



International Journal of Research in Academic World

Received: 05/May/2024

IJRAW: 2024; 3(6):57-60

Accepted: 08/June/2024

Demystifying the Threshold in Dowry Harassment against Women- Skeptical Judicial Approach

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Abstract

Dowry is a system which is not new to Indian society. This system persists since time immemorial to which history is evident. Dowry is a practise of giving gifts, cash or property that the bride's family gives to groom as a condition of the marriage. Dowry harassment has now become a serious concern due to abuse and mistreatment associated with it. To curb the practice of Dowry there is a specific law The Dowry Prohibition Act 1961, which prohibits giving or receiving of dowry at or before or after the marriage. Section 498-A of Indian Penal Code of 1860 now named as Bharatiya Nyaya Sanhita 2023 with an insertion of clause 84 provides cruelty by husband or relatives. However when such an offence is committed the accused person will be facing mandatory minimum punishment wherein not only the accused but his entire family is subject to the procedure. There is a deviation from the settled principles of Law. Judiciary often deviates from the procedure which expressly provides presumption of innocence, shifting of burden of proof and time and again there are judicial pronouncements which itself is not settled.

Keywords: Dowry, offences, presumption, judiciary, harassment

Introduction

Human rights breaches ^[1] against women have become more severe in Indian society, particularly in the last several decades. The dowry system, women's economic dependency, lack of education, and poverty are some of the reasons contributing to the rising rate of violence against them in our culture, which is controlled by men. Ultimately, marriage should help the newlyweds live a happy and peaceful life. The ideals of marriage are thwarted for women by domestic violence against them, dowry demands, and their economic and social dependence. Following a surge in dowry death cases, Section 498A IPC was introduced at present section 80 ^[2] of The Bharatiya Nyaya Sanhita. It's a method to lessen the abuse that women endure at the hands of their in-laws and bandmates. The current increase in bogus charges under section 498A IPC suggests that the law needs to be amended appropriately.

As to the origin of Dowry it was a contribution by the wife's family, or by the wife herself, intended to assist the husband in bearing the expenses of the conjugal household. Megasthenes ^[3] who visited India several times about 300 B.C. gave an account of the then society. Dowry was considered as Kanyadan which existed in Hindu society since time immemorial. Then marriage of the girls at the marriageable age is recorded. No dowry was given or taken in *Svayamvara* ^[4]. While dowry previously belonged to husband, his right over it being unrestricted, all the property of the wife not included in the dowry was called

her *paraphera* and was her absolute property over which her husband had no control. The genesis of dowry as it is understood in the present social set up practically lies in hypergamy ^[5], a system under which the husband for a virgin girl is secured from higher or affluent social group. The concept of 'Dowry' is intermittently linked with a marriage and the provisions of The Dowry Prohibition Act, 1961 apply in relation to marriage. If the legality of the marriage itself is an issue further legalistic problems do arise. If the validity of the marriage itself is under legal scrutiny, the demand for dowry in respect of an invalid marriage would be legally not recognizable.

The dowry is a deep-rooted evil in the society. It started as customary presents with love and affection. In olden days, it was customary to give some presents to the bride and bridegroom and his family at the time of marriage. The parents of the bride or their relations out of affection and good intention used to provide the couple something to fall back upon in case of need. The system started at a time when girls were generally not very much educated and even if they were educated, they were unwilling to take up gainful employment. There was also less opportunity for them either to supplement the family income or to become financially independent. There was yet another reason for such customary gifts. The daughter then was not entitled to a share in the joint family properties when she had a brother. Hence, the father out of affection or other consideration used to give some cash or kind to daughter at the time of marriage ^[6].

The right of the father to give a small portion of even the family property as a gift to the daughter at the time of her marriage was recognized. But unfortunately, over the years new practice developed. The boy or his family members started demanding cash or kind from the bride's parents. They started demanding dowry as a matter of right. The demand more often extended even after the marriage. There were instances of harassment of the wife, if the demand was not complied with. Greed being limitless the demands became insatiable in many cases, followed by torture of the girl leading to either suicide in some cases or murder^[7].

Provision of Law, Onus/Burden/Standard of Proof, Mandatory Minimum Punishment, Benefit of Doubt in Dowry Cases.

