) Circumstantial Evidence

Circumstantial evidence is that evidence which relates to a series of other facts other than the fact in issue, but by experience have been found so associated with the fact in issue in relation to cause and effect that it leads to a satisfactory conclusion. The aid of this type of evidence is sought in criminal cases when the direct or positive evidence in the point is not available, but here always care has to be taken that the chain should be complete where no other hypotheses could be drawn except that it was one else but the accused against whom certain allegations have been attributed by the prosecution, e.g. if there was no evidence to he effect that any person saw the accused committing the crime, the following facts can be taken into consideration to find out as to who could be the actual culprit :-

- Evidence of those persons who lastly saw the accused going with the victim going towards a particular place.
- Evidence to the effect that accused was found concealing the evidence of offence, i.e. murder, rape, dacoity etc. to disappear.
- Discovery and recovery of any incriminating fact of weapon of offence, dead body or material in pursuance of the disclosure statement made by the accused during interrogation, etc.
- Conduct of the accused subsequently to the occurrence and preceding to the occurrence and some overt act on the part of the accused.
- Extra judicial confession made by the accused confessing his guilt before some respectable person.
- Letter, if any, exchanged between husband the wife indicating the relationship between the bride and he r husband preceding to her deaths.
- Any other circumstances which could highlight about the manner of offence or taking some other event relevant to be taken into consideration so as to connect the accused with the commission of offence.

Rule to be Applied in Circumstantial Evidence

In dealing with circumstantial evidence, the rule especial ly applicable to such evidence must be born in mind. In such cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion o f guilt is to be drawn should :

- In the first instance be fully established, and that the facts so established should be consistent only with the hypothesis of the guilt of the accused,
- again, the circumstances should be of conclusive nature and tendency and
- they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

Relevant Circumstances

The case of Prabhudayal v. State45, it was observed that ordinarily, offences against married woman are committed within the four corners of a house and normally, direct evidence regarding cruelty or harassment on the woman by her husband or relatives of the husband is not available. Hence, while deciding as it to whether a woman was harassed or ill -treated by her husband or his relatives, various factors and circumstances can be considered by the Court, such as dying declaration of the woman, if any, extra judicial confession by the accused, motive, place, time, demand, if any of dowry, physical or mental cruelty shown towards wife, conduct of the husband as also the relatives of the husband.

Evidence of Demand of Dowry soon before the Death

To prove the offence of dowry death, there must be concrete and specific demand of dowry on behalf of the hu sband and his family members and the lady must be harassed or subjected to cruelty by them on account of demand of dowry. If there is no demand of dowry and vague allegations are made therein, then the death of the bride if occurred because of any other reason that would not be termed as dowry death.
In case of Gurcharan Kaur & Another v. State of Rajasthan46, discussing the facts of the case, it was observed that bride committed suicide because she could not get comforts and freedom, which she enjoyed at parental home. No harassment for demand of dowry proved. Conviction was accordingly set aside. Acquitting the husband also, who did not even file appeal, it was held by the Supreme Court that the accused who did not even file appeal or whose special leave petition was dismissed also entitled to acquittal if his case stood on same footing.

Evidence of Relative or Interested Witnesses

In the case of State v. Orilal Jaiswal47, it was observed that in cases of dowry deaths,

[45] *(1993), AIR 2614 (SC).*

[46] *(2003), AIR 992 (SC).*

[47] *(1994), AIR SC 1418.*

ordinarily, the evidence of cl ose relatives and friends would be available and normally, strangers would neither be aware nor willing to come forward to depose in favour of prosecution. The testimony of close relatives and friends, therefore, cannot be disbelieved only on the ground that they are relatives and that on that ground he or she had come forward to depose for the prosecution.

Non- Examination of Material Witnesses

In case of Kaushal Prasad v. State48 , it was held that where the alleged ill -treatment and demand of dowry could not be established and the mother of the deceased, who could have been an important witness was not examined, the conviction of the accused was not proper.

Vague Allegations

It has been observed in many cases that only general allegations are leveled in the FIR with the intention to implicate the whole members of the family. To attract the provisions of dowry death, the allegations regarding demand of dowry must be complete, specific and cogent one. Otherwise these allega tions cannot be said to amount to demand of dowry.

Delay in Filing FIR

In Rajeevan v. State of Kerala49, the Supreme Court while discussing the consequences of delayed filing of FIR held : -

Object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the offence was committed, the names of the actual culprits and the part played by them as well as the names of eye- witnesses present at the scene of occurrence.

Delay in lodging the first information report quite often results in embellishment which

[48] *(1996), Cr. LJ, 2268.*

[49] *(2003) SC 1813.*

is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation.

It is, therefore, essential that the delay in lodging the first information report should be satisfactorily explained.

Discrepancies, Contradictions, Inconsistencies and Technical Errors

The Supreme Court of India in the case of M.K. Antony v. State of U.P.50, held that while appreciating the evidence of a witness the approach must be whether the evidence of the witness read as a whole appears to have a ri ng of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to fin d out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies or trivial matters not touching the core of the case, h yper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer nor going to the root of the matter would not ordinarily permit rejection o f the evidence as a whole. If the court before whom the witness gives evidence has the opportunity to form the opinion about the general tenor of evidence given by the witness, the Appellate Court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthf ul witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross-examination is an unequal duel between a rustic and refined lawyer.

Improvements in the Subsequent Statement

In case of Paidimarri Shankeri & Ors v. State of A.P.51, it was observed that allegation of demand of dowry being made, not made at earlier stage. Evidence of mother of deceased that accused were harassing deceased for dowry and that she h ad

[50] *(1985) SC 48.*

[51] *2003) Cr. LJ 297 (AP).*

given some money to deceased when she came home at D ushera. No such statement was made before police. Therefore, it was clearly improvement. All other prosecution witnesses did not support plea of harassment and cruelty and were declared hostile. Moreover, parents of deceased not having income sufficient to even meet family expenses. Evidence with regard to demand of dowry immediately before incident is reliable. Conviction of accused under Sections 304 - A and 498-A not held proper.

Admissibility of Evidence of Interested Witnesses

It happens often that an eye- witness is related in some way to the party in whose favour he gives evidence. Such a witness is called an interested or partisan witness. Sections 153 52 permits question to be asked to a witness to show that his testimony is likely to be partial. The principle to be kept in mind in such cases has been re-stated by the Supreme Court53:-

"It is well settled that interested evidence is not necessarily unreliable. Even partisanship by i tself is not a valid ground for discrediting or rejecting sworn testimony. Nor it can be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated in material particulars. All that is necessary is a careful scrutiny and caution. If on such scrutiny, the interested testimony if found to be intrinsically reliable, or inherently probable it ma y by itself be sufficient to base a conviction. In evaluating the evidence of an interested witness, it is useful to focus attention on the question whether the presence of the crime was probable. If so, whether the substratum of the story narrated by the witnesses, being consistent with other evidence on record, the natural course of human events, the surrounding circumstances and inherent probabilities of the case, is such which will carry conviction with a prudent person. If the answer to these questions be in the affirmative, and the evidence of the witness appears to be free from suspicion, the court may accept it without seeking corroboration from any other source." [54]

[52] *Evidence Act, 1872.*

[53] *Hari Obula Reddi v. State of A.P., AIR 1981 SC 81.*

[54] *Bolineedi v. State of A.P., AIR 1994 SC 76.*

In the case of State v. Orilal Jaiswal[55], it was observed that in cases of dowry deaths, ordinarily, the evidence of close relatives and friends would be available and normally, strangers wou ld neither be aware nor willing to come forward to depose in favour of prosecution. The testimony of close relatives and friends, therefore, cannot be disbelieved only on the ground that they are relatives and that on that ground he or she had come forwa rd to depose for the prosecution.

RULES OF EVIDENCE DURING TRIAL OF CASE

Presumption as to abetment of suicide by a married woman. [56]

The words "having regard to all the other circumstances of the case" in this section give wide powers to the court t o appraise evidence and come to conclusion whether there was some extraneous cause for a woman to commit suicide. [57]

The words "all other circumstances of the case" require that a cause and effect relationship between the cruelty and suicide has to be established before drawing the presumption. Therefore, the presumption is not of mandatory nature. [58]

The drinking habit of a husband alone with late coming and beating his wife was held to be a cruelty for the purpose of the presumption under the section, 59but not where he only came home late after drinking and did not beat his wife.60 For raising the presumption of abetment of suicide under section 113A it must be established that the women had committed suicide.[61] Where the demand for out standing items of dowry was met and the matter was settled and there was no evidence of any further dowry demand or torture thereafter, but the wife committed suicide 1 ½ months after the demand was met and the matter settled, it was held that probability of existence of nexus between cruelty and suicide suffered a set back and it was unsafe to invoke presumption of guilt against the accused. [62]In a dowry death case it was found that the deceased was continuously harassed and subjected to cruelty with demand of dowry, presumption under section 113A and 113B was held to be applicable. [63]Where the maltreatment by the husband and the in - laws drove the deceased to commit suicide

[55] *(1994), AIR SC 1418.*

[56] Ins. by the criminal Law (2nd Amendment) Act, 1983 (Act 46 of 1983) w.e.f. 26-12-1983.

