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Protection of Women and Children against Violence: Dowry Death and Matrimonial Cruelty under the Bharatiya Nyaya Sanhita, 2023

G. DEVAKIRUBAI[*] AND LEKSHMI V.S.[**]

ABSTRACT

Shielding women and children from violence is one of the basic duties of a criminal justice system, and in India that duty is carried out through a layered set of constitutional, penal and protective laws. This article studies the framework set up by the Bharatiya Nyaya Sanhita, 2023 (BNS), concentrating on dowry death under section 80 and on cruelty by a husband or his relatives under sections 85 and 86. It sets out the separate facts that the prosecution must prove for each offence, explains how the presumption in section 118 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA) operates, and asks how far Supreme Court rulings on the corresponding Indian Penal Code provisions still guide courts. The offences are then placed among related statutes: the Dowry Prohibition Act, 1961, the Protection of Women from Domestic Violence Act, 2005, and the Protection of Children from Sexual Offences Act, 2012. Following a doctrinal and analytical method, the article argues that real protection cannot be secured by heavy punishment alone. It also needs early intervention, careful investigation, proof directed at each accused individually, and dependable support for survivors. The article closes with proposals that aim to keep both the safety of survivors and the guarantee of a fair trial intact.

Keywords: *dowry death, matrimonial cruelty, Bharatiya Nyaya Sanhita, domestic violence, evidentiary presumption, women and children, criminal justice*

I. INTRODUCTION

A promise of equality means little if force and fear continue to govern life inside the home. Within a marriage, control can take many forms: repeated demands for money or goods, threats, enforced isolation, humiliation and beatings. At its gravest, this pattern ends in the unnatural death of a wife. The criminal law answers by describing the forbidden conduct, fixing punishments, and regulating what a court may infer once certain circumstances have been

[*] Author is a Student at Sri Chandrasekharendra Saraswathi Viswa Mahavidyalaya, Kanchipuram, Tamil Nadu, India.

[**] Author is a Faculty at Anvikshiki School of Law, Sri Chandrasekharendra Saraswathi Viswa Mahavidyalaya, Kanchipuram, Tamil Nadu, India.

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proved. These instruments, however, work only when applied with care. Not every death in a marital home is a dowry death, and not every quarrel between spouses amounts to cruelty in the statutory sense.

Since 1 July 2024 the Bharatiya Nyaya Sanhita, 2023 (BNS) has replaced the Indian Penal Code, 1860 (IPC).[1] The earlier offences of dowry death (section 304B) and cruelty to a married woman (section 498A) have been carried into the new Sanhita as sections 80 and 85–86.[2] Because the wording is substantially equivalent, earlier judicial reasoning continues to carry weight. Whether a given incident is governed by the old or the new law, however, depends on its date and on the transitional provisions.[3] The aim of this article is to examine how the law recognises abuse and what the prosecution must establish before anyone can be held criminally liable, and so to assess whether the present scheme strikes a fair balance between protecting people from gender-based violence and insisting that guilt be proved against each accused person separately.

II. THE WIDER PROTECTIVE FRAMEWORK

A. Constitutional foundations

The Constitution supplies the starting point. Articles 14 and 15 guarantee equality and bar discrimination on stated grounds, while Article 15(3) allows the State to make special provisions for women and children.[4] Article 21 secures life and personal liberty and is the source from which courts draw the rights to dignity, bodily integrity and personal security.[5] The Directive Principles, among them Article 39(e) and (f), encourage policies that protect vulnerable people.[6] Even so, a person can be found guilty only under enacted law[7] and on evidence; constitutional values guide interpretation but do not replace proof.

[1] MINISTRY OF HOME AFFAIRS, Notification S.O. 850(E), GAZETTE OF INDIA, Extraordinary, pt. II, sec. 3(ii) (Feb. 23, 2024) (India) (appointing 1 July 2024 for the commencement of the Sanhita, except § 106(2)).
[2] Indian Penal Code, No. 45 of 1860, §§ 304B, 498A (India) [hereinafter IPC]; Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 80, 85–86 (India) [hereinafter BNS].
[3] BNS, *supra* note 2, § 358; *see also* Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 531 (India) [hereinafter BNSS].
[4] INDIA CONST. arts. 14, 15.
[5] INDIA CONST. art. 21; *Francis Coralie Mullin v. Adm'r, Union Territory of Delhi*, (1981) 1 S.C.C. 608 (India) (right to live with human dignity); *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India) (privacy, dignity and bodily integrity).
[6] INDIA CONST. art. 39(e)–(f).
[7] INDIA CONST. art. 20(1).

