

**DOWRY DEATHS IN INDIA: A BOON AND A BANE**

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ABSTRACT

Dowry is the payment of cash or articles by the bride's family to the bridegroom's family along with the giving away of the bride in Indian marriages. Women are exploited, tortured, and killed by their husbands or in-laws to procure dowry, making the women's in-laws house the most dangerous place to live in. In some parts of India, parents worry for the future of their daughter to give dowry from the time she is born. Dowry deaths are found in India to a large extent. To improve the condition of women in society, the government has taken many steps, legislating the provisions like The Dowry Prohibition Act 1961, Indian Penal Code 1860 which seeks to outlaw the demand, giving, and taking of dowry. Despite these legislations, the practice of dowry still prevails in some parts of India. The inefficiency of the judiciary system and the police in lodging dowry deaths and punishing the bully should be looked into and improved. This research studies the triggers of such violence and the steps by the government to improve the condition of women. In almost all the cases, the victimized woman is young, uneducated, and are dependent. The exploitation is mostly cramped to the early years of marriage. In India, the money and the embellishments that a lady carries with her from her parent's home is customarily cited as "Streedhan"<sup>1</sup>. The sum to be paid has no set standards, the measuring stick incredibly reckon on the boy's social standards. This research paper has made an effort to look over and assess legal provisions which have been implemented by the judicial system to eradicate or at least lower down this atrocious act of dowry system and related deaths also to highlight the available remedies and misuse of these remedies available by some females to gain benefits.

INTRODUCTION

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<sup>1</sup>Streedhan: <https://www.relakhs.com/streedhan-meaning-constituents/>

Dowry is a payment of cash or embellishments from the bride's family to the groom's family upon marriage. It may incorporate electrical appliances, furniture, crockery, utensils, and car. The purpose of giving all items was to help the new couple start their journey in comfort. But due to changing times, people started taking dowry to fulfill their own needs and make it a social symbol. Studies show that even parents of daughters see dowry as a chance to make status claim and secure good treatment to daughters from in-law's house. The practice of dowry has largely faded in the Western World it still remains in South Asia. It has become grave and unethical in contemporary India even though the population claims itself to be literate and developed. All this system is not only causing the death, brutality, physical and emotional inhumanity of the bride but also cause depression and financial stress to the parents of the bride.

In ancient times, the term varadakshina, mentioned in the Hindu Shastras, was a Dakshina of a purely discretionary nature without which the admirable act of kanyadaan would not be completed<sup>2</sup>. In most of the cases of dowry death, it is seen that the mother-in-law, sister-in-law, and even the relatives of the groom take an active part in the dissolution of marriage for the lust of dowry. Sometimes even though the dowry payment is made, there is no assurance for the health and well-being of the bride. There are many cases where there is another demand after marriage for dowry after marriage. Not only does this affect the bride and her family but in some cases affects the child also.

The authorities taking note of the seriousness and cruelty against women, enacted many laws so as to make a safer environment for them.

### GROWTH OF DOWRY-RELATED DEATHS IN INDIA

Most of the dowry deaths occur when the bride is powerless to go through harassment, torture, physical abuse, commits suicide. Most of the suicides are done by burning themselves on fire, hanging, or poisoning. At times the woman is killed by being set on fire by her husband and in-laws' which are known as "bride burning".

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<sup>2</sup> <https://timesofindia.indiatimes.com/readersblog/khyatiravivcreations/why-kanyadaan-an-unquestioned-ritual-33302/>

With the passing years, dowry deaths cases in India are gradually increasing. By far it has the highest number of dowry-related deaths in the world according to the Indian National Crime Record bureau. According to the statistics given in the NCRB report 2016, the total number of cases reported in the year 2016 were 7,621, and the total number of reported cases due to cruelty by husband or his relatives in the year 2016 was 1,10,378.<sup>3</sup>

### LEGAL HELP AVAILABLE TO VICTIMS

Due to the increase in the number of cases of dowry death in India, the government has imposed some laws to deal with it and some laws also have been amended for strengthening the system to safeguard women from cruelty. Acts like The Dowry Prohibition Act 1961, The Indian Penal Code, The Indian Evidence Act, Criminal Procedure Code are sanctioned to protect women and control the rate of deaths.

#### **Indian Penal Code, 1860**

##### Section 304-B

This section of IPC deals with dowry death and further says that;

(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<sup>4</sup>.

(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.