[57] *Krishan Lal v. Union of India* (FB), 1994 Cr LJ 3472 (P&H).

[58] *Ramesh Kumar v. State of Chhatisgarh*, 2001Cri LJ 4724 (SC).

[59] *Amarjit Singh v. State of Punjab*, 1989 Cr LJ (NOC) 13 (P&H).

[60] *Jagdish Chunder v. State of Haryana*, 1988 Cr LJ 1948 (P & H)..

[61] *Suresh Raghunath Kochare v. State of Maharashtra*, 1992 Cri LJ 2455 (Bom).

[62] *Samir Samanta v. State*, 1993 Cr LJ 134 (Cal).

[63] *P.P. Rao v. State of U.P.*, 1994 Cr LJ 2632 (AP).

immediately after her marriage, presumption under section 113A was drawn against the accused.[64]

The wife died by consuming poison. Oral and documentary evidence showed that the accused (husband) subjected her to mental cruelty. Her letters showed that he dominated her and was treating her like a chattel. The court said that the conduct of the accused was of such a nature as was likely to drive his wife to commit suicide. Thus he abetted suicide. The presumption under the section prevailed.[65]

In a dowry death case, presumption that suicide was abetted by the accused- husband of the deceased could be drawn only when prosecution has discharged the initial onus of proving cruelty. 66In State of W.B. v. Orilal Jaiswal, [67]it was held that the requirement of proof beyond reasonable doubt in dowry death cases does not stand altered even after the introduction of s 498A, IPC and s. 113A of the Evidence Act. "Although, the court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidences adduced in the case and the materials placed on record. The doubt must be to a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject- matter.68 Where there was no evidence showing cruelty or harassment before the occurrence, presumption of dowry death was not attracted. 69Where a married woman had committed suicide within one year of her marriage and from the circumstantial evidence it was established t hat there was no harassment and torture of the deceased by the accused husband and the in-laws for want of dowry, presumption under s. 113A was not made. 70The scope of the pronouncement of the Apex Court that the offence of attempt to commit suicide is ultra vires the Constitution does not make the offence of abetment to commit suicide ultra vires the Constitution because the former is volitional and well-planned act of the person concerned whereas the latter is on the different footing as a third person fo rces

[64] *Saroj Satiya v. State*, 1996 AIHC 37 (Del)
[65] *Devkinandan v. State*, 2003 Cri LJ 1502 (MP).
[66] *Basappa Dattu Hegade v. State of Karnataka*, 1994 Cr LJ 1602 (Kant).
[67] AIR 1994 SC 1418 : 1994 Cr LJ 2104.
[68] *Dhobilal v. State*, 1998 Cri LJ 4108 (MP),
[69] *Babaji Charan Barik v. State*, 1994 Cr LJ 1684 (Ori).
[70] *State of Haryana v. Suresh Kumar*, 1993 Cr LJ 1400 (P&H)

the other person to take his life by committing suicide. [71]

Where two witnesses deposed that there was a demand of dowry by the mother-in-law, husband as well as by the father -in- law and one witness, however, in her deposition stated that the deceased complained to her that the mother-in-law was demanding dowry and harassing her for the same and the other two were silent about the same, it was held that an inference was to be drawn that connivance of the other two also was there when the deceased was being treated. Therefore, the cruelty part of s. 113A meted out to the deceased was proved. [72]

Retrospective application.—The section embodies a rule of evidence. It would, therefore, also apply to incidents prior to its enforcement date, i.e., December 25, 19 83.[73] The section is procedural in nature. It would, therefore, have retrospective operation. [74]

The provisions of the section are applicable to the pre - amendment cases also. In the words of SABYASACHI MUKHERJI, J. (afterwards C.J.) of the Supreme Court: "These provisions do not create any new offence, (or any substantive right), but merely a matter of procedure and as such are retrospective and applicable to the present case. "The presumption against retrospection does not apply to legislation concerned merely with matters of procedure or of evidence; on the contrary, the provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the intention of Parliament". [75]

Legislative intent.— The legislative intent is clear, i.e., to curb the menace of dowry deaths, etc., with a firm hand. One must keep in mind this legislative intent. It must be remembered that since such crimes, e.g., dowry death, cruelty etc., are generally committed in the privacy of residen tial homes and in secrecy, independent and direct evidence is not easy to get. That is why the legislature has by introducing Ss. 113 -A and 113B in the Evidence Act tried to strengthen the hands of the prosecution by permitting a presumption to be raised i f certain foundation facts are established and the unfortunate event has taken place within seven years of marriage. This period of seven years is considered to be the turbulent one after which the legislature assumes

[71] *Krishan Lal v. Union fo India (FB),* 1994 Cr LJ 3472 (P&H).

[72] *Lakhjit Singh v. State of Punjab,* 1994 Supp (1) SCC 173, 177

[73] *State of Punjab v. Iqbal Singh,* 1991 Cri LJ 1897.

[74] *Arvind Kumar v. State of M.P.,* 2001 Cri LJ 2317 (MP).

[75] The court cited HALSBURY'S LAWS OF ENGLAND, Vol. 44 para 570.

that the couple had time enough to set tled down in life. [76]

Presumption as to dowry death.[77]

When the question at issue is whether a person is guilty of dowry death of a woman and the evidence discloses that immediately before her death she was subjected by such person to cruelty and/ or harassment for, or in connection with, any demand for dowry, s. 113B, provides that the court shall presume that such person had caused dowry death. Of course if there is proof of the person having intentionally caused her death that would attract s. 302, IPC.[78]

Where the prosecution was able to prove that the deceased woman was last seen alive in the company of the accused, she being at the moment in her special care and custody, that there was a strong motive for the crime and that the death in question was unnatural and homicidal, it was held that by virtue of the provision in s. 106 of the Evidence Act the burden of showing the circumstances of the death was on the accused as those circumstances must be specially known to him only. 79Where the death was by strangulation and evidence was available to show that dowry was being demanded and the accused husband was also subjecting his deceased wife to cruelty, it was held that the presumption under the section applied with full force making the accused liable to be convicted under s. 304B, I.P.C. [80]

Section 113B of the Evidence Act being procedural, it has been held that it is retrospective in operation. [81]

Presumption – when may be raised.—The presumption under section 113B shall be raised only on the proof of the following essentials:-

The question before the Court must be whether the accused has committed the dowry death of a woman. This means that the presumption can be raised only if the accused

[76] *State of Punjab v. Iqbal Singh*, (1991) 3 SCC 1, 9.

[77] Ins. by Act No. 43 of 1986, s. 12.

[78] *State of Punjab v. Iqbal Singh*, (1991) 3 SCC 1.

[79] *Amarjit Singh v. State of Punjab*, 1989 Cr LJ (NOC) 12 (P&H).

[80] *Hem Chand v. State of Haryana*, AIR 1995 SC 120.

[81] *Bhoora Singh v. State of U.P.*, 1992 Cr LJ 2294 (All).

is being tried for the offence under section 304B, I.P.C.

The woman was subjected to cruelty or harassment by her husband or his relatives.
Such cruelty or harassment was for or in connection with any demand for dowry.
Such cruelty or harassment was taking place soon before her death.[82]

The provisions of this section, although mandatory in nature, simply enjoin upon the court to draw such presumption of dowry death on proof of circumstances mentioned therein which amount to shifting the onus on the accused to show that the married woman was not treated with cruelty by her husband soon before her death. 83In a dowry death case, it is a condition precedent to the raising of the presumption that the deceased married woman was subjected to cruelty or harassment for and in connection with the demand for dowry soon before her death. [84]

Where the facts showed that a continuous harassment connected with demand for dowry was taking place right up to the time that the deceased woman met her parents two - days before her death, the court said that it could be assumed that harassment existed upto a time soon before her death. There were no intervening attempts at a settlement. 85A statement made by the woman to her brother 2 - 3 days before she was killed, that she was not being allowed to leave her in- laws till their demand for a scooter was met was held to be admissible under s. 32 Evidence act. The court said that demand for dowry was taking place soon before her death and therefore, presumption under the section could be drawn. [86]

Even if s. 113- A is found to be inapplicable in the absence of proof as to the occurrence having taken place within seven years of marriage the legislative intent as is evident from Ss. 304- B, 498 - A IPC as also Ss. As also Ss. 113 - A and 113- B which is to curb dowry death menace with firm hand, has to be kept in mind in deciding

[82] *Keshab Chandra Panda v. State of Orissa,* 1995 Cr LJ 174 (Ori).

