

DOWRY AND DOWRY DEATHS

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INTRODUCTION

“ANY YOUNG MAN, WHO MAKES DOWRY A CONDITION TO MARRIAGE, DISCREDITS HIS EDUCATION AND HIS COUNTRY AND DISHONOURS WOMANHOOD”

- MAHATMA GANDHI

India is a Country where marriage is meant to be a Sacrament. We can say that the marriage between two persons that is male and female is a Holy tradition. But there is however one custom which troubles the most during such holy tradition which is Dowry System. We can trace its path from medieval ages and time. In this system the family of Bride used to give some amount of gift to her to maintain her pride and independence. But during colonial period this practice was legalized by the Britishers, and it was mandatory for all to follow it.

In today's era Dowry is one of the burning issues in India. There are many laws and acts which were enacted and amended by Indian Judiciary. To stop this practice the Government and Non-Governmental Organizations have initiated many awareness programs, against Dowry Deaths and Dowry System in India. Then also after so much initiative by the Government and NGOs the crime rate is on increase in the Country. We have achieved so much progress in modernization in better education, other developments, economy sectors and others. Then also there are some areas in which our Country is lacking behind. One of the area in which our Country is very much lacking behind is Dowry System and Dowry related deaths, which keeps on increasing with time.

First we have to understand what Dowry is. ²Dowry is transfer of parental property, gifts, money or property at the time of marriage of daughter. Therefore we can say that the concept of Dowry is to give Dower to daughter by her parents at the time of marriage which remains under her control; Dowry Prohibition Act 1961 was enacted to tackle these types of situations in our

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²<https://wcd.nic.in/act/dowry-prohibition-act-1961>

Country. The main aim of this Act is to prohibit in giving or taking of dowry and similar related offenses.

In 1986 Dowry deaths increased. After this a new offence known as Dowry Death was inserted in Indian Penal Code of 1860 by the virtue of section 304-B. Under this section the provision is much strong and stricter than previous acts and provisions. ³**Section 304-B** of Indian Penal Code defines- **Dowry Death** on the other hand ⁴**Section 498-A** of Indian Penal Code defines- **Husband or relative of husband of a woman subjecting her to Cruelty**, in simple words this section talks about cruelty. Similarly ⁵**Section 113-B** of Indian Evidence Act 1872states- **Presumption as to dowry deaths**, in order to lower down the crime rates of such heinous called Dowry Death.

There are many other provisions in which we have given protection to women under such crime and cruelty. As ⁶**Article 21** of The Constitution of India clearly states “Right to life” but in some landmark cases we have also seen that right to life also includes right to live with dignity. Therefore this is also a fundamental right available to women who face cruelty of not bringing much dowry.

Dowry system has become so much serious and unethical stigma in our Indian Society after being so much modern. India is a country where more than half of the population claim themselves Educated people. But these literate and educated people are the only ones who do this crime so much. This leads brutality, physical and emotional cruelty towards women, and on the other hand this also creates financial and emotional stress for the family of women.

We live in a Society where taking and giving Dowry is crime and a Criminal offense under Indian Penal Code, Indian Evidence Act and even if right to live with dignity is also affected of women then it also violates her legal and fundamental right, after all this also Dowry System still exists in our Indian Society.

³UNIVERSAL’S CRIMINAL MANUAL 2016 (PAGE NO. 517)

⁴UNIVERSAL’S CRIMINAL MANUAL 2016 (PAGE NO. 593)

⁵UNIVERSAL’S CRIMINAL MANUAL 2016 (PAGE NO. 655)

⁶THE CONSTITUTION OF INDIA BARE ACT 15TH EDITION - P M BAKSHI (PAGE NO. 72)

DOWRY SYSTEM IN INDIA

If we see the traces of Dowry System in India, in Ancient times this act was completely Voluntary Act, in this case the father without even groom's demand used to give gifts voluntary. But if we see this in present scenario then in today's era it is Conditional Dowry. If we check the texts written in ancient period then we will see that, marriage is an important ritual and one of the main ceremonies in a person's life, but there is not all mentioned about Dowry System. Although during the Vedic period marriage was to be considered as holy tradition and bond blessed by gods and goddess and this bond could not be broken by any sort of human action. There were only simple and basic rules for marriage but the mention of word dowry or dowry system was not presented anywhere.

Therefore in Vedic period there were no such conditions then why there are such conditions now? And who made these conditions, are these conditions made by us?

