

# Dowry System in India

Leila Ateffakhr

\* Department of Law, University of Kerala

**Abstract-** Practice of dowry poses heavy threat to the life of females. Dowry is an age old practice in Indian society referring to property or valuable security given by one party to another as a consideration for marriage. The origin of dowry primarily was the contribution of wife's family or by herself with the intention to help the husband. This custom of dowry was started in the medieval period. Women were gifted with wealth and jewel from their parents during her marriage and this served as a tool of financial independence for the bride even after marriage. This menace is the root cause of almost all violence against a married woman. In most cases after marriage the problem of dowry will arise. If the wife is not able to provide all, which her husband and in laws demand, her life in the groom's house become miserable. She will be treated cruelly and in some cases she may lose her life.

**Index Terms-** Dowry, Dowry deaths, India, Marriage, Women

## I. INTRODUCTION

The problem which Indian society still suffers is cruelty against women is based on dowry; domestic violence against women in India has its root at the demand of dowry. Dowry may happen in any families there is no difference between rich, middle class, poor, educated or uneducated. when a marriage is fixed no one is worry as to how clever, intellectual, and homely the girl is, but all that matters is, how much money and luxuries will she get to husband's home. With the passage of time dowry became a customary part in Indian society and became demanding dowry as their right in order to marry a woman, and gradually the dowry became violence to women

when the groom's family didn't get enough dowry, resulting in harassment or cruelty of brides and also dowry deaths, especially in certain parts of India. Dowry demands affect the lives of females socially, economically and culturally.

According to the definition of dowry under section 2 of the Dowry Prohibition Act 1961 it is clear that dowry is a property which woman brings to her husband at marriage and includes the land, all sorts of properties, valuable securities given or agreed to be given directly or indirectly at the time of marriage. The term dowry does not include repayment of marriage expenses. The term dowry does not include Mahr.

## II. HISTORICAL BACKGROUND OF DOWRY SYSTEM

Dowry or Kanyadanam is an important part of Hindu marital rites. Kanya means daughter and danna means gift. The custom of Kanyadaan (giving daughter in marriage) followed by Varadakshina (gift to the bridegroom at the time of marriage) may have given increase to dowry. It is in the Riji Veda that one comes across the concept of kanyadaan. It was a custom in ancient times to give dakshina (obligatory gifts) after any kind of daan (voluntary gifts), hence the tradition of varadakshina following kanyadaan. It is said that Rishi Karva gave a number of gifts to his daughter, Shakuntala, when she married king Dushyant. It can be guessed that, since child marriages was the norm in ancient India, the parents may have given numerous gifts to the girl as she left her maternal home. Nevertheless dowry as it now exists, includes the extraction of cash and material goods from the bride's parents by the groom and his family. This social disease has spread through the range of society crossing religious and economic

limitations. Furthermore, dowry demands are made not only prior to the marriage, but also for years afterward, for instance, at the time of centenaries and the birth of children. Demands

The first national legislation to deal with the problem of dowry is the dowry prohibition Act 1961 with the main motive to prohibit the heavy demand in dowry; government introduced the Dowry Prohibition Act on 1st July 1961. Unfortunately, the dowry system is still widespread in India despite the provision in the Dowry Prohibition Act 1961.

According to section 3 of the dowry prohibition Act 1961, the Act prohibits the demand, payment or acceptance of a dowry, as consideration for the marriage, where dowry defined as a gift demanded or given as a precondition for a marriage. So asking or giving of dowry is punishable by an imprisonment of up to six months, a fine of up to fifteen thousand rupees or the amount of dowry, whichever is more, or imprisonment up to five year. It replaced several parts of anti-dowry legislation which had been enacted by various Indian states. However in accordance with section 3 of this Act, both the giver and receiver are pursued to rom potential harassment by the husband and his relatives.

The first national legislation to deal with the problem of dowry is the dowry prohibition Act 1961 with the main motive to prohibit the heavy demand in dowry; government introduced the Dowry Prohibition Act on 1st July 1961 . Unfortunately, the dowry system is still widespread in India despite the provision in the Dowry Prohibition Act 1961.

#### A) Dowry Death and Suicide

. Where the death of a woman is caused by any burns or bodily injury or happens 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 by her husband or any relative of her husband for or in

for dowry have been secret after the passing of the dowry prohibition Act 1961, and its amendments in 1984.