[83] *Krishan Lal v. Union of India, (FB),* 1994 Cr LJ 3472 (P&H).

[84] *Bhoora Singh v. State of U.P.,* 1993 Cr LJ 2636 (All).

[85] *Kans Raj v. State of Punjab,* 2000 Cri Lj 2993.

[86] *Mahesh Kumar v. State,* 2001 Cri LJ 4417 (All).

conviction under s. 306, IPC. [87]

Where the wife was taken back to her nuptial home after the dispute as to dowry was resolved by the intervention of the Panchayat and this had taken place 10 - 15 days before the incidecent and there was no evidence to show that she was treated with cruelty or harassed for dowry during the period of her coming back and the tragic end, it was held that the presumption of dowry death could not be raised. [88]

Acquittal under s. 302, IPC and Presumption.—Where the ingredients of dowry death were established, namely, death within 7 years and proof of dowry demand, the Supreme Court held that merely because the accused was acquitted under s. 302, IPC (charge of murder), the presumption under S. 113 - B as to dowry death did not stand automatically rebutted.[89]

Witness of dowry death. —The doctor attending the injured woman testified that her neighbours brought her to the hospital and no relatives accompanied her; that she was in a serious condition and that on questioning her she told him that the mother-in-law had burnt her. This was held to be good evidence though the doctor did not record it in the medical register. Nothing could be brought in the cross -examination that he was an interested witness.[90]

KRISHNA IYER J. following statement very seriously reduced the need for corroboration:91 “To forsake this vital consideration and go by obsolescent demands for substantial corroboration is to sacrifice commonsense in favour of an artificial concoction called judicial probability. A socially sensitized judge is a better statutory armour against gender outrage than long clauses of a complex section with all the protection writ into it.”

No presumption against wife where husband commits suicide.—A husband committed suicide. The alleged cause was cruelty by wife. The court said that a presumption under

[87] *State of Punjab v. Iqbal Singh,* (1991) 3 SCC 1.

[88] *Bhagwan Dass v. Shamlal,* AIR 1997 SC 1873.

[89] *Alamgir Sani v. State of Assam,* AIR 2003 SC 2108.

[90] *Lichhamadevi v. State of Rajasthan,* 1988 Cr LJ 1812.

[91] *Krishna Lal v. State of Haryana,* AIR 1980 SC 1252.

the section could not be raised against the wife. [92]

Criminal Proceedings.—In criminal proceedings, the complainant or the prosecutor, as the case may be, has the right to begin; and, if necessary, the accused is asked to adduce his evidence in defence. The trial before a Magistrate may be (a) in summons cases (Criminal Procedure Code, ss. 251 -258), or (b) warrant cases instituted by the Police, s. 238; otherwise th an on Police report (ss. 244 -249) or (c) summary (s. 260). Where a trial takes place before a Court of Session, or High Court, the procedure as laid down in s. 226, et seq of the Criminal Procedure Code is followed. In hearing appeals, the appellant begins and if necessary the other side is heard next (s. 285).

Evidence relating to facts in issue and also relevant facts.—[Clause 1].—In order to focus the attention of the litigants to the points in dispute between them, issues are raised on the pleadings. The parties are called upon to lead evidence on them. Such evidence must primarily relate to facts in issue; but it may also refer to relevant facts (s.5). In the latter case, the first paragraph of this section enables the presiding Judge to ask the party to show the relevancy of the fact which is sought to be proved. Questions of admissibility of evidence are to be determined by the Judge.
In dealing with the relevancy of facts as above, two sets of special circumstances may arise; first, where the eviden ce of one fact is admissible only upon proof of some other fact, such last - mentioned fact must be proved first, unless the Court accepts the undertaking by the party that it will be proved later on (cl. 2); and, secondly, where the relevancy of one fact de pends upon the proof of another fact, the Judge may in his discretion permit either of them to be proved first (cl. 3).

It is the bounden duty of a party, personally knowing the whole circumstances of the case, to give evidence on his own behalf and to submit to cross-examination. His non- appearance as a witness would be the strongest possible circumstance going to discredit the truth of his case.[93]

Police diaries.—"It is the absolute duty of Judges and Magistrate to entirely disregard all statements and e ntries in special diaries as being an any sense legal evidence for any purpose, except for one solitary purpose of contradicting the Police- officer who

[92] *Alka Grewal v. State of M.P.*, 2000 Cri LJ 672 (MP).

[93] *Gurbaksh Singh v. Gurdial Singh*, (1927) 29 Bom LR 1392 (PC).

made the special diary when they do afford such a contradiction; and even in that case they are not evid ence of anything except that such Police- officer made the particular entry which is at variance with his subsequently given evidence; they are not evidence that what is stated in the entry was true or correctly represents what was said or done." [94]

"Where the Police- officer who made the special diary is allowed to refresh his memory and does look at an entry in the Diary for the purpose of refreshing his memory, the provisions of s. 161 of the Indian Evidence Act … apply, and the accused or his agent is entitled to see such entry in the special diary and to cross-examine such Police-officer thereupon. There is no provision in s. 172 of the Code of Criminal Procedure, 1973 enabling any person other than the Police- officer who made the special diary to refresh his memory by looking at the special diary and the necessary implication is that a special diary cannot be used to enable any witness other than the Police -officer who made the special diary to refresh his memory by looking at it.[95] This is in truth a general principle of law. The Criminal Court, but not an accused person or his agent may use the special diary for the purpose of contradicting the Police - officer who made it, but before doing so the Court must comply with the specific enactment of s. 145 of the Indian Evidence Act.. and call the attention of the Police- officer to such parts of the special diary as are to be used for the purpose of contradicting him, otherwise such a use of the special diary would be illegal. There is no provision in s. 172 of the Code of Criminal Procedure enabling the Court, the prosecution or the accused to use the special diary for the Purpose of contradicting any witness other than the Police- officer who made it, and the necessary implication is that the special diary cannot be used to contradict any witness other than the Police- officer who made it. Section 145 of the Indian Evidence Act… does not either extend or control the provisions of s. 172 of the Code of Criminal Procedure. It is only if the Court uses the special diary for the purpose of contradicting the police- officer who made it that s. 145 of the Indian Evidence Act

… applies, and in such case it applies for that purpose only, and not for the purpose of enabling the Court or a party to contradict any other witness in the case, or to show it or

[94] Per EDGE; C.J., in *Queen-Empress v. Mannu,* (1897) 19 ALL 390, 412 (FB); *DadanGazi v. Emperor,* (1906) 33 Cal 1023, 1026, 1027.

[95] Therse provisions are not discriminatory *Subhash Chandra v. Union of INida,* 1988Cr LJ 1077 Raj.

any part of its contents to any other witness. No reading of s. 172 of the Code of Criminal Procedure consistent with the rules of construction and a knowledge of the English language is possible by which the special diary is to be used to contradict any person except the police- officer who made it. It is not enacted in s. 172 of the Code of Criminal Procedure by reference to s. 145 of the Indian Evidence Act.. or otherwise that if the special diary is used by the Court to contradict the Police- officer who made it, it may thereupon or thereafter be used to contradict any other witness in the case.

CHAPTER – VI

JUDUCIAL TRENDS IN INDIA

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JUDUCIAL TRENDS IN INDIA

A. INTRODUCTION

There has been a plethora of judicial pronouncements on dowry deaths cases ever since the enactment of the dowry prohibition law, but even the domestic violence Act and drastic changes introduced by the amending Acts have not been able to contain this menace, on the contrary, it is on a constant increase. In protecting the women the Indian judiciary has removed all the procedural shackles and has completely revolutionised constitutional litigations. The judiciary has encouraged widest possible coverage of the legislations by liberal interpreting the terms. The judiciary by its landmark judgements had filled up the gap created by the legislative machinery. The judiciary had extended helping hands to women. The vibrant judiciary has recently exalted the dignity of women by its golden judgements.

Criminal justice is a mirror image of the state of affairs in a society and the status of its governance. It is one of the primary functions of any civilized gov ernment. At the same time, in democratic societies governed by rule of law and guaranteed human rights, it is not easy to organize crime control and administer criminal justice according to the expectations of the people. The problems are many and varied. They become more complicated with technological developments, unstable governments and economic globalization. 96With the rise of crimes against women being on the increase, it should have followed that judges trying the cases would display not only a greater sense of responsibility but also be more sensitive while dealing with cases of violence against women. But this has not always happened not only in the lower courts but even in some of the high courts and unfortunately even in the Supreme Court.