- **Section 304-B IPC Defines "Dowry Death" as 304-B. Dowry death^[8]:** 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.
- This section makes the offence punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

Section 498A IPC^[9] was introduced in the Criminal Law (Second Amendment) Act, 1983, Act No. 46 of 1983 under Chapter XX A as 'Of Cruelty by Husband or Relative of Husband'^[10]. The Section was inserted to curb the cruelty faced by women from the in-laws preceding dowry death. The act also introduced a suitable provision under Section 113B of IEA^[11] and made amendments in Section 174 CrPC^[12] to enhance the stringent provision. The complaint can be made by the victim or her relatives.

Section 498A IPC is a non-bailable, non-compoundable, and cognizable offence with imprisonment of up to 3 years and a fine. India's National Family Health Survey (NFHS-5), conducted in 2019-2020, has found that the women who experience spousal violence that includes both physical and sexual violence in the state of Karnataka (44.4%), Bihar (40%), Assam (32%), Andhra Pradesh (30%)^[13].

Domestic Violence is an age-old phenomenon that traces its roots to rigid gender roles, cultural norms, political conditions, etc.^[14] Such violence against women has a hugely detrimental impact on women's health conditions such as gynecological problems, temporary and permanent disability, depression, suicide, etc. The social practice of Dowry now has an irreplaceable role in Indian society. The term 'Dowry' can be defined as a "*monetary payment or gesture given to the groom's family in regard to the bride, and it incorporates currency, gold, electrical devices, furniture, and other housewares that assist the newlyweds in setting up their home.*"^[15]

Acknowledging the social, economic, and political intricacies involved in upbringing the status of women in the society, the government over the years has introduced numerous legislations to protect the rights of women.

The Dowry Prohibition Act is a legal remedy as well as a criminal law. Because of this, the courts must interpret the provisions so that, to the extent possible and within the bounds of the statute's text, the goal is achieved. Furthermore, the courts must remember that the charge needs to be proven,

even in spite of their duty to ensure the accomplishment of the legislative enactment. This is the case because the fundamental tenet of criminal law is that an accused person should not be punished merely for the purpose of teaching a lesson to others involved in a crime or because the court determines that the offender has broken moral law unless and until guilt is proven.^[16]

The Dowry Prohibition Act, 1961 which was later amended in 1984, The Domestic Violence Act, 2005, Cruelty by Husband or relative under Section 498A IPC 1860, Dowry Death under Section 304B IPC 1860^[17], Section 113B IEA, 1872, etc. However, over the past few years, there is an increasing tendency to misuse these legislations, such as section 498A IPC, which deals with cruelty to women by husbands or their relatives hence depriving the legislation of its purpose of inception.

An increase in literacy rate, Better legal awareness of the features of section 498A IPC as non-bailable, non-compoundable, and cognizable offence, and the fact that immediate action by police on the FIR lodged by them would lead to an arrest are the factors for the increase in the rate of misuse of the section.^[18] Cruelty is an essential element under Section 304B IPC and Section 498A IPC, however, they are distinct offences and unlike Section 498A IPC where cruelty by itself is an offence, Section 304B of dowry death requires that death must have taken place within seven years of marriage^[19]. The difference between Section 306^[20] IPC and Section 498A IPC is in the intention. In Section 498A IPC cruelty by the husband or his relative lead the woman to commit suicide whereas under Section 306 IPC suicide is abetted and intended^[21, 22]

The quality of being cruel; disposition of inflicting suffering; delight in or indifference to another's pain; mercilessness; hard-heartedness'^[23] Cruelty includes the conduct that may force a woman to commit suicide, cause grave injury, danger to life, or harassment with the intention to coerce her to meet the unlawful demand of dowry^[24]. In the case of *Vijay Pal Singh v. State of Uttarakhand*,^[25] the woman was forced to leave her in-law's house as she was unable to fulfill the dowry demand. The evidence also showed that even a Panchayat was held at the local level to sort out the issue. The Supreme Court in the case held that these factors amounted to mental cruelty or harassment. Cruelty postulates such a treatment that causes reasonable apprehension in the mind in the mind of the wife that living with her husband will be harmful and injurious to her wife.^[26] However, it has to be distinguished from the ordinary trifle matters of family life. The illicit relationship of a married man with another woman also amounts to cruelty.^[27]

In order to curb this evil practice, the Parliament enacted the Dowry Prohibition Act, 1961 The Act prohibited the giving or taking of Dowry and making it a non-cognizable offence. But, in spite of this enactment, the pernicious practice continued in some communities. The Dowry Prohibition (Amendment) Act, 1984 was enacted with considerable changes in the present Act. Likewise, the Indian Penal Code was amended by introducing S. 498-A^[28] under the ambit of chapter XXII(A)^[29], providing punishment for cruelty by husband or the relatives of the husband. A new dimension has been given to the concept of cruelty.

