

## Dowry death and access to justice

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### Abstract

Women have been exploited in our country for ages, socially, economically and also physically. The worse form of exploitation is seen in the form of dowry death. Though we have laws prohibiting dowry death but these women do not have access to justice. They do not have awareness and resources to ensure justice is done to them. In this article I would be dealing with laws made for women and also constitutional provisions made for protection of women.

**Keywords:** Dowry death, Access to justice, Constitution, Women

### 1. Introduction

In the past centuries, not only have women been denied justice social, economic and political but also they have been generally abused, exploited and then discarded. Adding to many other issues on which women are exploited, a dowry issue is the one, which sours the relationship with the mother-in-law and daughter-in-law, husband and wife, the root cause of which is greed. The tradition of dowry started in the form of "Varadakshina" which used to be given by the parents of the bride to the bridegroom out of love and affection and to honour the groom rather than to induce him to take the bride. Later on in the hands of lords and kings it became the symbol of status and prestige to assert one's superiority over others and dowry emerged as an unintended consequence of the above social practice. I do not find any better way to show the impact of this evil than the opinion of the Supreme Court:

"Every time a case relating to dowry death comes up, it causes ripples in the pool of the conscience of this Court Nothing could be more barbarous, nothing could be more heinous than this sort of crime. The root cause for killing young bride or daughter-in-law is avarice and greed. All tender feelings, which alone make the humanity noble, disappear from the heart. Kindness, which is the hallmark of human culture, is buried. Sympathy to the fairer sex, the minimum sympathy is not even shown. The seedling which is uprooted from its original soil and is to be planted in another soil to grow and bear fruits is crushed"<sup>[1]</sup>.

While women have been exalted to divine heights there is a schizophrenia about women in practice arising from ancient religious texts as in Manusmriti. "In childhood a female must be subject to her father, in youth to her husband, when her lord is dead to her sons. A women must never be independent."<sup>[2]</sup>. "Though destitute of virtue, or seeking pleasure (elsewhere) or devoid of good qualities, (yet) a husband must be constantly worshipped as a God by a faithful wife."<sup>[3]</sup>.

"The sacred and imperative duty of a wife is to carry out the commands of her

Husband, and to live in perfect obedience to his wishes."<sup>[4]</sup>.

#### 1.1 Misconceptions about "Dowry" and its early origins

"Dowry" is, and has always been essentially, that property which has been obtained under duress, coercion or pressure. It

is in fact property extorted from the father or guardian of the bride by the bridegroom, his parents or relations. It does not consist of voluntary gifts given to the bride and bridegroom. The confusion that "dowry" is a concept of Hindu Law has arisen from the concept of "Varadakshina" which was associated with an approved Hindu marriage considered as "Kanyadaan". Marriage was considered a sacrament and not a contract under Hindu Law. Kanyadaan being essentially the gift which the father of the bride gave to the father of the bridegroom. The Dharmshastras, the ancient Hindu Law texts laid down detailed qualifications and qualities that bridegrooms must possess and to whom presents in cash or kind known as "Varadakshina" were to be given. Both Kanyadaan and Varadakshina were considered meritorious acts. The presents that were given to the daughter on the occasion of marriage by her relations and friends constituted her "stridhan" i.e. her separate property. Varadakshina was given voluntarily to the groom and there was no compulsion. Obviously it was his property.

Another question that arises in regard to dowry is- how is it different from *Stridhan*. Literal meaning of the word *Stridhan* is women's property. This a type of property over which the woman generally has full rights of ownership. It mostly consists of items which are given to her during the time of her maidenhood, presented at the time of her marriage or after the marriage now all types of *Stridhan* including *Saudayika* are the properties given to her by way of gift without any demand, coercion or pressure. The dowry given to the husband or in-laws is different from *Saudayika* as it is essentially given under coercion, undue influence or pressure.

The modern practice of dowry has no resemblance to the original concept contained in Hindu Law as it originated in ancient times. In fact it is a manifestation of the political, economic and cultural insignificance of women both in her natal family and in the family in which she enters in marriage. Having always been considered an economic liability within her natal home, she is considered a temporary visitor until she departs in marriage to her husband's home. Dowry has to be given so as to compensate this non-productive being, even when the woman is educated and has her own job and is not economically dependent on her husband. The culture of conspicuous consumption has reached such frightening

proportions that dowry has permeated even those communities and classes which traditionally did not accept dowry. They are now doing so in order to achieve social mobility and status.