The answer to above questions is YES these conditions are made by us only.

If we see the writings of some authors who wrote about the Dowry System growth in India, through that we can find that in earlier days and time, daughters were not having rights of inheritance and were denied of this rights, and on the other hand only sons were having power and right of inheritance, therefore only sons inherited their fathers property. So as daughters were not having rights and powers of inheritance therefore their parents at the time of their marriage out of sheer love and affection used to gift some money, and jewellery etc... to her.

According to Hindu Succession Act 1956, no property was given to women and not evens a piece of land or anything. But in the year 2005 one amendment took place in Hindu Succession Act and according to that amendment women and daughters of our Country wereentitled for an equal share in parental property. ⁷Whereas if the property is ancestral property, a daughter has its own share from his birth and in the case of self-acquired property then the division will be taking place according to the will.

⁷https://hr.economictimes.indiatimes.com/microsite/workplace-resurgence?rgstr=1&form_id=form-512-1587444904&ag=etwebskin&utm_source=etwebskin&utm_medium=static&utm_campaign=ETHRWorld

In the time of Ancient period in India, when India was not under British Control some authors wrote, that the theory of dowry was directly responsible for the status of women in the country and society. According to them Dowry system was made for benefiting the married women in the country. And when Britishers occupied Indian territories, dowry system was converted into a system and landed up harming the married women who actually was supposed to be benefited from it.

DOWRY DEATHS IN INDIA

To start this topic we will first understand what do we mean by Dowry Death? Dowry Death can be defined as unnatural death of a woman or wife due to demand of dowry by her husband or the family of husband. Dowry can be of any kind may be its money, assets, property both moveable and immovable and jewellery, and if these conditions are not fulfilled by a woman or wife then some of them are killed and murdered by their husbands or family of husband or women commits suicide as they are unable to fulfil their demands. They are harassed if they can't fulfil the demand of greedy people who demand more and more.

The reason of demand can be anything such as to start career, or to fulfil the demands of developing social materialistic requirements. Therefore through this analysis we can say that it's the only greed of the husband and his family members to demand dowry otherwise this system of dowry or such a heinous system could have been stopped in past years and time only.

It's the responsibility of The Government and Indian Judiciary to stop this practice that is going from many years. It's not the custom or tradition to take dowry. As the time and years are passing by, the crime rates in dowry deaths keeps on increasing and today it's at its peak. People don't get it, that its crime to give and take dowry.

If we look into the statistics given by ⁸**NATIONAL CRIME RECORDS BUREAU (NCRB)**, in the year 2016, the total number of cases reported related to dowry deaths were approximately 7600 and total cases reported related to cruelty by husband and by their family members were approximately 100,000. Till today also India holds the highest number of Dowry Death cases all over the world. There are many provisions and laws for protection of women, but then also

⁸<https://ncrb.gov.in/crime-india-2016-0>

Government and Judiciary are falling in their duties to protect the woman. It only seems that the laws and acts passed by them just kept in statute books and never tried to use them.

But on the other hand that same laws and acts that were made to protect women from any crimes if happens to them are being misused by themselves and by their family members. There are many cases in which wife and the family of wife misuse these laws and blackmail the husband and his family, these things should also be taken into consideration by Government and Indian Judiciary.

As we have seen the report of NCRB, we can say that the crime rate is at increasing stage only and if nothing is done then every wife and woman has to face such cruelty and other things. We have also seen that the very law that was made for the protection for women is also being misused by them and their family members.

TYPES OF DOWRY CRIMES

Dowry is one of the heinous crimes which are faced by women in everyday situation. This situation sometimes leads to physical violence by husband, family or relatives, emotional abuse and sometimes they are being murdered after conditions are not fulfilled. The three main predominant types of crimes related to dowry are: **Cruelty** includes torture and harassment, **Domestic violence** includes physical, emotional and sexual assault, **Dowry death** which includes bride burning and murder. We will deal with these types individually. They are as follows -

- **CRUELTY** - Cruelty can be in any form such as torture or harassment of women to fulfil the conditions of dowry for property or valuable security is a form of dowry crime. The cruelty can be in the form of verbal attacks or may be with beating in order to force the wife, women and their family members to fulfil the conditions of Dowry. There are also cases regarding Cruelty in which women commits suicide and it is criminalized by anti- dowry laws in India.
- **DOMESTIC VIOLENCE** -Domestic Violence is a broader version of Cruelty. Domestic violence includes physical, emotional, economic and sexual violence as well as Coercion. For the protection of women from domestic violence a law was made that is Protection of

women from Domestic Violence Act 2005, this law helps women in reduction of domestic violence and protects their rights.