In this regard, the observations of the Orissa High Court are very instructive, the High Court observed that -

[96] Madava Menon, N.R. (Ed.), Criminal Justice India Series, Vol. 3, U.P. 2001.

"Courts are called upon to adjudicate the complex question whether 'in-laws' have become ' out-laws' and have directly or indirectly contributed to snuff out the life of a woman. Dowry deaths are result of their disgraceful acts. But the courts have to be careful in sifting the evidence to see whether the accusations are true or are aimed at false implication. In the present day complex world, it is extremely difficult to gauge the machinations of a mischievous mind. The courts have to trend on very slippery grounds while dealing with such cases, because, sometimes, emotions overrun realities."97 Analysis of some decisions delivered by the higher judiciary would reveal the active judicial efforts in dealing with cases of violence against woman.

The court commented critically on 'attendency' which has developed for roping in all relatives of the in -laws of the deceased in matters of dowry death which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In a judgement, Supreme Court expressed 'strong reservations against the practice of the police to file charges against all the in-laws in dowry death cases on the basis of the allegations of the parents of the deceased.' The Supreme Court stated that involving other relatives ultimately weakens the case. Judicial trend has been most encouraging as the same is evident from analysing the following cases. Judiciary ha s time to time been also issuing suitable directives for such cases.

B. THE CHANGING SCENARIO OF DOWRY DEATH:JUDICIAL APPROACH

To constitute cruelty, the conduct complained of should be " grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, cu stoms and traditions. It

[97] Baby v. State of Orrisa, (1984), Cr.L.J., 1684 Orissa High Court.

is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between th e parties had deteriorated to such extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Hindu Marriage Act. Mental cruelty may consist of verbal abus es and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party and the sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty. The respondent's act of humiliating the appellant and virtually turning him out of house also amount to cruelty. The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However, insignificant or triflin g, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable pers on would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day -today married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non - violent."

a) Humiliating, turning out of house and not taking care during illness

Ordinarily, mere words do not amount to cruelty, but since one of the marital obligations is sobriety and kindness, habitual use of rough language, or systematic and

continued use by one spouse of vile, profane and unkind language in the presence of and towards the injured spouse, constitutes cruelty if it is causing immense mental suffering and injury to the latter's health. The mere use of profane and abusive language does no t constitute cruelty, at least when used only once or at intervals. However, cruelty may consist of remarks, statements, language or words that render the life of the spouse burdensome, even if no personal violence is inflicted or threatened. Words uttered without justifiable cause and for the purpose of inflicting pain, or words tending to wound the feelings to such a degree as to affect the spouse's health or cause grave and weighty mental suffering constitute cruelty.[98]

Further observed by Hon' ble Supreme Court of India that respondents act of humiliating the appellant and visually turning him out of house and did not take care of the appellant during his prolonged illness and never enquired about his health even when he underwent the bye-pass surgery amounts to cruelty. Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to cruelty.[99] In another case husband has been thrown out of the house by the wife and had been forced to live sexless life amounts to cruelty by wife.[100] In another case it has been held that the husband did not cohabit with deceased wife from very first day of marriage till her death, thereby compelling her to live a life of celibacy amounts to cruelty.[101] Wife retaining house of husband and turning him out of house without any reason is ill - treatment by wife amounts to cruelty to husband.[102]

It has been observed by Hon' ble Rajasthan High Court, while deciding an appeal against Divorce on the aground o f wife's cruelty to husband and his family and False case of cruelty and dowry demand under section 498 - A IPC, that:

[98] J.D. Kapoor (J.), Law and Flaws in Marriages, Konark Publishers Pvt. Ltd., Delhi.

[99] Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511.

[100] Smt. Krishana Devi v. Brij Bhusan, AIR 2007 P & H, 43.

[101] Alok Haldar Vimal v. State of Uttaranchal, 2007, Cr. L.J. (NOC) 3 (U.T.R.).

[102] Smt. Krishana Devi v. Brij Bhushan, AIR 2007 P & H, 43.

The respondent husband, as AW I has narrated the events of cruelty meted out to him and his family members. According to him, he has been verbally abused by the appellant wife in front of the neighbors. His family has been humiliated by the false complaint lodged with the police and with the District Woman Development Tribunal. Moreover his wife has taken away money, jewellery and utensils fr om the matrimonial home and given them to her parental family. In view of the repeated acts of cruelty, he finds it impossible to live with the appellant. His testimony has father's testimony as AW 2, Shadi Ram and by the testimony of the Independent witnesses AW 3, Balu Ram and AW 4 Khairati Ram. There is no reason for this court to doubt the testimonies of the independent witnesses and of the respondent's father.

Even the learned Judge has noted that the appellant is in the habit of leveling false charges against the respondent- husband and his family members. She is also prone to change her stand. She had lodged a criminal report against the respondent and his family members. In her testimony she clearly admits that a negative final report was filed by the police. But, she does not state that she had filed a protest petition against the negative final report. Although Mr. M.K. Jain had claimed, during the course of the arguments, that the trial court in the criminal case has taken cognizance on the basis of the protest petition filed by the appellant, but the cognizance order has to been produced before this Court. Hence, we are not in a position to accept the said contention. The appellant had also refused to implement the decision of the caste Panchayat and had refused to cohabit with the respondent. Without any rhyme or reason, she has refused to fulfill her matrimonial duties. Her omission does amount to mental cruelty towards the respondent husband.

Although the appellant claimed in her testimony that sh e is willing to resume her cohabitation with the respondent husband, but the fact that the she is staying away from the husband for the last four years, the fact that she refused to resume her cohabitation despite the direction of the caste Panchayat, the fact that she has false cases both before the police and before the District Women Development Tribunal clearly prove her intention not to live with the husband.

Since in the present case the marriage has become a dead wood, since there is no possibility of resurrecting the marriage, it is better to dissolve the said marriage interfere with the judgment dated 30.8.05. [103]

b) Husband refused to effectuate marital obligation

Marital intercourse is just one marital right or duty. There are many other important rights and duties. The obligations of the parties to each other and to society do not depend on this single duty. The other obligations include fidelity, sobriety and kindness.

Sexual relations between man and woman are given a socially and legally sanctioned status only when they take place within marriage. But, this obligation is of a very personal and delicate nature depends on sentiment and feelings to such an extent that it would be an intrusion into the privacy of domestic life to stipulate that reasonable denial on the part of either party to submit to marital intercourse constitutes cruelty. Thus, such denial does not constitute cruelty even though refusal to have marital sexual relations undermines the essential structure of a marriage.

If refusal is occasional, or for a short period, it is against public policy to treat it as cruelty. However, complete failure to have sexual intercourse over a prolonged period, or its total and irrevocable negation, despite advances and requests, does constitute cruelty as in the absence of an adequate excuse, such refusal strikes at the basic obligations springing from marriage, undermining its essential structure.[104]

In recent case, it has been held that husband not capable of performing matrimonial obligations and marriage could not be consummated moreover, husband not ready for medical check - up, held, marriage without sex is an anathema and amounts to cruelty[105.]

[103] *Sumitra* v. *Luna Ram*, 2007(2) RLW, Rajasthan High Court, (JB).

[104] J.D. Kapoor (J.), Law and Flaws in Marriages, Konark Publishers Pvt. Ltd., Delhi.

[105] Vinita Saxena v. Pankaj Pandit, 2006(1) HLR 586 (S.C.).

It was observed by the Rajasthan High Court that it is established that respondent husband refused to effectuate his marital obligations. He had avoided consummation of marriage on one pretext or other; persistent refusal to consummate marital intercourse and discharge marital obligation amounts to cruelty. [106]

c) False allegation of extra marital relationship

In this case decided by Andhra Pradesh High Court held that where the husband in divorce petition had only said that he was subjected to harassment and cruelty which cannot be put on record since the kind of allegations leveled by his wife were not only harmful and derogatory to. him in society but also to family of his sister-in-law but the wife had blown up the allegations in counter and made such elaborate allegations and same unethical and unholy allegations linking up character of husband with the character of sister-in-law and thereby bringing down reputation of the family of sister-in-law of husband it only indicates the amount of abhorrence the wife gathered against her husband. Her thought process was absolutely going wrong in a short span o f 11 months of marital life instead of understanding the husband or correcting the husband, if at all he was at fault and thereby make a good family by herself and for herself, the wife had resorted to demolish her own family and her future and the future of other family members of the husband. Thus the conduct on the part of wife was such that her desertion was not justified and cruelty if at all was to be attributed to wife only. Subsequently she made a complaint to Bar Council of Andhra Pradesh, Hyderabad making the same allegations targeting the husband and the sister -in-law of the husband. She can have grievance against the husband for any reason but has absolutely no right to demolish or to destroy the family fabric of the sister- in-law of the husband. She had lodged criminal proceeding against husband and in -laws under S. 498- A. IPC and said proceedings ended in acquittal. In view of above facts on the ground of cruelty the husband was held entitled to decree of divorce. 107Further Punjab and Haryana High Court held while granting a decree of divorce on the ground of cruelty and irretrievable breakdown of marriage to the husband observed that denial

[106] Smt. Kusum v. Omparkash, AIR 2007, Raj. 5.