Section 113-A^[30] was added in the Indian Evidence Act^[31], by virtue of Criminal Law(2nd Amendment Act),1983, which came into force on 25th December 1983, to deal effectively for those responsible for dowry death, Also section 304-B and Section 113-B^[32] was added. Substantive section 498-A and

presumptive section 113-B of the Evidence Act has been inserted in the respective statutes by the Criminal Law (Second Amendment) Act, 1983 and the Dowry Prohibition (Amendment) Act, 1986, respectively. Section 498-A, IPC and section 113-B of the Evidence Act include in their amplitude past events of cruelty. Period of operation of section 113-B of the Evidence Act is seven years, presumption arises when a woman committed suicide within a period of seven years from the date of marriage. A bare reading of the newly framed sections, makes it clear that when the husband or any relative of his is guilty of cruelty to the wife, he or she is punishable under section 498-A of Indian Penal Code, and in the presence of such cruelty a presumption can be raised for abetment to suicide if the same is committed within the period of seven years from the date of marriage. In a nutshell, the first requisite for attracting the presumption under section 113-A of the Indian Evidence Act, it must be proved that the wife is subjected to cruelty under section 498-A of The Indian Penal Code.

The direct nexus between cruelty and suicide is to be established under Dowry cases. Cruelty in both the sections has to be proved as a mandate under Dowry harassment aspects. Section 498-A suffices the meaning of cruelty/harassment, But, section 304-B of Indian Penal Code does not include in its garb the aspect of cruelty. It is true that cruelty is a common essential to both the sections that has to be proved. It is pertinent to note and mention that there is no definition for the words such as harassment or cruelty everything depends on the facts and circumstances of each case. The word harass is defined in the Webster's Dictionary as 'To subject someone to continuous vexatious attacks, questions, demands or other unpleasantness'. Even unjust conduct amounts to cruelty. Cruelty of harassment need not be physical even mental torture given would be a case of Cruelty and harassment^[33].

Cruelty has been defined in the classic judgement of *Russel v. Russel*^[34], as 'Cruelty, which is a ground for dissolution of a marriage, may be defined as willful and unjustifiable conduct of such a character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger'. Cruelty does not always mean physical torture alone it has a wide amplitude. The legal conception of cruelty is generally described as conduct of such a character as to have caused danger of life, limb or health (bodily or mental) or as to give rise to a reasonable apprehension of such danger^[35].

In a very recent case the Hon'ble Jammu and Kashmir High Court held that from the mere fact of suicide within seven years of marriage, one should not jump to the conclusion of abetment unless cruelty was proved. The court has the discretion to raise or not to raise the presumption, because of the words "may presume". It must take into account all the circumstances of the case which is an additional safeguard^[36].

The Hon'ble Apex court quashes dowry harassment case filed by woman, says she wanted to 'wreak vengeance'.

A three-judge bench of justices Aniruddha Bose, Sanjay Kumar and SVN Bhatti said given the totality of facts and circumstances, it was of the considered opinion that the woman's allegations against her in-laws are wholly insufficient and, prima facie, do not make out a case against them^[37].

"The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage.

Petty quibbles, trifling differences are mundane matters and should not be exaggerated and blown out of proportion to destroy what is said to have been made in heaven,". Further the Court opine that in matrimonial disputes the main sufferers are children^[38].

Conclusion

In dowry harassment cases, differences of opinion among courts, especially higher courts like the Supreme Court, can arise due to various factors such as interpretation of evidence, application of law, and assessment of witness credibility. The realm of dowry harassment cases presents a complex legal landscape where differing opinions among courts, particularly at higher echelons, are not uncommon. These disparities often stem from nuanced interpretations of evidence, varying thresholds for establishing guilt beyond a reasonable doubt, and divergent applications of legal principles pertaining to trial of offences, burden of proof, paradigm shift of onus of proof, presumption of guilt which in straight jacket deviates the settled principles of law and the very settled principles of due process of Law. While some judgments may emphasize strict adherence to legal provisions, others may prioritize contextual considerations and equitable outcomes. Such differences underscore the inherent subjectivity in judicial decision-making and the need for careful examination of facts, adherence to procedural fairness, and consistent application of legal principles. Ultimately, efforts to reconcile these differences should focus on promoting uniformity, fairness, and justice in addressing the scourge of dowry harassment within the legal framework.