Essential of dowry death under section 304-B

<sup>3</sup> [https://en.wikipedia.org/wiki/Dowry\\_death#:~:text=In](https://en.wikipedia.org/wiki/Dowry_death#:~:text=In)

<sup>4</sup> <https://indiankanoon.org/doc/653797/>

- Death was caused by bodily injury or burns or otherwise under abnormal circumstances.
- Death should occur within seven years of marriage.
- The Bride must have been subjected to brutality by her husband or his relatives.
- Brutality should be in connection with the demand of dowry and soon before death.

In the case of *Satbir Singh v. State Of Haryana*<sup>5</sup>, the apex court held that the harassment or brutality to which the woman is subjected should not be at the same time with demand to dowry rather it should be “soon before her death”.

In the case of *Mustafa Shahadal Shaikh v. State Of Maharashtra*<sup>6</sup>, states that “Soon before death” means no specific period has been mentioned under the Indian Penal Code. It depends upon the facts and circumstances of the case. Though, the interval should not be much between the cruelty and death in question. And if the alleged cruelty is not remote enough to disturb the mental health of the women, it would be of no consequence.

In *Prahallad Budek v. State Of Orissa*<sup>7</sup> it was held that there should be a link between the cruelty faced by her concerning the demand of dowry and the death of the women, and if there is no such link then the offense of section 304-B of IPC cannot be set against the husband and his relatives. Also, it was the same that was stated in *Baldev Singh v. State Of Punjab*<sup>8</sup> additionally, it was also held that the time gap should not be much between the brutality or harassment and the death of the women.

Section 498-A of the IPC deals with when a husband or his relatives subjects the woman to cruelty or harassment. Cruelty by her husband or relatives has been made punishable with imprisonment up to three years and a fine. The word cruelty means both mental and physical torture. It involves any willful conduct likely to push the woman to commit suicide or to cause danger to her life, limb, or health, physical or mental harassment to compel her or any other person by making unlawful demand for dowries.

<sup>5</sup> (2001) 8 SCC 633; 2002 SCC (Cri) 48; AIR 2001 SC 2828; MANU/SC/0588/2001

<sup>6</sup> <https://indiankanoon.org/doc/94579337/>

<sup>7</sup> (2008) 64 AIC 458; 2008 CriLJ (NOC 339)97)

<sup>8</sup> (2008) 13 SCC 233; (2009) 3 SCC (Cri) 537); MANU/SC/7907/2008

In the case of *Balwant Singh and others v. State of Himachal Pradesh*<sup>9</sup> the 2 judges' bench said that the person who is excused under section 304-B of IPC can also be convicted under section 498-A of IPC as both the sections of IPC cannot be held as mutually comprehensive.

In the case of *Vijeta Gajra v. State of NCT Delhi*<sup>10</sup> it was held that the foster sister is not 'relative' within the connotation of section 498-A, I.P.C to fix liability for causing cruelty against the complainant.

In the case of *Arnesh Kumar v. State of Bihar*<sup>11</sup> the pleader approached the supreme court by way of a special leave petition for a grant of anticipatory bail in which he failed earlier. Section 498-A of IPC was sanctioned with an object to fight the peril of harassment to a woman by husband and his relatives. Supreme court said that it is a fact that Section 498-A is a cognizable and non-bailable offense which has lent it an uncertain place of pride amongst the provision that is used as an accoutrement rather than shields by displeased wives. Nowadays it's the simplest way to harass is to get the husband and his relatives arrested under this provision. In many cases old and sick fathers and mothers of the husband and his sister living abroad who never met with each other were also getting arrested so the Apex Court gave the following directions before arresting under section 498-A of IPC:

- Police not to arrest without a warrant unless feels the necessity and fulfillments of all parameters laid under section 41 of CRPC.
- All police officers shall provide a checklist including specified sub-clauses under section 41 (1)(b)(ii) and must be filed and furnish the reason which compelled the arrest.
- The magistrate while sanctioning the detention of the accused shall trail the report furnished by the police and after recording its satisfaction may order the detention.

<sup>9</sup> (2008) 15 SCC 497; (2009) 3 SCC (Cri) 1094; 2008 CriLJ 4683; MANU/SC/4359/2008

<sup>10</sup> <https://indiankanoon.org/doc/453296/>

<sup>11</sup> 2 (1998) 3 SCC 309; 1998 SCC (Cri) 740; AIR 1998 SC 958; MANU/SC/0104/1998

- The confinement not to arrest was forwarded to the magistrate within two weeks from the date of institution of the case with a copy that arrests not made under offence referred.
- When such a person, at any time, fails to act in accordance with terms of notice or is reluctant to identify him then the authorities may arrest him for offence mentioned in the notice.