### III. LAWS RELATED TO DOWRY

connection with the demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death. The Dowry Prohibition Act goes to the utmost limit of creating criminal offence to prescribe the giving or taking of dowry as a consideration for marriage or demanding or abetting the same. The statute intended to eradicate the kind of corruption and commercialization of the concept of dowry. So the definition under the Act was, therefore, moulded to the peculiar object of nipping the extortionate evil in the bud .[1]

mention in the oldest of Hindu scriptures and is continued today with a greater zeal. In the case of *Kunju Moideen v. Sayed Mohamme*, amount paid by Mohammedan in connection with daughter's marriage, to future bridegroom for buying of property in joint names of daughter and would be son-in-law is not 'dowry' within the meaning of section 2. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a relation between the giving and taking of property or valuable security with the marriage of the parties is essential.[2]

Definition of dowry can be understood with the other sections of the Dowry Prohibition Act such as section 3 which, mentions to giving or taking dowry and section 4 which, deals with a penalty for demanding dowry. This makes it clear that even demand of dowry on other ingredient being satisfied is punishable. In *Prem Kumar v. State of Rajasthan*[3], the Supreme Court says that it is not always essential that there be any agreement for dowry because section 3 prohibits the demand, acceptance or payment of a dowry, as consideration for the marriage, where dowry defined as a gift demanded or given as a precondition for a marriage. Taking or giving of

dowry is punishable by an imprisonment up to six months, a fine of up to fifteen thousand rupees or the amount of dowry, whichever is more, or imprisonment up to five year. However in accordance with section 3 of the Act, both the giver and receiver are pursued to be punished. Demanding of dowry also is punishable under section 4 of this Act.

In *S. Gopal Reddy v. state Andhra pradesh*[4], the Supreme Court stated that the demand, though it was made prior to the marriage has to be considered as offence under section 4 of the Dowry Prohibition Act. In this case the court stated that, mere demand of dowry is enough to bring home the offence to an accused and that any demand of property or money made from the bride or her relatives by the bridegroom or his parents or vice versa would fall in the troubles of dowry under section 4 of DV Act.

The considerable point stated by the Supreme Court is that marriage in this situation would contain a future marriage also more special where the non-fulfillment of the demand of dowry leads to the bad result of the marriage not happening at all. In *Pavana Kumar v. State of Haryana*[5], when persistent demands for TV and Scooter are made from the bride or her parents after marriage, it would constitute to be in connection with the marriage and it would be a case of demand of dowry in the meaning of section 304-B.

The Supreme Court in the case of *Satvir Singh and Ors v. State of Punjab and Anr* [6], stated that, in the cases of dowry death, the circumstances of harassment and cruelty to the victim have to be seen soon before her death. The expression 'soon before death' used in section 304-B of IPC is present with the idea of proximity test. No definite period has been indicated and this expression is not defined. The determination of period soon before is to be determined by the Courts depending upon facts and circumstances of the case. Normally the expression 'soon before' would imply that the time should not be much between the concerned harassment

or cruelty and the death of deceased. On proof of necessary in section 304-B, it becomes essential on the court to raise an assumption that the accused caused the dowry death.

In the case of *Yashoda and another v. State of M.P*[7], the Supreme Court says that, the presumption shall be raised, such cruelty or harassment was for or in connection with, any demand of dowry or, such harassment or cruelty was soon before her death.

In another case in *State of Punjab v. Iqbal Singh and Ors* [8], a woman set herself and her three children on fire. She was working as a teacher. Soon after the marriage there were arguments between the husband and wife on the request of dowry, the demand for extra dowry strained the relation between them and as a result the husband began to misbehaviour the deceased wife. She also lodged police complaint. In spite of the same, the situation did not improve and she was forced to take the dangerous step of putting an end to the life of herself and her three children. The Supreme Court sentenced the accused husband under section 304-B.

Woman also being subjected to cruelty or harassment by the relatives of her husband, their in-laws may drive her to suicide by continuous harassment and torture, in the case of *Amar Singh v. State of Rajasthan* [9], Supreme Court held that under section 304-B IPC the mother-in-law and other in-law of the deceased were taunting the bride for bringing less dowry, so they drive her to commit suicide, it would amount to causing dowry death.

#### B) Cruelty Relating to Dowry

Traditionally woman is subjected to the whims and caprices of man, particularly when it relates to the relationship of husband and wife it becomes worst. Woman in a family or a relationship with her husband sometimes becomes intolerable and miserable which drags the woman towards suicide. Section 498-A of IPC comes into play on such situation. Section 498-A of IPC can only be invoked by a married

woman against the husband or his relatives for cruelty. This section was added with the intention to protect women from dowry harassment, domestic violence and to end the offences of cruelty by husband or in-laws of wife and providing punishment to the husband or relative of the husband of a woman subjecting to cruelty. section 498-A, manifests with four types of cruelty: Any conduct that is likely to drive a woman to commit suicide; any conduct which is likely to cause serious injury to the life, limb or health of the woman; harassment with the aim of forcing the woman or her relatives to give some property; or harassment because the woman or her relatives are either incapable to yield to the demand for more money or do not give some share of the property. Supreme Court in *M.Srinivasulu v. State of A.P*[10], stated that, Consequences of cruelty which are likely to drive a woman to suicide or to cause grave injury or danger to life, limb, or health, whether mental or physical of the woman is necessary to be established in order to bring home the application of section 498-A of IPC.