- **DOWRY DEATH-** Dowry Death mainly relates to Bride's Suicide or killing done or committed by husband or by his family soon after the marriage because of the dissatisfaction of dowry brought. Most of the Deaths happen when the woman is young and is unable to bear the harassment or torture and commits suicide by hanging or by consuming poison. Dowry death also includes bride burning that is when petrol or kerosene is put on wife and set ablaze by husband or their family members.

These are the main three types of Dowry deaths. In India daughters are only seen as economic liability to our society.

We have seen types of dowry death and history of the system. Now we will see some of the penal provisions given by Indian Judiciary for Protection of Women from Dowry Deaths and other crimes.

PENAL PROVISIONS: INDIAN PENAL CODE 1860 AND INDIAN EVIDENCE ACT 1872

There are two main Sections of Indian Penal Code that deals with Dowry system and cruelty faced by wives by their husbands. We will deal with these Sections one by one with the help of some case laws. These are -

- **SECTION 304B - DOWRY DEATH** - This section is explained under two clauses- (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 soon before her death that 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", an such husband or relative shall be deemed to have caused her death.

(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.

⁹UNIVERSAL'S CRIMINAL MANUAL 2016 (PAGE NO. 517-518)

¹⁰Ingredients of Section 304B of the Indian Penal Code -

1. Death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances.
2. Within 7 years of her marriage
3. It is shown that soon before her death she was subjected to cruelty and harassment by her husband or his relatives 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.

This offence is Cognizable, Non-Bailable and non-Compoundable.

In ¹¹**JASPAL SINGH v. STATE OF PUNJAB (1984)**. The facts of the case are- After the marriage, husband started harassing the wife demanding more and more dowry including a motor cycle. The harassment came to the knowledge of the village Mukhiya. He came to the house and advised not to harass the wife. After some time in the evening husband beater to death and in the backyard of the house he burnt down her body completely. The Court decided this matter and issue and he was convicted by life imprisonment.

In ¹²**STATE OF WEST BENGAL v. ORILAL JAISWAL (1993)**. The facts of the case are - Marriage took place in the month of May 1985. Within few months father-in-law suffered death. Lady became pregnant and suffered miscarriage. Mother-in-law continuously used abusive language on the daughter-in-law and tortured her and compelled her to suffer death. Daughter-in-law hanged herself in the month of April 1986. Court provided imprisonment by life.

In ¹³**PRABHU DAYAL v. STATE OF MAHARASTRA (1993)**. The facts of the case are - Marriage took place in April 1984. Woman's father promised more dowry on Ganesh Chaturthi. But failed to fulfil the promise. Father-in-law started harassing her. Woman wrote letters to her family members and friends and she was burnt to death in the month of September in 1984. Court convicted the accused by life imprisonment.

¹⁰RATANLAL & DHIRAJLAL - THE INDIAN PENAL CODE 1860 35TH EDITION (PAGE NO. 700)

¹¹<https://www.jstor.org/stable/43951055?seq=1>

¹²<http://www.the-laws.com/Encyclopedia/Browse/Case?CaseId=003991687000>

¹³<https://www.lawyerservices.in/Prabhudayal-and-Others-Versus-State-of-Maharashtra-1993-05-14>

In ¹⁴**BALDEV SINGH v. STATE OF PUNJAB**. In this case the Court held that the time gap between the cruelty, harassment and death of women should not be much.

In ¹⁵**STATE OF RAJASTHAN v. JAGGU RAM**. In this case the Court held that there is no specification of time period between the cruelty, harassment and death of a women in any of the statute books or acts. Therefore the Court said and directed that the facts and circumstances of every case may differ from each other, so on the basis of that it is required for the court to decide whether the time period between the death of a women and cruelty she suffered is immediate or not.

These are some of the best judgment cases by various High Courts and Supreme Court of India.

¹⁶**SECTION 498A**- This Section was added in the year 1983. There is already a Section for dowry death that is Section 304B. According to it, if death takes place of the lady within 7 years of marriage. It is punishable from 7 years to life imprisonment.

According to Section 498A, if husband practices cruelty or any relative of the husband practices cruelty and which drives the lady to commit suicide or to suffer grave injury or danger to her life mentally or physically ordemands any valuable properties and jewels or cash it is called harassment, irrespective years from the date of marriage. The punishment is 3 years or fine.