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B. Penal and allied legislation

The BNS deals with sexual offences, assault, trafficking, offences connected with marriage, cruelty and other wrongs.[8] The Dowry Prohibition Act, 1961 separately penalises the giving, taking and demanding of dowry,[9] and its definition of dowry is the one used in BNS section 80.[10] The Protection of Women from Domestic Violence Act, 2005 (Domestic Violence Act) provides civil remedies, namely protection, residence, monetary relief, custody and compensation orders; it complements criminal prosecution and does not take its place.[11] For children, the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) supplies definitions and procedures specific to sexual offences against minors,[12] and the Juvenile Justice (Care and Protection of Children) Act, 2015 (Juvenile Justice Act) deals with care and protection and with children in conflict with the law.[13] Child protection forms part of the wider setting of this article, but the two offences examined in detail, dowry death and cruelty by a husband or his relatives, concern married women.

The law nevertheless reaches children in the matrimonial home in three ways. First, the BNS defines a woman as a female human being of any age and a child as any person below eighteen,[14] so a girl married below that age falls within sections 80 and 85 while remaining a child under the POCSO Act, which treats penetrative sexual assault by a relative through marriage, or by a person living in the same household, as aggravated.[15] Second, the children of the marriage are affected by what happens to their mother. The Domestic Violence Act allows a Magistrate to order maintenance for the aggrieved person's children and to grant temporary custody,[16] and where a woman dies within seven years of marriage otherwise than due to natural causes, before receiving dowry held by another person, the Dowry Prohibition Act directs that the property pass to her children, if she has any, held in trust for them until it is transferred.[17] Third, a child who resides with a person who has injured, abused or neglected the child, or whose parent is found unfit or incapacitated, is a child in need of care and protection under the

[8] BNS, *supra* note 2, ch. V, §§ 63–99 (offences against woman and child, including sexual offences and offences relating to marriage), § 131 (assault), § 143 (trafficking).
[9] Dowry Prohibition Act, No. 28 of 1961, §§ 3–4 (India) [hereinafter Dowry Prohibition Act].
[10] Dowry Prohibition Act, *supra* note 9, § 2; BNS, *supra* note 2, § 80(1) expl.
[11] Protection of Women from Domestic Violence Act, No. 43 of 2005, §§ 18–22, 36 (India) [hereinafter Domestic Violence Act].
[12] Protection of Children from Sexual Offences Act, No. 32 of 2012 (India) [hereinafter POCSO Act].
[13] Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016 (India) [hereinafter Juvenile Justice Act].
[14] BNS, *supra* note 2, § 2(3), (35).
[15] POCSO Act, *supra* note 12, §§ 2(1)(d), 5(n).
[16] Domestic Violence Act, *supra* note 11, §§ 20(1)(d), 21.
[17] Dowry Prohibition Act, *supra* note 9, § 6(3) proviso.

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Juvenile Justice Act, which also punishes cruelty by anyone having actual charge of or control over a child.[18]

III. Dowry death: section 80, Bharatiya Nyaya Sanhita

Under section 80(1), a woman's death is a dowry death when it is caused by 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 her husband or a relative of the husband treated her with cruelty or harassment for, or in connection with, a demand for dowry; that husband or relative is then deemed to have caused her death.[19] Section 80(2) prescribes imprisonment of not less than seven years, which may extend to imprisonment for life.[20] The provision corresponds in substance to former IPC section 304B.[21]

A. Essential ingredients to be proved

Five matters must be established. First, the deceased was a woman who died from burns or bodily injury or in circumstances that were not normal. Second, her death took place within seven years of the marriage. Third, the prosecution must identify cruelty or harassment that can be attributed to the husband or to a named relative. Fourth, that mistreatment must be linked to a dowry demand and not to some unrelated dispute. Fifth, the dowry-related cruelty or harassment must have occurred "soon before" the death. These conditions are cumulative.[22] An unexplained death, however distressing, cannot stand in for proof of the remaining elements.[23]

B. Meaning of dowry and the causal nexus

"Dowry" is understood through section 2 of the Dowry Prohibition Act, 1961, which concerns property or valuable security given or agreed to be given, directly or indirectly, at or before or at any time after the marriage, in connection with the marriage, within the limits of the statutory definition.[24] A court has to look at the substance and context of a demand. An earlier decision held that a demand for money to meet financial stringency or urgent domestic expenses was not a demand for dowry,[25] but the Supreme Court has since held that this does not state the law correctly: money, property or valuable security demanded at or before or at any time after the marriage, and reasonably connected to the death of a married woman, is taken to be in

[18] Juvenile Justice Act, *supra* note 13, §§ 2(14)(iii)(a), 2(14)(v), 75.
[19] BNS, *supra* note 2, § 80(1).
[20] BNS, *supra* note 2, § 80(2).
[21] IPC, *supra* note 2, § 304B.
[22] *Satbir Singh v. State of Haryana*, (2021) 6 S.C.C. 1, [2021] 7 S.C.R. 269, ¶ 8 (India); *Kaliyaperumal v. State of Tamil Nadu*, (2004) 9 S.C.C. 157 (India).
[23] *Charan Singh v. State of Uttarakhand*, [2023] 3 S.C.R. 511, ¶ 23 (India).
[24] Dowry Prohibition Act, *supra* note 9, § 2.
[25] *Appasaheb v. State of Maharashtra*, (2007) 9 S.C.C. 721, 727 (India).