A Joint Committee appointed by the Houses of Parliament to examine the working of the Dowry Prohibition Act in 1980 found that dowry had permeated all classes, communities, and religious groups and castes. It noted with distress that education had no liberalising effect on the minds of people. In fact the more educated people accepted and insisted on dowry. The Committee recommended amendments to the Dowry Act of 1961 and in the Indian Penal Code. Amendments were brought into effect by the dowry Prohibition Amendment Act, 1983 and Criminal Law Amendment Act, 1986. Before the enactment of the Criminal Law Amendment Acts, 1983 and 1986, dowry deaths were dealt with under Section 302 of the Indian Penal Code i.e. murder or under Section 306 i.e. abetment to suicide. So far as the Penal Code is concerned, S. 498A<sup>[5]</sup> was introduced wherein if a woman is subjected to cruelty by her husband or his relative they could be convicted under this Penal provision. In so far as the Evidence Act is concerned, a new S. 113A was introduced which contains a presumption as to abetment of suicide by a married woman. It seems as if it was introduced to provide the prosecution a tight hand against the defense while dealing with matter. The law underwent a further change with the introduction of S. 304B in the Penal Code and S. 113B in the Evidence Act by the Dowry Prohibition (Amendment) Act, 1986. The legislature has by introducing Sections 113A and 113B in the Evidence Act tried to permit a presumption to be raised if certain facts are established.

### 1.2 S.304B of the IPC reads as follows

“304B. Dowry death. – (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation. – For the purposes of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

### 1.3 A careful analysis of the above section brings to our notice that it has the following essentials:

1. The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances;
2. Such death should have occurred within seven years of her marriage;
3. She must have been subjected to cruelty or harassment by her husband or any relative of her husband;
4. Such cruelty or harassment should be for or in connection with demand for dowry.

Now I will take up the each term and try to analyze it in the light of Supreme Court decisions.

### 1.4 Dowry

In section 304 B dowry has the same meaning as in section 2 of the Dowry Prohibition Act, 1961. The Dowry Prohibition Act, 1961 is a short legislation with just 10-sections with the express objective of giving or taking of dowry. Obviously what is included and what is excluded from the legal definition of dowry is basic to understand the scope of the Act. The definition is quite comprehensive. It not only prohibits the giving and taking of dowry but also tries to curb the practice of giving or taking of dowry in any form either before or after the marriage. The Act as it may be noted uses the word dowry not in the sense only what the bride’s parents give to bridegroom or their daughter’s in laws but also other way round. Amending Act of 1984 omitted Explanation to the section, which saved the presents made at the time of marriage from scope of dowry. The same Act also substituted the phrase “in connection with marriage” for “as consideration for the marriage”. The 1986 Amendment Act gave another change by substituting the phrase “or any time after the marriage” for “after the marriage” in section 2 whereby the continued demand for dowry long after the marriage was expressly included within the purview of the section.

In Section 2 of the Dowry Prohibition Act, 1961 as amended, "dowry" is defined as under

"Definition of "dowry"- In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage; or by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before (or any time after the marriage) in connection with the marriage of the said parties, but does not include dower or 'mahr' in the case of persons to whom the Muslim Personal Law (Shariat) applies."

Once a question arose in *Kunju Moideen v. Sayed mohd*<sup>[6]</sup>. that whether money advanced by a person to a prospective son-in-law for purchasing land in the joint name of himself and daughter amounts to dowry or not. This suit was for the recovery of the amount, as the prospective son in law broke the engagement and refused to refund the money. Since this was a case before the amendment of 1986 probably the court was justified in holding that the disputed amount was not ‘dowry’, as it was not paid before or after the marriage in consideration for marriage.