¹⁷**Ingredients of Section 498A of Indian Penal Code -**

1. The women should be married.
2. The women should be subjected to harassment and cruelty.
3. The harassment and cruelty should be done by husband, family of husband or relatives.
4. There should be Men's Rea on the part of husband, family of husband or relatives of husband's.

This offence is also Cognizable, non - Bailable and non - Compoundable

¹⁴(2008) 13 SCC 233

¹⁵(2008) 12 SCC 51

¹⁶UNIVERSAL'S CRIMINAL MANUAL 2016 (PAGE NO. 593)

¹⁷RATANLAL AND DHIRAJLAL INDAIN PENAL CODE 35TH EDITION (PAGE NO. 1196)

In ¹⁸**BALWANT SINGH AND OTHERS v. STATE OF HIMACHAL PRADESH**. The court held that the person who is being acquitted under Section 304B of Indian Penal Code can also be convicted under Section 498A of Indian Penal Code, as both the sections of Indian Penal Code can't be mutually inclusive.

In ¹⁹**PAWAN KUMAR AND OTHERS v. STATE OF HARYANA**. The court held that the wife who died within 7 years of her marriage, which is the result of dowry death by committing suicide, then along with Section 304B of Indian Penal Code and Section 498A of Indian Penal Code, the husband, family of husband or any relative of husband can also be convicted under ²⁰Section 306 of Indian Penal Code which is Abetment of Suicide, as forced the wife to do so.

Therefore we have seen Sections of Indian Penal Code who gives protection to women under such circumstances. With the help of Indian Judiciary we have achieved many things as we have seen in the above cases.

Now we will be seeing Section 113B of the Indian Evidence Act 1872, its ingredients and with the help of some case laws we will try to understand this Section.

²¹**SECTION 113B OF INDIAN EVIDENCE ACT - PRESUMPTION OF AS TO DOWRY DEATH** - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

The ingredient of this section is fulfilled by the ingredients of Section 304B of The Indian Penal Code 1860.

In ²²**KAMESH PANJIYAR ALIAS KAMLESH PANJIYAR v. STATE OF BIHAR**. In this case the court held that Section 113B of the Indian Evidence Act and Section 304B of the Indian Penal Code will have conjoint reading. Therefore after that the evidences will be produced for cruelty and harassment, in order to punish the accused in the matter of dowry death.

¹⁸(2008) 15 SCC 497

¹⁹(1998) 3 SCC 309

²⁰UNIVERSAL'S CRIMINAL MANUAL 2016 (PAGE NO. 520)

²¹UNIVERSAL'S CRIMINAL MANUAL 2016 (PAGE NO. 655)

²²(2005) 2 SCC 388

In ²³**SHAM LAL v. STATE OF HARYANA**. In this case the court held that the husband cannot be convicted under Section 304B of The Indian Penal Code and Section 113B of Indian Evidence Act if there are no evidences or proof of harassment and cruelty.

In ²⁴**HARJIT SINGH v. STATE OF PUNJAB**. In this case the court held that there was no evidence that wife has consumed poison due to some cruelty or harassment by husband or family of husband. Therefore he was acquitted under Section 304B of the Indian Penal Code and provisions of Section 113B of The Indian Evidence Act was not inflicted against him.

We have seen that women are protected under Sections of Indian Penal Code and Indian Evidence Act. But after all this efforts the mind-set of the society remains the same and the number of cases regarding this matter keeps on increasing. These provisions and sections are misused by women also for sometimes blackmailing the husband and family of husband.

Now we will be seeing the act made by Indian Judiciary and Government to protect women from such circumstances. This Act was created apart from Indian Penal Code and Indian Evidence Act. This act is known as The Dowry Prohibition Act, 1961.

THE DOWRY PROHIBITION ACT 1961

The main aim to make and enact this act was to give protection to women and to provide relief to the victims of dowry cases in the country. This act alone fulfils the purpose to protect woman from dowry harassment and cruelty.