[107] B. Srinivasulu v. Mrs. Veena Kumari, AIR 2008 Andhra Pradesh 20.

of sexual intercourse by wife to husband constitute mental torture toward husband. [108]

d) Physical violence for demand of dowry

Sometimes words inflict a more painful blow but, under Section 498 - A, IPC physical harassment for the demand of dowry is a punishable offence. In a recent case, the accused husband threatened that whenever his wife comes to his house, she will not come alive to her parents. On another occasion accused slapped his wife. These two incidents are sufficient to hold accused guilty of offences under section 498 - A and 306 IPC where wife committed suicide. 109In another case it has been observed that there had been persistent demand of colour T.V., scooter and Rs. 20,000/- deceased was subjected to harassment, humiliation and physical violence and beating by the husband and her-in-laws. Dead body was secretly and clandestinely cremated causing disappearance of evidence of offence, without even intimating the parents of the deceased who were living only a few miles away from their village. The above acts fall within the definition of cruelty under section 498 - A IPC.[110]

In Sahebrao' s case [111] it has been held that where the husband and brother of the husband of deceased were demanding Rs. 10,000. She was constantly troubled and given beating. Her father was insulted in her presence, the Act of the accused is sufficient to cause cruelty. In another case, a ccused husband and in-laws subjected deceased to cruelty and harassment for not bringing balance dowry amount, leading her to commit suicide is sufficient to convict the accused u/s 498 - A.[112]

In a recent case, it has been observed by the High Court that the accused husband given beating to deceased because the wife sold some agriculture product without permission of the husband and she committed suicide. The accused husband is convicted for causing cruelty and abetment of suicide.[113] In another case, the accused

[108] Jasminder Singh v. Mrs. Prabhjinder Kaur, AIR 2008 P&H 13.

[109] Raj Kumar v. State of MP, 2006 (4) RCR (Criminal) 508 (MP) (Jabalpur Bench).

[110] Ram Badan Sharma v. State of Bihar, 2006(4) RCR (Criminal) 104 S.C.

[111] Sahebrao & others v. State of Maharastra, 2006 (2) RCR (Cri.) 855 (SC).
[112] Pathan Hussain Basha & ors. v. State of A.P., 2007 Cr. L.J., (NOC) 1 (A.P.) (DB).
[113] Shankar Rajwar and another v. State of Jharkhand, 2007, Cr. L.J. (NOC), 97 (Jhar.)

husband was not satisfied with the quality of articles given during marriage. The husband did not allowed the deceased to meet anybody and, in fact, she was kept confined within her room. She was not given proper food and finally, there was persistent demand for a scooter by the accused to be brought from the father of the deceased wife. These all act would bring the appellant/ accused within the mischief of sec. 498- A of the IPC. [114]

In another recent case decided by Hon' ble Supreme Court, it has been held that the accused demanded Rs. 25000/- from the father of the deceased for purchasing a tempo. This demand was not fulfilled due to weak financial position of the father of deceased. The deceased was often beaten and was sometimes not given food. After the wife was murdered, information was sent to her parents that she had died on account of snake bite. The accused had been convicted for dowry death and cruelty.[115]

In another recent case decided by Hon' ble Supreme Court, it has been observed by the Apex court that the deceased had been harassed due to demand of dowry. About six months prior to the occurrence, the appellant husband demanded Rs. 80,000/ - for purchase of tractor. However, the brother of the deceased could not fulfill the demand of money. Suren der, the deceased husband started beating the deceased and ultimately she was turned out of the matrimonial house and went to her parent's house. Thereafter, she was taken aback by the appellant, but 10 days after she committed suicide. Accused are convict ed for cruelty and dowry death.[116]

[114] Tapas Kumar Ghosh v. State of Bengal, 2007 Cr. L.J. 434.
[115] Trimukh Maroti Kirkan v. State of Maharastra, 2007 Cr. L.J. 20 (S.C.).

[116] Trimukh Maroti Kirkan v. State of Maharastra, 2007 Cr. L.J. 20 (S.C.).

Chapter VII

CONCLUSION AND SUGGESTIONS

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CONCLUSION:

According to Hindu mythology, marriages are made in heaven indeed, but mothers-in-law, sisters-in-law, husbands and other relatives are being increasingly involved in the breaking of the wedlock for the lust of dowry. Dowry death, murder, suicide, and bride burning are symptoms of peculiar social malady and are an unfortunate development of our social set up. During the last few decades India has witnessed the black evils of the dowry death system in a more acute form in almost all parts of the country since it is practised by almost every section of the society. It is almost a matter of day-to-day occurrence that not only married women are harassed, humiliated, beaten and forced to commit suicide, leave husband, etc., tortured and ill treated but thousands are even burnt to death because parents are unable to meet the dowry demands of in -laws or their husbands.[117]

It is quite apparent that the new member of the family may have little volition to exercise and in such a state of affairs cannot regard her own things to be hers. Such treatment finds roots in the traditional Hindu belief that children are the ' property' of their parents. Therefore, along with the son, his bride is also treated as the property o f the family where the dowry she brings is utilized as per the wishes of the in -laws and in most cases for marrying their daughter, leaving the bride completely at the mercy of the husband and his kin. Very often dowry is regarded as more important than th e girl herself. Littlethought is given to her procreative power which seemed to have been the original basis of marriage. She is increasingly being viewed as a convenient tool of amassing recurring wealth and fortune. As already stated, dowry demands very often continue to be made even after the solemnization of marriage and an unfulfilled demand may result in the continual harassment of the bride

[117] Times of India, May 20, 2000.

and even death.

When the humanity marched in the twentieth century with the slogans of equality of law and equal protection of laws, such pitiable, miserable and appalling was her condition that these slogans have no meaning for her, with the result that laws of protective discrimination have to be enacted so that equality and equal protection of laws have some meaning for her.

We come across the reports regarding dowry deaths, mentioned in the newspapers daily. An accurate picture is difficult to obtain, as statistics are varied and contradictory. In 1995, the National Crime Bureau of the Government of India [118] reported about 6,000 dowry deaths every year. In 2007 dowry deaths under Section 304B of IPC have been reported total of 8093 by National Crime Record Bureau, New Delhi[119]. A more recent police report stated that dowry deaths had risen by 170 percent in the decade to 1997. All of these official figures are considered to be gross understatements of the real situation. Unofficial estimates cited in a 1999 article by Himendra Thakur "Are our sisters and daughters for sale?" put the number of deaths at 25,000 women a year, with many more left maimed and scarred as a result of attempts on their lives.[120]

Some of the reasons for the under-reporting are obvious. As in other countries, women are reluctant to report threats and abuse to the police for fear of retaliation against themselves and their families. But in India there is an added disincentive. Any attempt to seek police involvement in disputes over dowry transactions may result in members of the woman's own family being subject to criminal proceedings and p otentially imprisoned. Moreover, police action is unlikely to stop the demands for dowry payments. [121]

Many of the victims are burnt to death —they are doused in kerosene and set on fire. Routinely the in -laws claim that what happened was simply an accident. The kerosene

[118] National Crime Record Bureau, New Delhi.
[119] Ibid., p.
[120] http://www.wsws.org/articles/2001/jul2001/ind-j04.shtml

[121] Ibid.

stoves used in many poorer households are dangerous. When evidence of foul play is too obvious to ignore, the story changes to suicide —the wife, it is said, could not adjust to new family life and subsequently killed herself. Research done in t he late 1990s[122], revealed that many deaths are quickly written off by police. The police record of interview with the dying woman —often taken with her husband and relatives present —is often the sole consideration in determining whether an investigation shou ld proceed or not. As Vimochana [123] (a) was able to demonstrate, what a victim will say in a state of shock and under threat from her husband's relatives will often change markedly in later interviews.

Of the 1,133 cases of "unnatural deaths" of women in Bangalore in 1997, only 157 were treated as murder while 546 were categorised as "suicides" and 430 as "accidents". But as Vimochana activist V. Gowramma explained: "We found that of 550 cases reported between January and September 1997, 71 percent were closed as ' kitchen/ cooking accidents' and 'stove- bursts' after investigations under section 174 of the Code of Criminal Procedures." The fact that a large proportion of thevictims were daughters- in-law was either ignored or treated as a coincidence by police.