References

1. *G.V. Rao v. L.H.V. Prasad*, (2000) 3 SCC 693
2. Sec 80. (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.
3. Explanation.-For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961.
4. (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
5. Megasthenes (350-290 B.C.) was an ancient Greek historian, diplomat and explorer in the Hellenistic period. The Hellenistic king who sent Megasthenes as an ambassador to the court of King Chandragupta Maurya in India was a Greek general before assuming the title of basileus (king).
6. In ancient India was a method of marriage in which a woman chose a man as her husband from a group of suitors. In this context, svayam in Sanskrit means 'self' and vara means 'groom'. The bride wishing to marry would select an auspicious time and venue and then broadcast her intentions.
7. *Hypergamy* is a term used in social science for the act or practice of a person marrying a spouse of higher caste or social status than themselves.

8. J K Soonavala: Supreme Court Criminal Digest (1950-2015), 6e 2016
9. *AIR 1996 SC 67:1995 (2) All India Hindu Law Reporter 598(SC)*.
10. Section 80 of Bharatiya Nyaya Sanhita, 2023.
11. Indian Penal Code, 1860, s. 498A
12. Criminal Law (Second Amendment) Act, 1983
13. Evidence Act, 1872, s. 113B
14. Criminal Procedure Code, 1973, s. 174
15. Dr. V.K. Paul, 'National Family Health Survey NFHS-5 Phase 2' (*National Family Health Survey*) <http://rchiips.org/nfhs/factsheet_NFHS-5.shtml>
16. Ravneet Kaur & Suneela Garg, 'Addressing Domestic Violence against Women: An Unfinished Agenda' (2008) 32 (2) IJCM 73-76<<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2784629/>>
17. Dowry Death: A Neglected Public Health Issue In India' (2022) 5 (2) IJLMH 384-389 dowry-death-a-neglected-public-health-issue-in-india/>
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19. The Indian Penal Code, § 304B, No. 45, Act of Parliament, 1860(India).
20. Kriti M.M., 'an analysis of section 498A IPC' (*Manupatra*, 30 March, 2017) <<https://articles.manupatra.com/article-details/An-Analysis-of-Section-498A-of-IPC>>.
21. Saif Rasul Khan, 'A swinging Between Extremes to find the perfect Balance?' (*Manupatra*, 7 September, 2018) <<https://articles.manupatra.com/article-details/Section-498-a-Swinging-Between-Extremesto-Find-The-Perfect-Balance>>
22. The Indian Penal Code, § 306, No. 45, Act of Parliament, 1860(India).
23. *Satish Kumar Batra v. State of Haryana*, (2009) Criminal Appeal No. 976/200.
24. *State of Punjab v. Iqbal Singh*, (1991) 2 SCR 790.
25. *Shorter Oxford Dictionary* (6th edn, Oxford University Press 2007).
26. Penal Code, 1860, s. 498A
27. *Vijay Pal Singh v. State of Uttarakhand* (2014) Criminal Appeal No. 37/2011
28. *Savitri Pandey v. Prem Chandra Pandey* (2002) Appeal (Civil) No. 20-21/1999
29. *Laxman Ram Mane v. State of Maharashtra* (2010) Criminal Appeal No. 19/2005
30. Husband or relative of husband of a woman subjecting her to cruelty.
31. Explanation to S. 498-A provides that any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide would constitute cruelty. Such wilful conduct which is likely to cause grave injury or danger to life, limb or health (whether mental or physical of the woman) would also amount to cruelty. 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 would also constitute cruelty.
32. Presumption as to abetment of suicide by a married woman
33. The Indian Evidence Act, originally passed in India by the Imperial Legislative Council in 1872, during the British Raj, contains a set of rules and allied issues governing admissibility of evidence in the Indian courts of law.
34. Presumption as to dowry death.
35. *Pavan Kumar v. State of Haryana* Cri LJ 1144 at 1150(SC).
36. (1895)PD 315.
37. Halybury's Laws of England, 3rd Edn, Vol 12, Para 514, P.269.
38. *Rakesh Singh v. Respondent*, 5th June 2024.
39. <https://www.deccanherald.com/india/sc-dowry-harassment-2-2670312>
40. "Tolerance Foundation Of Sound Marriage": Supreme Court In Dowry Case (ndtv.com)