## THE DOWRY PROHIBITION ACT, 1961

The entire Dowry Prohibition Act, 1961 is constructed and prepared to bring forth relief to the women due to dowry in the country. The entire act solely fulfills the object to protect woman from harassment and cruelty due to dowry demand. It includes a total of 10 sections.

It is recognized that the word “dowry” is a social evil, but section 6 of the dowry prohibition act says that ‘dowry to be for benefit of the wife or her heirs’, which should be understood as dowry is clearly a sum of money, ornaments or property, etc given by brides parent’s out of love and affection which is not a social evil. In fact, it becomes evil when it is demanded for by the husband and his family.

In the case of *Sabitri Dei and others v. Sarat Chandra Rout and others*<sup>12</sup> the apex court quashed the order passed by the competent session courts the husband and his relative under section 498-A/section 304-B of the I.P.C and also under section 4 of the dowry prohibition act.

In the case of *Sanjay Kumar Jain v. State of Delhi*<sup>13</sup> it was said that “the dowry system is a big slur and curse on our society, democracy and the country. It is indecipherable how such unfortunate instances of dowry death are customarily occurring in our society. All efforts should be made to fight and suppress the increasing danger of dowry death. The legislature was very concerned about this unfortunate truth of our society and thus enacted the Dowry Prohibition Act, 1961.

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<sup>12</sup> (1996) 3 SCC 301; MANU/SC/1117/1996

<sup>13</sup> (2011) 11 SCC 733

In the year 1961, the dowry prohibition act was amended twice to widen the meaning of the term “dowry” and augmentation of punishment for the number of violations of the provisions of the act. Section 2 of the act states that “any property or valuable security from one side to another either given or agreed to be given in future directly or indirectly in connection of marriage amounts to dowry”. The expression used in the original Act was “as consideration for the marriage of such parties” was elucidated by the court to give a narrow meaning of the term “dowry”. In *Inder sain v. State*<sup>14</sup>, it was held that “consideration” was confined to motive or reason, compensation or reward to marriage and would not, therefore, include any property demanded or given later to marriage. The expression “any time after the marriage” has been brought to replace “after marriage” to eradicate a restricted interpretation of the statute. The concepts of gift in Indian marriages are only allowed which are customary in nature, which does not create a financial burden on the bride’s family.

In the landmark judgment of *Suresh Kumar Singh v. State of Uttar Pradesh*<sup>15</sup> the apex court held that the proof of demand of dowry as shown by the prosecution should not be too old from the date of the death of the woman. The closeness of demand for dowry and the death of victim should be established to call up the expression of “soon before death” and charge the accused under the dowry prohibition act as well.

## INDIAN EVIDENCE ACT, 1872

Section 113-B deals with the presumption as to dowry death. It has been created concerning the burden of proof in dowry-related death according to which court has to suppose that the dowry death was caused by the person who is shown to have treated the woman to harassment or cruelty soon before her death. The ingredients of this section are the fulfilments of ingredients of section 304-B of the I.P.C.

In view of the nature of dowry offences that are generally perpetrated in the privacy of houses and secretly, direct evidence necessary for convicting the wrongdoer is not easy to gain. Accordingly, section 113-B was inserted in the evidence act, 1872 to strengthen the

<sup>14</sup> 1981CriLJ 1116(Del)

<sup>15</sup> (2009) 17 SCC 243; (2011) 1 SCC (Cri) 989; MANU/SC/0953/2009

prosecution's hands by allowing a certain presumption to be uplifted if certain facts are established and the death has taken place within seven years of marriage.

In *Kamesh Panjiyar alias Kamlesh Panjiyar v. State Of Bihar*<sup>16</sup>, the court said that if there is a combined reading of section 113-B of the Indian Evidence Act and section 304-B of The Indian Penal Code then there have to be some evidence that are to be submitted before the court stating that there has been cruelty and harassment to the wife from husband or his relatives In order to convict the accused.

Although in the case of *Sham Lal v. State Of Haryana*<sup>17</sup> it was said that the husband cannot be sentenced under section 304-B of the I.P.C and also under section 113-B of the I.E.A act if there is no evidence of cruelty and harassment against the wife "soon before her death".

In *Harjit Singh v. State Of Punjab*<sup>18</sup> the court held that there was no such evidence showing that the poison consumed by the wife was the result of some brutality or harassment by the husband, so he was convicted under section 304-B of the I.P.C. but not under the section 113-B of I.E.A.

## CODE OF CRIMINAL PROCEDURE, 1973

Section 174 and 176 of the Code of Criminal Procedure, 1973 deal with the inspection and inquiries related to the reasons for unnatural deaths by police and magistrate. The act amended in the year 1983 makes it obligatory for the police to send the body for post-mortem examination if the death of the woman has occurred within seven years of marriage in the matter of suicide due to demand or any other doubtful matter. It also allows the magistrate to look and enquire about the death of the woman.