Young married women are particularly vulnerable. By custom they go to live in the house of their husband' s family following the wedding. The marriage is frequently arranged, often in response to advertisements in newspapers. Issues of status, caste and religion may come into the decision, but money is nevertheless central to the transactions between the families of the bride and groom.

The wife is often seen as a servant, or if she works, a source of income, but has no special relationship with the members of her new household and therefore no base or support. Some 40 percent of women are married before the legal age of 18. Illiteracy among women is high, in some rural areas up to 63 percent. As a result they are isolated and often in no position to assert themselves.

[122] Vimochana, A Women's Group in the Southern City of Bangalore.

[123] (a) Ibid.

Demands for dowry can go on for years. Religious ceremonies and the birth of children often become the occasions for further requests for money or goods. The inability of the bride's family to comply with these demands often leads to the daughter- in-law being treated as a pariah and subject to abuse. In the worst cases, wives are simply killed to make way for a new financial transaction—that is, another marriage.

A recent survey of 10,000 Indian women conducted by India's Health Ministry found that more than half of those interviewed considered violence to be a normal part of married life—the most common cause being the failure to perform domestic duties up to the expectations of their husband's family.

The underlying causes for violence connected to dowry are undoubtedly complex. While the dowry has roots in traditional Indian society, the reasons for prevalence of dowry - associated deaths have comparatively recent origins.

A number of studies have shown that the lower ranks of the middle class are particularly prone. According to the Institute of Development and Communication, "The quantum of dowry exchange may still be greater among the middle classes, but 85 percent of dowry death and 80 percent of dowry harassment occurs in the middle and lower s tratas." Statistics produced by Vimochana in Bangalore show that 90 percent of the cases of dowry violence involve women from poorer families, who are unable to meet dowry demands.

There is a definite market in India for brides and grooms. Newspapers are f illed with pages of women seeking husbands and men advertising their eligibility and social prowess, usually using their caste as a bargaining chip. A "good" marriage is often seen by the wife' s family as a means to advance up the social ladder. But the catch is that there is a price to be paid in the form of a dowry. If for any reason that dowry arrangements cannot be met then it is the young woman who suffers.

One critic, Annuppa Caleekal, commented on the rising levels of dowry, particularly during the l ast decade. "The price of the Indian groom astronomically increased and was based on his qualifications, profession and income. Doctors, charted accountants

and engineers even prior to graduation develop the divine right to expect a ‘ fat’ dowry as they bec ome the most sought after cream of the graduating and educated dowry league.”

The other side of the dowry equation is that daughters are inevitably regarded as an unwelcome burden, compounding the already oppressed position of women in Indian society. Ther e is a high incidence of gender- based abortions—almost two million female babies a year. One article noted the particularly crass billboard advertisements in Bombay encouraging pregnant women to spend 500 rupees on a gender test to “save” a potential 50,000 rupees on dowry in the future. According to the UN Population Fund report for the year 2000, female infanticide has also increased dramatically over the past decade and infant mortality rates are 40 percent higher for girl babies than boys.

In many parts of our country, even today, the expectant mothers with all their expectations are afraid to give birth to a girl child, as she is threatened of the consequences if a baby girl is born. The girl child brings to the family a fear of harassment of dowry.

Critics of the dowry system point to the fact that the situation has worsened in the 1990s. As the Indian economy has been opened up for international investment, the gulf between rich and poor widened and so did the economic uncertainty facing the majority of people including the relatively well- off. It was a recipe for sharp tensions that have led to the worsening of a number of social problems.

One commentator Zenia Wadhwani noted: “At a time when India is enjoying unprecedented economic advances and boasts the world’ s fastest growing middle class, the country is also experiencing a dramatic escalation in reported dowry deaths and bride burnings. Hindu tradition has been transformed as a means to escaping poverty, augmenting one’ s wealth or acquiring the modern conveniences that are now advertised daily on television.” [124]

[124] http://www.wsws.org/articles/2001/jul2001/ind-j04.shtml

Statistics paint a terrifying picture of married women. In India woman is burnt alive or beaten to death or forced to commit suicide every six hours. As many as 6500 women arekilled every year. Twenty out of every 100 married women are beaten daily. An outstanding number of women are battered about 3 -4 million. "Battering at home constitutes the most universal form of violence against women" says the United Nations. Despite all these cruelties towards women only one in 10 cases is reported. 125

Domestic violence against women is certainly not isolated to India. The official rate of domestic violence is significantly lower than in the US, for example, where, according to UN statistics, a woman is battered somewhere in the country on average once every 15 seconds. In all countries this violence is bound up with a mixture of cultural backwardness that relegates women to an inferior status combined with the tensions produced by the pressures growing economic uncertainty and want.

An idea about the gravity of the problem can be had from the large number of reported cases of cruelty and torture by the National Record Bureau during 1997 the number was 36592, in 1998 - 41376 and 1999 – 43823, in 2007 - 75930 respectively that demonstrate an increase of 5.9 per cent. 126The object of this chapter is to punish a husband and his relatives who torture and harass the wife with a view to coerce her or any person related to her to meet any unlawful demands or to dri ve her to commit suicide. To make the offence more deterrent, Section 498A prescribes a sentence of three years and also fine for the husband or the relatives of the husband of a woman who subject her to cruelty. [127]

In India, however, where capitalism has fashioned out of the traditions of dowry a particularly naked nexus between marriage and money, and where the stresses of everyday life are being heightened by widening social polarisation, the violence takes correspondingly brutal and grotesque forms.

[125] Jessy Kurian, "Can You hear her cry?". Legal News and Views, May 2003.
[126] Crime in India – 1999, Crime Record Bureau, Govt. of India, p. 202.

[127] L.V. Jadhav v. Shankarrao Abasaheb Pawar, (1983) Cr LJ 1501 : AIR 1983 SC 1219.

The anti-dowry laws in India were enacted in 1961 but both parties to the dowry—the families of the husband and wife—are criminalized. The laws themselves have done nothing to halt dowry transactions and the violence that is often associated with them. Police and the courts are notorious for turning a blind eye to cases of violence against women and dowry associated deaths. It was not until 1983 that domestic violence became punishable by law.

In the wake of the recommendations made by the 91 st report of the Law Commission in August 1983 some changes were introduced in the I.P.C. 1860, Cr. P.C. 1973 and the Evidence Act, 1872 to deal more effectively with dowry deaths and cruelty to married women. For violence at home, behind closed doors, by husband and his close relatives had to be dealt on different place.[128] It was by the Criminal Law (Second Amendment) Act No. 46 of 1983, which received the President' s assent on 25 December 1983, that section 498 - A was inserted in the Penal Code. The statement of objects a nd reasons of the said amending Act referred to the increasing number of dowry deaths, which was a matter of serious concern. The extent of the evil was commented upon by the joint committee of both the Houses to examine the working of the Dowry Prohibitio n Act 1961. It was found that cases of cruelty by the husband and relatives of the husband which culminate in suicide by, or murder of, the hapless woman concerned, constitute only a small fraction of cases involving such cruelty. An offence in the nature of abetment to commit suicide may also attract the provisions of section 306, IPC, which was already on the statue book. It was, therefore, proposed to suitably amend the Indian Penal Code, Code of Criminal Procedure 1973 and the Indian Evidence Act 1872 t o effectively deal with not only the cases of dowry deaths, but a lso the cases of cruelty to married women by their in - laws. It was with a view to achieving this object that, inter alia, Section 498 - A was inserted in the Indian Penal Code.

During the last three decades, India has witnessed the emergence of three great social evils, namely:

- the dowry system

[128] Dr. Ramesh, Cruelty as Compoundable Offence: A Critique, 2006, Cr. L.J. 205(Journal).

- the cruelty and harassment to women (c) the resultant suicide.

Incorporation of Section 304B in the Indian Penal Code and Section 113 B in the Evidence Act

In view of the increasing dowry deaths and the demand of the society to check such inhuman acts being meted out upon women, in 1986 a new offence known as "Dowry Death" was inserted in the Indian Penal Code as Section 304B by the Dowry Prohibition (Amendment) Act, 1986 with effect from November 19, 1986. The provisions under Section 304B, Indian Penal Code are more stringent than that provided under Section 498A of the Penal Code. The offence is cognizable, non - bailable and triable by a court of Session. In view of the nature of the dowry offences that are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence necessary for conviction is not easy to get. Accordingly, the Amendment Act 43 of 1986 h as inserted Section 113 B in the Evidence Act, 1872 to strengthen the prosecution hands by permitting a certain presumption to be raised if certain fundamental facts are established and the unfortunate incident of death has taken place "within seven years of marriage".