Section 498-A, IPC, manifests that whoever being the husband or relative of the husband of a woman subject 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. Clause (b) of the Explanation to that section shows that the 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 property or valuable security or is on account of the failure by her or any person related to her to meet such demand would amount to cruelty for the purpose of section 498-A, IPC[11].

To invoke section 498-A, IPC one has to be a "relative" of the husband by blood, marriage or adoption. So by no stretch of imagination would a girlfriend or even a concubine in an etymological sense be a relative [12]. In *Vijeta Gajra v. State of NCT of Delhi* [13], it was held that the

word relative in section 498-A IPC, would be limited only to the blood relations and relations by marriage.

The term cruelty of section 498-A, IPC, has been explained in the explanation to section 498-A which consist of two clauses namely Clause (a) and (b). Cruelty or harassment to wife was to force her to cause grave bodily injury to herself or to commit suicide, or the harassment was to compel her to fulfill illegal demand for dowry. Every type of harassment or cruelty that would not attract section 498-A, IPC[ 14].Cruelty can either be mental or physical. It is difficult to straitjacket the term cruelty by means of a definition, because cruelty is a relative term. What constitutes cruelty for one may not constitute cruelty for another person [15].

Cruelty, Clause (b) to section 498-A IPC, contemplates harassment of the woman to coerce her or any relation of her to meet any unlawful demand for any property or valuable security. A complainant if wants to come under the ambit of Clause (b)of Explanation of section 498-A, she can succeed if it can be proved that there was an" unlawful demand" by the husband or any of her relations in respect of money or some valuable security [16].

Section 304-B and section 498-A are not mutually exclusive .these provisions deal with two distinct offences. It is true that 'cruelty' is a common essential to both the sections and that has to be proved.

In *Atmaram v. State of Maharashtra* [17],woman was subjected to harassment by her husband and his relatives, purposely. The Supreme Court held that, Clause (a) of section 498-A, deals with aggravated forms of cruelty which cause grave injury, and convicted her husband for cruelty. In *Shobha Rani v. Madhukar Reddi* [18], the court defined concept of cruelty and a new dimension has been given, cruelty while granting a divorce to the woman on the context of demand for dowry. Explanation to section 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 willful 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.

In short, the persistent demands for dowry are considered equivalent a ground for the purpose of granting matrimonial relief including divorce.

In *Rameshbhai Dalaji Godad v. State of Gujrat* [19], the Supreme Court held that to prove that cruelty was led under Explanation of section 498-A, it is not important to show or state that the woman was beaten up abusing her orally, denying her conjugal rights or even not speaking to her correctly would fall into the ambit of mental cruelty. The term 'cruelty' in this section has been defined in wide terms so as to include imposing physical or mental injury to the body or health of her and indulging in acts of cruelty with a view to force her or her relations to meet any illegal demand for any properties [20]. In *Smt. Sujata Mukherjee v. Prashant Kumar Mukherjee* [21], the Supreme Court held that a woman who is maltreated by her husband and in-laws for dowry can file a criminal complaint at all places where such an offence under section 498-A of IPC, is alleged to have been committed against her.

Cruelty also includes harassment noticing on one's incapacity, torture and further asking her to abort. In *Ajit Singh v. State of Himachal Pradesh* [22], evidence strongly shows accusation of accused, that due to dowry torture deceased committed suicide, then just because informant was not examined does not vitiate prosecution. Where neighbors, relatives and surrounding circumstances lead to a decision that it was accused only who used to harass, torture his wife for want of dowry and this was a regular feature in his life, then

punishment against section 498-A is justified [23]. Where demand of dowry and cruel behavior of deceased by accused proved beyond reasonable doubt, which impelled deceased to commit suicide, life sentence confirmed [24]. In the case of *Solaikumar v. State Rep* [25], the accused had abused his wife for her inability and forced her to leave the matrimonial life for the demand of dowry. Again after about forty-five days of her pregnancy the accused took the woman to the doctor for abortion without her will, in this case the Supreme Court stated that it would definitely amount to cruelty under section 498-A and an offence of cruelty is made out. Woman may also being subjected to cruelty by the relatives of her husband, in the case of *Arnesh Kumar v. State of Bihar* [26] a demand of dowry was made by the father-in-law, mother-in-law and sister-in-law which Supreme Court sentenced under section 498-A. It has been further observed by the Supreme Court that section 498-A of IPC introduced with an aim and objection to protect the women from harassment at the hands of husband and his relatives. Then, husband or his family members are presumed to be guilty till they prove their innocence in the court. A punishment contains imprisonment of up to three years is provided in the present law. This section punishes the husband or his relatives who subject a married woman to cruelty.