## BARRIERS IN THE IMPLEMENTATION OF THE LAW

The Indian legal system has many times crashed to make an impact on the miserable condition of the victims of dowry death. The culpabilities and answerability are seen in

<sup>16</sup> (2005) 2 SCC 388; 2005 SCC (Cri) 511; AIR 2005 SC 785; MANU/SC/0076/2005

<sup>17</sup> (1997) 9 SCC 759; 1997 SCC (Cri) 759; AIR 1997 SC 1873; MANU/SC/0438/1997

<sup>18</sup> (2006) 1 SCC 463; (2006) 1 SCC (Cri) 417; AIR 2006 SC 680; MANU/SC/2287/2005



almost all of the factors seen in implementation of the laws. The factors can be described as community-based, police, and judicial system.

## 1. Community-based

In criminal cases, administration of justice itself becomes a tough job and it becomes even more difficult when there is less or no support from the public. Normally there are not many eye-witnesses in cases of domestic violence and cruelty and bride's side except the family members who may or may not support the investigation due to family pressure or due to the thought that they do not want to come in between all the chaos of family, police, and court. The neighbours who might be having some information or even the slightest clue are not willing to testify because they do not want the neighbour relations to be spoiled. This behaviour of not talking favours the culprit.

## 2. Police

In public, there is agitation to talk to police because of the attitude and practices that some policemen do. Fear is created in the minds of the people. And most of the times police reach too late on a crime scene and in most cases dowry death has been seen as suicide and the inspection or enquiry is taken lightly. It is also alleged that police take violence against women as a family issue and are not willing to register an FIR. Like in the case of *Bhagwant Singh v. Comm. Of Police Delhi*, it is held by court that the incidence of unnatural death is much higher than indicated by police. Also that police diaries are not maintained properly and then maintained before the magistrate. The investigating officer of the case was also changed again and again which affected the investigation badly.

But the police also have their side of the story as firstly they say there are not adequate amount of evidences to be worked upon the case.

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## 3. Judicial System

In a number of cases, the judiciary held torment and astounded judgements in regards of deaths of women in dowry cases. Like in case of *Samunder Singh v. State of Rajasthan* the

court held that the anticipatory bail cannot be given in cases of dowry death. Also some of the disputes occurred on a presupposition of court like a person with 100% burns not fit for dying declaration.

## MISUSE OF THE RIGHTS PROVIDED TO THE WOMEN

Owing to its assumption of the case being based entirely on the victim's statement, there is a very critical issue of the rights being misused. With the rise of divorce rates in India, dowry laws have long been doubted for misuse by women assisted by their lawyers to harass their husbands and his family for different purposes. Kamini Lau, an additional session judge stated that "the provisions of section 498A are not a law to take revenge, seek recovery of dowry or to force a divorce but a penal provision to punish the wrongdoers. The victim women are often misguided into exaggerating the facts by adding those persons as accused which are not connected with the harassment under a mistaken belief that by doing so they are making a strong case."<sup>19</sup>

In view of this the Supreme Court ordered the police to follow a nine-point checklist before arresting anyone on a dowry complaint. These changes specified that any individual charged with the accusation would not be arrested unless there is an investigation held prior to it.

With the introduction of investigation before the arrest, it can be ensured that innocent people are not being swept up by police and also to keep a check on the misuse of the law.

## CONCLUSION

The practice of dowry is not only unlawful but also unethical. When a girl is accepted not for her virtues but for the money and ornaments she brings in with her, the marriage loses all the holiness and exquisiteness. The Indian government and judiciary made supportive laws to make the women feel secure and provide justice to those who are denied of it. Making the people aware and educated about the topic can make this system eliminate from the roots. Making women self-independent can also ease the burden on women to depend on their

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<sup>19</sup> <https://theswaddle.com/indias-dowry-laws-are-ineffective-easily-exploited-and-women-are-paying-the-price/#:~:text=In%202011%2C%20a%20trial%20court,provision%20to%20punish%20the%20wrongdoers.>

husbands, which can reduce the risk of males thinking that she is a burden on them and then eventually asking for dowry.

Woman using these rights to fulfill their greed and to bring problems to their spouses and his relative is a loophole that is needed to be rectified by the concerned authorities.

The burden of following traditions and a society that ignores violence creates a chamber of horror where even angels would fear to tread. Therefore the conscience of society needs to be .aroused to the evils of dowry death.