The period of seven years, has been considered cut off period for the reason that a marriage is complete after the bride and bride-groom have taken seven steps before the sacred nuptial fire. One step being considered equivalent to one yea r. The period of seven years has also been fixed for bigamy under Section 494, IPC to exonerate the husband or wife for marrying again during the lifetime of such husband or wife, if at the time of the subsequent marriage the other party is continuously a bsent from such person. 129Therefore, the period of seven years, as explained by the Supreme Court in Iqbal Singh[130], is considered to be turbulent one after which the legislature assumed that the couple would have settled down in life. Section 113B of the Evidence Act [131] states that if it is shown that soon before the death of a woman

[129] Tolson v. Tolson, (1880) 23 QBD 168.

[130] AIR 1961 SC 1532, 1537; Shanti v. State of Haryana, AIR 1991 SC 1532.

[131] The Evidence Act, 1872, Section 113B Presumption as to Dowry Death. Inserted byAct 43 of 1986 Sec. 12 (w.e.f. 5.1.1986).

such woman has been subjected to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person has caused the dowry death under Section 304B, IPC. The burden of proof of innocence accordingly shifts on defence.

Constitutional Validity of Amendments

The amendments to Indian Penal Code for incorporating Section 304B and 498A have been declared valid by various courts. In Polavarpu Satyanarayana v. Soundaravalli[132], the husband who was prosecuted under Section 498A, I.P.C. for subjecting his wife t cruelty, challenged the very definition of ' cruelty' as given under the Section as 'arbitrary' and ' delightfully vague', and as such ultra vires of the fundamental right to equality, guaranteed under Article 14 of the Constitution.

The Andhra Pradesh High Court while admitting that the expression 'cruelty' was not capable of precise definition, held that there was no vagueness in its meaning and as such it is not ultra vires of the Constitution. Each case has to be adjudged in the light of the facts of that particular case in the historical circumstances which necessitated the amendment. Similarly, with regard to the second contention that some relatives, i.e., in- laws, cannot be singled out by legislation for punishment and as such new provisions violated the fundamental right to equality, the court replied in the negative. Since dowry deaths are a hazard faced by woman, the husband and relatives may be treated as a class. This classification is not unreasonable and is intended to achieve the object of the new law.

In case of death of a woman caused under the above circumstances, 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. This is to say, the burden of proof shifts on the part of the accused to prove his innocence unlike other offences wherein the accused is presumed inn ocent. Clause (2) prescribes a minimum punishment of 7 years of imprisonment which may extend up to life imprisonment in case of dowry death. An

[132] 1988 Cr. LJ 1538 (AP). Held, Sec. 498A, I.P.C. applies even where person inflictssuch cruelty and harassment as to lead his mistress to commit suicide.

important feature of crimes that led to dowry deaths are that they are invariably committed within the safe precincts of home and the culprits are mostly close relations – brother-in-law, mother-in-law and sister-sin- law living under the same roof. The phenomenon is a by- product of the exploitation of newly married women by husbands and their relations in direct connivance with each other. The family ties are so strong that the truth will never come out and there would be no eye witness to testify against the guilty in a court of law.

The circumstances are hostile to an early or easy discovery of the truth.
Punitive measures may be adequate in their formal content, but their successful enforcement is a matter of great difficulty. This is why guilty men go scot - free and are seldom brought to book and punished. [133] 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 but by the Supreme Court in V.N. Pawar v. State of Maharashtra [134]-

…. Wife-burning tragedies are becoming too frequent for the country to be complacent. Police sensitization mechanisms 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 for by appropriate legislation.

Justice Dr. A.S. Anand in Kundula Bala Subrahmanyam observed:
"There has been an alarming increase in cases relating to harassment, torture, abetted suicides and dowry deaths of young innocent brides. This growing cult of violence and exploitation of the young brides, though keeps on sending shock waves to the civilized society 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

[133] See Lucy Caroll, 28 Journal of Indian Law Institute, (1986)

[134] AIR 1980 SC 1271.

perpetrators of the crime. It is more disturbingand said 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 obligations. In many cases, it has been noticed that the husband, even after marriage, continues to be ' Mamma' s baby' and the umbilical cord appears not have been cut even at that stage!".

There is no denying the fact that wome n are still the oppressed class and therefore need protective laws and procedures but what is disturbing is that some laws and procedures have a potential of misuse. Barbarity against married women in India despite stringent laws is one aspect - broadly discussed, debated, analyzed and often becoming headlines. There is another aspect too of the issue -equally sad and disturbing, but undiscussed, undebated, unanalysed, uncared and unheeded by those who matter. And that is – gross and growing misuse of the anti-dowry laws by estranged wives and their relatives to falsely implicate the innocent husbands and their relatives." There is a growing tendency among women to implicate a large number of members of the husband's family to teach them a lesson. Reason is simple–larger the number of members implicated, higher the chances to extract hefty amount to "settle" the matter.

Many husbands and their relatives are being harassed by unscrupulous wives and their ill -advised parents by involving dowry related laws to the verge of, or in fact, driving them to suicide. Special statutory provisions are aimed at guarding the interests of wives but unfortunately, they are double -edged weapons and if misused they cause a lot of harassment to the non- compliant. Not that alone, the differences become irreconcilable and there are no chances left of rapprochement between the parties. So great is the fear of being implicated and harassed by a women on a false dowry charge that the husband and his parents prefer to say good-bye and end the marriage rather than patch up and subject themselves to the risk of getting into trouble and lose their respect and mental peace, and these fears are not wholly unfounded.[135]

For the fault of the husband, the in-laws or the other relatives cannot, in all cases, be

[135] Kusum, "Harassed Husbands", IInd Edition, 2003, Regency Publication, New Delhi,

held to be involved in the demand of dowry. In cases where such accusations are made the overt acts attributed to persons other than husband are required to be proved beyond reasonable doubt. By mere conjectures and implications such relatives cannot be held guilty for the offence relating to dowry deaths. A tendency has, however, developed for roping in all relations of the in -laws of the deceased wives in the matters of dowry- death which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused. [136]

The provision of the Dowry and Cruelty laws (Criminal Laws) were with good intentions but the implementation has left a very bad taste and the move has been counterproductive. There is a growing tendency amongst the women which is further perpetuated by their parents and relatives to rope in each and every relative including minors and even school going kids nearer or distant relatives and in some cases against every person of the family of the husband whether li ving away or in other town or abroad and married sisters, unmarried sisters, sister -in- laws, unmarried brothers, married uncles and in some cases grand- parents or as many as 10 to 15 or even more relatives of the husband. Once a complaint is lodged under the Dowry and Cruelty laws (Criminal Laws), whether there are vague, unspecific or exaggerated allegations or there is no evidence of any physical or mental harm or injury inflicted upon woman that is likely to cause grave injury or danger to life, limb or health, it comes as an easy tool in the hand of the police to bound them with the threat of arrest making them run here and there and force them to hide at their friends or relatives houses till they get anticipatory bail as the offence has been made cognizable and non-bailable. Thousands of such complaints and cases are pending and are being lodged day in and day out. [137]

No doubt, there has been awareness amongst married women regarding the rights to

[136] Nand Raj v. State of Punjab & Ors. 2000 Cr. L.J. 2993 (SC)

[137] Savitri Devi v. Ramesh Chand & ors. 2003 Cr. L.J. 2759 (Delhi).

seek grievance for cruelty committed on them by their husbands and in-laws. However, at the same time, cases of misuse of this provision have come up particularly cases of implication of all members of the husband's family as accused. It is true that in many cases the women are being harassed but it is not so in all cases as it has been observed by Hon'ble Apex Court in Kansraj v. State of Punjab,[138] that:

"for the fault of the husband the in-laws or the other relatives cannot in all cases be held to be involved. The acts attributed to such persons have to be proved beyond reasonable doubt and they cannot he held responsible by mere conjectures and implications. The tendency to rope in relations of the husband, as accused has to be curbed."

Further, in State v. Srikanth, 139the Karnataka High Court observed that:

"Roping in of the whole of the family including brothers and sister-in-laws has to be depreciated unless there is a specific material against these persons; it is down right on part of the police to include the whole of the family as accused."

There may be many reasons where the women may feel harassed and tortured such as marriage against her wishes, financial stress, lack of privacy due to joint family, incompatibility, drinking, smoking, sexual dissatisfaction or other habits of the husband, psychopathi c problems or not begetting children but the ultimate recourse to come out of these problems is normally the accusation for harassment and demand of dowry by husband and her in-laws.

In scores of cases across India, the courts have witnessed misuse of dowry prohibition laws, while deciding disputes of domestic nature. The law, designed to help women regain social and economic empowerment in a highly patriarchal society, has been misused in several cases, as is observed even by the apex court. As was in the case of Preeti Gupta v. State of Jharkhand (2010) and Sushil Kumar Sharma v. UOI (2005), where not only the husband but all his immediate relations were implicated under

[138] 2000 Cri. L.J. 2993
[139] 2002 Cri. L.J. 3605

provision is constitutional and intra -vires, does not give a licence to unscrupulous persons to wreak personal vendetta or unleash harassment. There is a rapidly

false charges. Such acts of 'over-implication,' are often resorted with the sole motive to wreck personal vendetta, unleashing a sort of ' new legal terrorism.'