The table below shows the statistics rate of cases reported and Rate of crime of cruelty by husband or his relatives under section 498-A of IPC during 2010-2015.

In the case of suicide by a married woman, within seven years from the date of her marriage, the Court may presume that such commit to suicide has been abetted, encouraged by her husband or his relatives. Provisions to this effect added in the Indian Evidence Act (here in after referred to as IEA), by adding section 113-A since the year 1983. The explanation to this section says that the expression cruelty shall have the same meaning as in section 498A, IPC.

Supreme Court in *Kundula Balasubra manyam v. state of A.P* [27], says that on the alarming increase in the cases connecting to dowry death.

A new section 113-B also added to IEA by the Dowry Prohibition (Amendment) Act, 1986 which raises presumption as to dowry death in certain circumstance. It provides that 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 had been subjected by such person to harassment or cruelty for, or in connection with any demand for dowry, the court shall presume that such person had caused the dowry death [28]. In *Surinder Singh v. State of Haryana*[29], the Supreme Court convicted the accused under this section. In the Explanation of section 113-B, as the Supreme Court has mentioned in *Appasaheb v. State of Maharashtra*[30], it has been provided that for the objective of this section, dowry death shall have the same meaning as under section 304-B of the IPC [31].

By section 304-B IPC and section 113-B, IEA the law authorizes a presumption that the husband or his relative has caused the death of a woman if her death is not in a normal circumstances and that there is sufficient evidence to prove that she was subjected to cruelty or harassed before her death in connection with any demand for dowry [32]. Offences that result to dowry deaths are almost always perpetrated within the safe areas of a residential house. Other members of the family are either guilty related in offence, or silent but conniving witnesses to it. There would be no other eye witnesses, except for members of the family and the family circles are so strong that truth may not come out of the chains. In *Haria Lal & Ors V. State (Govt. of NCT) Delhi* [33], where the deceased committed suicide by consuming poison because she was harassed by her father-in-law and her mother-in-law. Supreme Court sentenced, under sections 304B, of IPC and 113-B, of IEA, since the death was

unnatural, information lodged with police and investigation done. To meet a situation of this kind, the legislature has enacted section 304-B, IPC and section 113-B of the IEA.

Thus, the demanding of dowry itself is a cruel action and can be a ground of divorce. A husband or his relatives can be punished for behaving cruelly with the wife by asking dowry. Cruelty of a wife for dowry is a criminal offence and misbehaviour of a wife for dowry can be punished. Also on account of the Dowry Prohibition Act, a wife or her relatives can take recourse of law and if dowry is demanded or a wife is harassed on account of dowry, the persons doing so can be punished.

Though law has provided strict actions to control this danger unless the whole society believes that dowry is an evil dowry could not be erased from the society, unless there is a strong awareness in the minds of the publics, unless every mother-in-law thinks that at one time she also is a daughter-in-law, unless every mother thinks that the behavior which she gives to her daughter-in-law may also be received by her own daughter.

Marriage is a holy ceremony, harassing women because of inadequate supply of dowry is not moral. It is so difficult to recommend a set of factors accountable for the custom of dowry, because dowry has become a complex phenomenon and a social problem that it requires immediate remedial actions. Although, the Government of India has taken good initiatives to combat this issue through enacted numerous laws for the prohibition of dowry system which impose punishment for dowry, but the Government of India should come out with some more severe laws to protect the rights of women who are victims of dowry.

#### IV. CONCLUSION

Though law has provided strict measures to control this

danger will be continued; Unless the whole society believes that dowry is an evil, unless there is a strong awareness in the minds of the publics, unless every mother-in-law thinks that at one time she also is a daughter-in-law, unless every mother thinks that the treatment which she gives to her daughter-in-law can also be received by her own daughter, the evils of dowry will remain in society. Too, society and anyone as a member of the society can do lots to prevent offences of harassment, dowry death, etc. by considering the following steps; Start practicing dowry prohibition in the family, educate the members of family with the provisions of law that demanding and accepting or giving dowry is an offence. If in any family there is a growing conflict among the in-laws and the wife, try to interfere to sort out the differences and educate them about the evils of dowry system. Because a woman is a significant member of family and is entitled to all the rights and privileges a man enjoys.