This act contains 10 Sections. ²⁵Those are -

- **SECTION 1** - Short title, extent and commencement
- **SECTION 2** - Definition of “Dowry”
- **SECTION 3** - Penalty for giving or taking dowry
- **SECTION 4** - Penalty for demanding dowry

²³(1997) 9 SCC 759

²⁴(2006) 1 SSC 463

²⁵<https://wcd.nic.in/act/dowry-prohibition-act-1961>

- **SECTION 4A** - Band on Advertisement
- **SECTION 5** - Agreement for giving and taking dowry to be void
- **SECTION 6** - Dowry to be for the benefit of the wife on her heirs
- **SECTION 7** - Cognizance of offence
- **SECTION 8** - Offenses to be cognizable of certain purposes and to be non-bail able and non - compoundable
- **SECTION 8A**- Burden of proof in certain cases.
- **SECTION 8B** - Dowry Prohibition officers
- **SECTION 9** - Power to make rules
- **SECTION 10** - Power of State Governments to make rules

We can see that this act is drafted; keeping in mind the interests of all members of Society in order to protect the status of women or dowry victims which may or may be leading them to commit suicide, death, harassment and cruelty.

Dowry is considered as a social evil, but if we see Section 6 of the Dowry prohibition act it states that “dowry to be for the benefit of the wife on her heirs”, From this we can say that dowry is just sum of property, whether money or any other property, which is given by her parents out of sheer love and affection. So we can say that the demand that is asked by husband or family of husband is a social evil.

In the landmark judgment ²⁶**SURESH KUMAR SINGH v. STATE OF UTTAR PRADESH**. In this case the court held that the proof of demand of dowry asked by husband or by family of husband should not be too old from the death of woman. The demand of dowry and death should be established to evoke the expression “soon before her death “as provided in Section 304B of Indian Penal Code and accused should also be charged under Dowry Prohibition Act 1961 as well.

²⁶(2009) 17 SCC 243

Therefore we have seen that apart from penal provisions there is also another act which is Dowry Protection Act 1961 which protects women which are suffering from this dowry demands.

These provisions and acts were made to protect every women in our society or country but there are many cases in which these laws, acts and provisions have been misused by the women also. One of the landmark cases is -

²⁷**SUSHIL KUMAR SHARMA v. UNION OF INDIA.**In this case the Supreme Court held that Section 498A of Indian Penal Code was incorporated for the protection of women which has been maliciously used by the wife and this section was stated as “legal Terrorism” by the Supreme Court.

If we see the statistics given by ²⁸**NATIONAL CRIME RECORDS BUREAU**, the report stated that total number of false cases reported regarding to Dowry Deaths were approximately 200 in the year 2016 and total number of false cases reported regarding cruelty of husband, family of husband or relatives of husband towards the wife were approximately 6700 in the year 2016.

So we can clearly say from the above data provided by National Crime Records Bureau that the laws and acts drafted for the protection of women have been misused by them. So what’s the use of making such laws for protection of women if they are only misusing them for their benefits?

LEGAL REMEDIES FOR WOMEN

We have already seen that legal remedies to women are provided under Indian Penal code, Indian evidence Act, Dowry prohibition Act and Criminal Procedure Code. There were many amendments made under these laws for the protection of women against Dowry deaths. With the increasing number of cases in Dowry deaths Indian Judiciary and Government of India has passed many guidelines to deal with such cases and laws were also amended to strengthening the legal system and support the victims who comes under dowry deaths and cruelty. Some of the sections which were amended are -

● SECTION 304B OF THE INDIAN PENAL CODE - DOWRY DEATH

²⁷(2005) 6 SCC 281

²⁸<https://ncrb.gov.in/crime-india-2016-0>

- **SECTION 498A OF THE INDIAN PENAL CODE - HUSBAND OR RELATIVE OF HUSBAND OF A WOMAN SUBJECTING HER TO CRUELTY**
- **SECTION 113B OF THE INDIAN EVIDENCE ACT - PRESUMPTION AS TO DOWRY DEATH**

And the new Law for protection of women was drafted which alone fulfils the purpose for protection of women from harassment and Cruelty. That is **THE DOWRY PROHIBITION ACT 1961**.

CONCLUSION

We have seen that Indian Judiciary and Government have tried their level best to protect the women from any happening which violates their fundamental rights, legal rights and right to live with dignity. But due to mind-set of people in the society they have failed in their works. Today also Indian Society claims that it is much educated, and then also they do the heinous crime of dowry. They don't think about the family of women they just want to fulfil their greed by taking much dowry. In every state and city women face these kinds of issues and some of them are not reported as they are scared. According to me, Government and Indian Judiciary should give more deterrent punishment to accused who commit this heinous crime. Apart from this the Society should also change their mind set and see that women are not for income purpose they are the one from whom the world is succeeding nowadays.