In case of Mrs. Satya Rani Chaddha, 1981 there was demand for gifts at the time of birth of child. The court held it is not dowry, as it is not a “consideration for marriage “However it seems that in both the cases, it would constitute dowry under new definition as the money advanced was squarely within the meaning of in connection with marriage. In section 2 the word property has been used in very broad sense. It includes both movable and immovable property. Recently, a matter arose before Supreme Court that in a case where cruel treatment and harassment of the deceased by accused led her to commit suicide, which was a death otherwise than normal circumstance, can attract the S.304B. Here the cruel treatment to the deceased was given to transfer the land, which was given to her in marriage as ritual. Court here said that death cannot be said to have been caused “in connection with dowry demand” and did not hold the accused guilty under S.304B.

I also feels that in the above case the harassment was not related to dowry but due to the reasons other than that, because in dowry the family members of the bride are always forced to

give more money or property by harassing the bride, which was not the case here.

In the case of *L. V. Jhadav v. Shankarrao Abasaheb pawar and others*<sup>[7]</sup> a dowry demand was made in the name of expense of sending the bride to her husband to USA where he was working. It was also told to the appellant that till the said amount is not paid further ceremonies of marriage would not be performed. However due to persuasion of some respectable persons all the formalities and ceremonies were performed. But respondents continuously made the persistent demand. It was submitted on behalf of the respondents that the demand of Rs.50, 000 here would not constitute dowry as according to section 2 dowry is something which has been agreed to be given or has been given. Here nothing of this sort happened, so it is not dowry according to section 2. However court declined to accept the same view and held that the above act of respondents is nothing but dowry.

After the decision of Supreme Court in the above case though there should not be any difficulty on this point however to remove all the doubts and giving correct signals to lower court it is necessary to amend the section 2 by removing the expression "agreed to be given" by appropriate section. It is always better for better implementation of the law to have it in more concrete form.

Another lacuna that seems is that dowry is something which is extracted or demanded from other party, but this very fact does not find its mention in the definition of dowry. Also the scope of phrase 'in connection with marriage' has been left to enforcement officers and courts to decide.

### 1.5 Cruelty

Meaning of the word cruelty has nowhere been given in S.304B. It is also to be noted that it has not been defined in any other section or any other statute other than S.498A of IPC. Having regard to common background of both the sections the meaning of cruelty for S.304B is taken from here. The definition of cruelty consists of two parts. Clause (b) concerns itself with the harassment on account of dowry demand, while clause (a) takes care of cruelty for reasons other than dowry demands. This section is used in limited sense, while dealing with S.304B because there cruelty has to be within seven years of marriage and in section 304B it is the dowry death that is punishable but here cruelty itself is punishable<sup>[18]</sup>. Under clause (a) of section 498A however in order to constitute cruelty it is not enough that the conduct of the accused is willful and is offensively unjust to the woman, but it is also necessary that the degree of such conduct on the part of the accused is such as is likely to drive the woman to commit suicide or such conduct is likely to cause grave injury or danger to her life or limb or to her mental or physical health<sup>[24]</sup>.

In *State of West Bengal v. Orilal Jaiswal and Another*<sup>[8]</sup> the deceased was called a woman of evil luck as her father in law died shortly after the marriage. She was told to have swallow her baby as she had an abortion in the hospital after being admitted to the hospital. Her husband would also beat her whenever he would come home drunk. She was also told at times that items she had brought in dowry are of inferior quality. Court regarded all these amounted to mental cruelty.

Generally a hue and cry is raised against the S.498A that it is too harsh and it has put many innocent husbands behind the bars on the basis of wrong and false accusations by their wives and the police also without investigating the matter properly

arrests them. The researcher does not see any force in the arguments and there does not seem to be any case, which has come up before the SC yet by the virtue of which it could be established. In the opinion of the researcher the S.498A comes into picture only when it has conclusively been established that the cruelty was committed by the husband.

Also it has been alleged that dowry act is misused by many to falsely implicate husbands and in-laws. Although there have been some such cases, but this is a social welfare law and cannot be scrapped just because it is misused by some.

Although the government prohibited dowry through legislation in 1961, it was never implemented properly. Prohibition officers were supposed to have been appointed in each district, taking the battle to the grassroots but nothing happened. And, the tide of greed driven murder of young brides continued unabated.