All social scientist and law makers altogether opine that education can solve the problems to a large extent. But the most pathetic story is that the dowry has been related with the educated elite class in a main way. Educated class should think in a high-minded way to overcome these problems. Though several state governments have brought various legislations into force to check the increasing threat of dowry, even this has not helped in anyway. The greatest remedy to overcome this type of harassments is to change oneself. Apart from this the attitude of the woman should change. This alteration should come from within every individual woman concerned. The laws connected with this system should become stronger and stronger and there by the individuals, the intellectuals, the press and the elite class shall take it as a challenge to eliminate this problem to save the society from this antisocial activity.

The evil of dowry cannot be battled by a few persons. It required a wide spread change. Then best education is the

best dowry. Parents are guided to educate daughters and it is time that education has more value in the service market and fields have been opened for women to become solution. In this way amount of dowry may be invested for her secured future.

#### REFERENCES

- [1] Vinod Kumar Sethi v. State of Punjab AIR 1982 P&H 372 105.
- [2] Kunju Moideen v. Sayed Mohammed, AIR 1986 Ker 48 (40).
- [3] Prem Kumar v. State of Rajasthan, AIR 2009 SCC 1242.
- [4] S. Gopal Reddy v. State Andhra pradesh, 1996 4 SCC 596.
- [5] Pavana Kumar v. State of Haryana, AIR 1998 SC 2628.
- [6] Satvir Singh and Ors v. State of Punjab and Anr, 2001 8 SCC 633.
- [7] Yashoda and another v. State of M.P., 2004 3 SCC 98.
- [8] State of Punjab v. Iqbal Singh and Ors, AIR 1991 SC 1532
- [9] Amar Singh v. State of Rajasthan, (2010) 9 SCC 64.
- [10] M. Srinivasulu v. State of AP, AIR 2007 SC 3146.
- [11] Wazir Chand v. State of Haryana, AIR 1989 SC 378: 1989 1 SCC 244.
- [12] U. Suvetha v. State, 2009 6 SCC 757: 2009 3 SCC (Cri) 36.
- [13] Vijeta Gajra v. State of NCT of Delhi, 2010 11 SCC 618. at para 11.
- [14] Sarala Prabhakar v. State of Maharashtra, 1990 CrLJ (1) 407.at para 3.
- [15] G.V. Siddaramesh v. State of Karnataka, 2010 3 SCC152. at para 24.
- [16] Ramesh Chand v. State of U.P., 1992 CrLJ 1444 (All). at para 6.
- [17] Atmaram v. State of Maharashtra, 2013 12 SCC 286.
- [18] Shobha Rani v. Madhukar Reddi, AIR 1988 SC 121.
- [19] Rameshbhai Dalaji Godad v. Sate of Gujrat, 2003 CrLJ (2) 2445.
- [20] Ganaath Pattnaik v. State of Orissa, 2002 2 SCC 619.
- [21] Smt. Sujata Mukherjee v. Prashant Kumar Mukherjee, 1997 5 SCC 30.
- [22] Ajit Singh v. State of Himachal Pradesh, 2000 Cr LJ (2) 2370 (HP).
- [23] S.T Dayananda Reddy v. State of Karnataka, 2000 Cr LJ (2) 2054 (HP).
- [24] Vakil Chand and Ors v. State of Haryana (2) Chand, 1992 Cri
- [25] Solaikumar v. State Rep, 2015 CrI. R.C. 536 (Mad).
- [26] Arnesh Kumar v. State of Bihar, AIR 2014 SC 2 756.
- [27] Kundula Balasubra manyam v. state of A.P, 1993 SCR (2) 666, 1993 SCC (2) 684.
- [28] Kaliyaperumal v. State of Tamil Nadu, 2004 (9) SCC 157.
- [29] Surinder Singh v. State of Haryana, 2014 4 SCC 129
- [30] Appasaheb v. State of Maharashtra, 2007 9 SCC 721
- [31] Anguri Devian and Ors v. State of Jharkhand, 2007 (1) 1047 (Jha).
- [32] Muthu Kutty and another v. State by Inspector of Police, T.N, (2005) 9 SCC 113.
- [33] Haria Lal & Ors V. State (Govt. of NCT) Delhi, AIR 2003 SC 2865..

#### AUTHORS

**First Author – Leila Ateffakhr, Research Scholar, University of Kerala, Attef\_I@yahoo.com.**

**Correspondence Author** – Leila Ateffakhr,

**Attef\_I@yahoo.com, 0091- 8593866791**