Scores of cases have come to light where the greed for ' quick money' has lured young women to slap false cases against the in - laws, whose life- long earnings and savings are claimed by the bride and her family. At the same time , women are victimised in a patriarchal system. The law is double -edged and needs a re-think. Or, should be used with utmost care.

The irony of Dowry Prohibition Act was exposed by an interesting case when the chief judicial magistrate of Noida ordered to book a woman, Natasha Jayal, a call centre employee, and her parents for giving dowry under section 3 of Dowry Prohibition Act, in 2008. The action was taken on her husband Namit Juyal's complaint, who, harassed by his wife's complaint of dowry harassment case which claimed that her parents paid Rs 10 lakh in dowry to Namit. He was arrested and jailed as per law. Under RTI he demanded to know under what section he had been jailed. When he learnt that on a mere verbal complaint of Natasha, without any investigation he had been arrested, his lawyer slapped the very same section against Natasha' s family - for giving dowry. He also demanded investigation as to how her father could give money that was beyond his mean s. Under section 3 of DPA, giving and taking dowry, both are criminal offence.

Also, the conviction rate in dowry cases remains 4 to 5 %, a National Family and Health Survey shows that only 2% distressed women seek institutional intervention, putting a serious question mark on the law and the manner of its implementation.

The object of the Dowry and Cruelty laws (Criminal Laws) is to strike at the roots of dowry menace. But by misuse of the said provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not as an assassin's weapon. If the cry of " wolf' is made too often as a prank, assistance and protection may not be available when the actual " wolf' appears. May instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the

misery.

The question, therefore, i s what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the accelerating social evil in our societies, namely the misuse of the Dowry and Cruelty laws (Criminal Laws), which were originally meant to act "as a shield" for the protection of harassed women. Nowadays, the educated urban Indian women have turned the tables. They have discovered several loopholes in the existing Indian judicial system and are using the dowry laws to harass all or most of the husband's family that includes mothers, sisters, sister- in-law, elderly grandparents, disabled individuals and even very young children. We are not only talking about the dowry deaths or physical injury cases but also dowry harassments cases that require no evidence and can be filed just based on a singly - sentence complaint by the wife. Dowry is being ma de a scapegoat for all problems in the family. A man whose wife is not happy in her marriage for whatever reasons is placed in a very vulnerable position.

True, in many of these cases a women may be a victim of dowry harassment but surely not all cases of unhappy or strained relations can be attributed to dowry demands. A women may feel harassed and frustrated for many other reasons like, lack of privacy or independence in joint family, incompatibility, drinking, smoking or other habits of the husband, fina ncial stresses, psychopathic problems and so on. Why then should dowry be made a scape-goat for every unpleasant situation.

Once a family has been tortured by using the Dowry and Cruelty laws (Criminal Laws) weapon, the chances of reconciliation between the husband and wife is nil. The divorce that ensues is another mode of harassment for the already impoverished husband because he is forced to pay the hefty alimony/ maintenance demanded by his wife.

Families who have never spent a single minute with lawyers, courts and police, are forced to run frantically from pillar to post to defend an alleged crime which they never committed and they are bound to get depressed with the judiciary and police system. A lot of productive time, energy and money of the accused family are spent in proving themselves innocent. Eventually, the institution of marriage might become more like a business transaction in which a man and wife will have to document each

and every agreement in writing in front of the lawyers.

There are multifarious ways in which cruelty is committed on the wives if one make a critical survey of the cases that come to the police station as well as women's cell daily. In majority of these cases women agree to compromise with their husband as they want to patch up with the erring husband for the sake of social stigma for being a deserted wife or it is for the sake of children.

SUGGESTIONS:

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.

As regards the implementation of the dowry prohibition laws, it is often alleged that anti-dowry legislation is observed more in breach than in implementation. Be that as it may, but the fact remains that dowry being a socio-legal problem, it cannot be tackled by law alone unless members of the society come forward and actively cooperate with the l aw- enforcement agencies to abate this menace. There is also need to create social awareness and mobilise public opinion against dowry through an intensive educational programme at all levels, particularly in the rural pockets. More recently, a number of vo luntary non- governmental agencies and social organisations are doing a commendable work in helping the dowry victims and exposing the perpetrators of dowry crimes with the help of community assistance and guidance, the legal aid workers including the law teachers and students should also take initiative in dowry eradication campaign through an intensive legal literacy programme not only in urban cities and towns but in remote village areas as well.

In view of the foregoing discussion and observations, the following suggestions are made to modify the relevant provision by means of suitable amendments and by sensitizing the police, judiciary and to some extends the women and the society at large.

1. Appointment of Dowry Prohibition officer :-

Preventive steps like appointing Dowry Prohibition Officer should be immediately undertaken by all the State Government. The duty of the officer should also include creating awareness against the practice of dowry among the public by conducting seminars, etc. Some state government had created the institution of Dowry Prohibition Officers, to prevent giving or taking of dowry, but in several states not a single case has ever been reported by DPOs. The institution like DPO should be strengthened for controlling dowry deaths.

2. Speedy clearance of Dowry cases :-

Under the directive of the Supreme Court, these cases should be cleared within six months. Instead, some of the cases have been lingering for 12 to 16 years, since the arrests made under dowry related sections are non- bailable. Those who lack resources to get legal aid remain locked in jail for years. Most of these victims are senior citizens.

3. Legal help to victims :-

Since most victims cannot interpret the law, while many accused had not even ‘ heard of’ 498 A & 304B till they found themselves behind bars. Legal help may be provided to protect the interest of thousands of accused and arrested men and their family members .

4. Using of dowry prohibition laws with double edge :-

Under section 3 of DPA, giving and taking dowry, both are criminal offence. The very same section can be slapped against bride family- for giving dowry. Scores of cases have come to light where the greed for ‘ quick money’ has lured young women to slap false cases against the in -laws, whose life-long earnings and savings are claimed by the bride and her family. At the same time, women are victimised in a patriarchal system. The law is double - edged and needs a re-think. Or, should be used with

utmost care. If greed is to be treated under a criminal law, it should be understood that it is not monopolised by the groom' s family alone.

5. Re think on Legal terrorism of dowry sections under IPC:-

The need to discourage unjustified and frivolous complaints by making the dowry offence under the provisions of the Code of Criminal Procedure (Cr PC) as compoundable and bailable instead of non- compoundable and non-bailable.

It is not inclined to take a view that dilutes the e fficacy of dowry related sections to the extent of defeating its purpose- to protect women against atrocities. ' A balanced and holistic view has to be taken on weighing the pros and cons.

6. Handing the cases of dowry demand by the civil court :-

In the cases of cruelty and harassment for the demand of dowry the Investigating Agency Should Be Civil Authorities. In view of the sensitivity of the offence and in order to avoid clumsiness in human relations it is required that the investigation into these offences be vested in civil authorities like Executive Magistrates . This would enable the civil court to sort out matters of over -reach and over- implications with the added advantage of exploring the possibility of matrimonial reconciliation.

In the event, the Magistrate decides that a particular case falls in the realm of criminal law without the possibility of resuscitating the matrimonial relationship, he may pass an appropriate order for its trial by the criminal court.

7. Creating awareness about penal provisions :-

It has suggested that there is a dire need to create awareness about the penal provisions of the section amongst the poor and hapless rural women ' who face quite often the problems of drunken misbehaviour,' by having ' easy access' to the Taluka and District level Legal Services Authorities and/ or credible NGOs. The lawyers and the police should also be reminded what is expected of them ' morally and legally.'

8. Declare Dowry Killing a social stigma :-

Purely a punitive approach towards the dowry issue is not appropriate. Some kind of social stigma is needed to be attached to it. Dowry killing is a crime of its own kind where elimination of bride becomes immediate necessity so that the groom can again be sold in the marriage market and could fetch more money. Eliminating which seems to provide a solution towards resolving the problem. Social reformist and legal jurists may evolve machinery for debarring such a boy from remarriage irrespective of the member of family who committed the crime an d in violation penalize the whole family including those who participate in it.

9. Education of women to curb dowry deaths:-

A social movement of educating women of their rights particularly in rural areas is needed. It also seems that

once education and economic independence for women are achieved, the evil of dowry would vanish itself .For better results a publicity drive should also be started to inform people at every level about the nature of legal control of dowry. A major thrust to enforcement sch emes should also be given. Awakening of the collective consciousness is the need of the day.

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