In 1986, under huge pressure from the women's movement, the Indian penal Code was amended to include section 304B, specifically against murder following harassment for dowry. Section 498A was added to define harassment and cruelty by husbands and his relatives. Strangely this too has not had much effect. Laxity of the government machinery can be one reason for the failure of legal measures. After all, conviction rates in bride burning cases have dipped from an already weak 37% in 2000 to 34% in 2010. In section 498A cases, the conviction rates are even lower: just 19%, although reported cases were 94,000 in 2010.

But perhaps the primary reason for spread of this cancer has been the almost complete absence of any public campaign or mobilization against it for the past 25 years. As a result, girls are considered a burden on the parents, families go bankrupt trying to get their daughters married off, choice in forming relations is frowned upon and thousands - maybe lakhs - of young women suffer violence silently behind closed doors. Only 18 per cent cases registered under dowry death charges end up in conviction, statistics available with the Delhi Police reveal. According to the Delhi Police figures, a dowry death is reported in the city every third day. Of the 681 people arrested under the sections of dowry death in Delhi, only 207 were convicted of the charges and sent to jail. Around four years ago, the Delhi Police had issued a circular that no arrests would be made in cases of dowry harassment without the prior permission of the deputy commissioner of police (DCP). This was done after the courts issued strict guidelines against the misuse of dowry harassment laws.

According to the data available for the years 2008, 2009 and 2010, as many as 413 cases were registered under Section 304B (dowry deaths) of the IPC in Delhi. However, when the cases came up for trial in the courts, only 75 cases ended in a conviction. It meant a jail term for only 207 people, the records said. Police said it was not necessary that the other cases would have ended in an acquittal, as they might have gone for appeals in a higher court. The data was provided by the Ministry of Home Affairs in the present session of the Lok Sabha. Earlier, police arrested all men and women, including distant relatives of the victim, even on the mere mention of their names in the First Information Report (FIR). "From the allegations set out in the FIR and other subsequent allegations or material collected during investigation, if necessary only the prime/main accused, whose primary role in the commission of the offence has been established, should be arrested, and that too after the prior written approval of the DCP. The arrest of the accused should

be an exception not a rule," an order issued by the then police chief Y S Dadwal had specified.

### 1.6 Seven years

Another essential ingredient of S.304B is that death must have been occurred within seven years of marriage. Supreme Court once in the case of *State of Punjab v. Iqbal Singh and others* <sup>[9]</sup> observed that this period of seven years is considered to be the turbulent one after which the legislature assumes that the couple would have settled down in life. Supreme court's view that every marriage is a transplant and when a tender plant is shifted from the place of origin to a new setting, great care is taken to ensure that the new soil is suitable and not far different from the soil where the plant had hitherto been growing; care is taken to ensure that there is not much of variation of the temperature, watering facility is assured and congeniality is attempted to be provided, indirectly indicates to the fact that a married life in true means can not be said to have been started till the both of them don't start living together.

Now take an example of child marriage where a child is married at the age of 10 years but bride continues to live in her parent's house and goes to bridegroom's home at the age of 22 years. Now, if she dies at the age of 24 years under abnormal circumstances and it is also shown that she was harassed soon before death in connection with dowry, can the husband or his relatives be held guilty under S.304B. However this sort of question has never arisen before the Hon'ble Supreme Court but going by the spirit of the piece of legislation and looking at the attitude of the court however it can safely be concluded that in these types of circumstances the marriage would be deemed to have been solemnized at the time when bride actually goes to her husband's home and lives there.

### 1.7 Women and the Constitution

The low status of women sanctioned by social custom exists in spite of the egalitarian vision of women expressed in the Indian Constitution. The Constitution of India assures equality for both sexes. Article 14 of the Constitution states as follows: "Article 14- Equality before law -The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." Article 15 prohibits discrimination on the basis of sex, but permits discrimination in favour of women. It states as follows:- "Article 15(1)-The State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them. "Article 15(3)-Nothing in this article shall prevent the State from making any special provision for women and children." Some Directive Principles of State Policy of the Constitution of India apply to women specifically. Directive Principles contained in Part IV of the Constitution are guidelines for the State and are not justiciable. They are set out in Article 39:- "Article 39: Certain principles of policy to be followed by the State: The State shall in particular, direct its policy towards securing:

- a) That the citizens, men and women equally have the right to an adequate means of livelihood.
- b) That there is equal pay for equal work for both men and women.
- c) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength."

**"Article 42:** Provision for just and humane conditions of work and maternity relief The State shall make provision for securing just and humane conditions of work and for maternity relief" Part 4A of the Constitution which contains the Fundamental Duties was introduced by the 42nd amendment and enacted during the emergency when Mrs. Indira Gandhi wanted legitimacy for her government and also to make a gesture to women during the International Decade for Women in 1976. This chapter does not create rights but enjoins duties. It has been used effectively in invoking intervention and access to justice for and on behalf of women. The courts till today have not decided the scope and parameters of Fundamental Duties. It is hoped that Article 51 A Part 4A will make enforceable those responsibilities and principles that have not been enforced because of the bar in Article 37 of the Directive Principles Personal Law

The Constitution promises equality but a parallel regime of personal laws prevails and is justified on the ground that they are permitted in view of the express guarantee of the freedom of religion under Article 25 of the Constitution of India.

Social Action Litigation Under Article 32 and Article 226 of the Constitution of India Article 32 provides the right to move the Supreme Court for constitutional remedies and Article 226 provides the right to move the High Court where there is a violation of fundamental rights or any legal right. Fundamental rights are available against the State and its instrumentalities. The post emergency period i.e. after 1975 witnessed the growth of social action litigation in the Supreme Court which was mostly judge induced whereby the court, by enlarging the rules of locus standi, allowed persons or groups of persons, acting on behalf of those who are socially disadvantaged or who could not assert their own rights to do so by invoking the courts' power of intervention under Articles 32 and 226 of the Constitution of India. Such persons however had to be bonafide persons and who were advancing a public cause. This new jurisdiction of the court has been used effectively in dowry and dowry death cases to invite the supervision of the highest court and also to obtain orders from it directing the police to register complaints and carry out investigations promptly, honestly, impartially and effectively.

### 2. Conclusion

Dowry will not vanish overnight by law alone. At a joint sitting of both Houses of Parliament, the Prime Minister, Mr. Jawaharlal Nehru on Dowry Prohibition Bill in May 1961 observed: "Legislation cannot by itself normally solve deep rooted social problems. One has to approach them in other ways too, but legislation is necessary and essential, so that it may give that push and have that educative factor as well as the legal sanctions behind it which help public opinion to be given a certain shape." The concept of dowry has been so intimately linked with custom that it has become legitimized in the sub-conscious minds of people and is not perceived as immoral or illegal. Many prominent personalities suggest women "to stay at home and leave their offices" and "not to compete with men". They asserted that the "constitutional mandate of gender equality" was the "anti-thesis of the human process because God has not created man and woman as equal". Several suggestions have been made to control the evil of dowry such as increased efforts at legal literacy and social mobilisation for legal action. One of the serious handicaps in dowry cases has been the manipulation by investigating agencies in collusion

with public servants such as government doctors, magistrates etc. The law should be strengthened to deal severely with such cases and classify it as a crime of "custodial suppression of evidence. "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 and in violation penalize the whole family including those who participate in it.

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 schemes should also be given. Awakening of the collective consciousness is the need of the day. It also seems that once education and economic independence for women are achieved, the evil of dowry would vanish itself. A social movement of educating women of their rights particularly in rural areas is needed. Courts have to assume a greater responsibility and it is expected that the courts would deal with such cases in a more realistic manner and would not allow the criminals to escape on account of procedural technicalities.

### 3. References

1. Smt. Paniben. Vs State Of Gujarat, AIR 1817, 1992 SCR. 1992; (2)197.
2. Laws of Manu V. 145.
3. Manu V. 154.
4. Garuda Purana. Dutt, 95, 270.
5. 498 A. Husband or relative of husband of a woman subjecting her to cruelty. Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation. For the purpose of this section, "cruelty" means:
6. Any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
7. Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.'
8. AIR. Ker, 1986, 48.
9. 1983 AIR 1219, SCR, 1983; (3)762.
10. AIR. SC, 1994, 1418.
11. AIR, 1991, 1532.