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connection with the marriage unless the facts of the case clearly and unequivocally point otherwise.[26] Even so, a request for money during a marriage is not automatically a demand for dowry. Relevant evidence may include messages sent at the time, bank transfers, persons who heard the demands, earlier complaints, medical records and the deceased's own statements where these are legally admissible.[27] What the prosecution must show is a real connection between the demand and the harassment.

C. The phrase "soon before her death"

The law does not fix a number of days for "soon before."[28] What is required is a proximate and live link between mistreatment connected with dowry and the death.[29] To insist on proof of abuse in the hours just before death would ignore long-running patterns of coercion. In the other direction, a single remote incident that has no continuing significance may be insufficient.[30] The court weighs the sequence of events, how often the conduct was repeated, its seriousness and any events that intervened.[31]

D. Evidentiary presumption

Section 118 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA), which corresponds to former section 113B of the Indian Evidence Act, requires the court to presume that the accused caused the dowry death once the foundational facts stated in the provision are proved.[32] The presumption can be rebutted.[33] It does not turn the marriage relationship into a basis for automatic conviction. The prosecution first has to prove the foundational ingredients,[34] and the accused must then have a genuine chance to rebut the presumption. Throughout, the court must consider the whole record and protect the right to a fair trial.[35]

IV. Cruelty by Husband or Relatives: Sections 85 and 86 BNS

Section 85 makes it an offence for a husband, or a relative of the husband, to subject a woman to cruelty, and prescribes imprisonment which may extend to three years together with a fine.[36]

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[26] *Rajinder Singh v. State of Punjab*, (2015) 6 S.C.C. 477, ¶ 20 (India).
[27] Bharatiya Sakshya Adhiniyam, No. 47 of 2023, § 26(a) (India) [hereinafter BSA]; *see* Indian Evidence Act, No. 1 of 1872, § 32(1) (India) [hereinafter Evidence Act].
[28] *Kans Raj v. State of Punjab*, (2000) 5 S.C.C. 207, ¶ 15 (India).
[29] *Satbir Singh*, *supra* note 22, ¶¶ 14–15.
[30] *Kaliyaperumal*, *supra* note 22.
[31] *Kans Raj*, *supra* note 28, ¶ 15.
[32] BSA, *supra* note 27, § 118; Evidence Act, *supra* note 27, § 113B.
[33] *Satbir Singh*, *supra* note 22, ¶¶ 16, 18.
[34] *Kaliyaperumal*, *supra* note 22.
[35] *Satbir Singh*, *supra* note 22, ¶¶ 19–21.
[36] BNS, *supra* note 2, § 85.

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Section 86 explains cruelty in two alternative ways.[37] Under clause (a), cruelty covers wilful conduct of a kind likely to drive a woman to suicide or to cause grave injury or danger to her life, limb or health, whether mental or physical. Under clause (b), it covers harassment aimed at coercing the woman, or any person related to her, to meet an unlawful demand for property or valuable security, as well as harassment on account of a failure to meet such a demand. Because the clauses are alternatives, a dowry or property demand is not needed for a prosecution under clause (a).

A. Ingredients of the offence

To succeed, the prosecution must prove the marital relationship and the accused's position as husband or relative of the husband. It must then identify conduct that can be attributed to that particular accused and show facts that fall within one of the two statutory definitions. Clause (a) needs wilful conduct of the required gravity or likelihood of serious harm; it does not demand proof that a suicide or injury actually followed.[38] Clause (b) needs harassment connected with coercion for an unlawful demand for property or valuable security, or with retaliation for not meeting it. A court is helped by specific incidents, dates where they are available, communications, medical material and consistent testimony. Mere kinship with the husband is not a ground for conviction.[39]

B. Mental cruelty and evidentiary assessment

Cruelty to the mind can be grave even when no visible injury is left. Prolonged threats, deliberate humiliation, enforced isolation or conduct that endangers mental health may meet the statutory threshold when they are proved.[40] The criminal standard, however, should not be watered down into a general judgment about an unhappy marriage. Courts need to distinguish ordinary domestic friction from deliberate and serious misconduct, and to look at the specific role of each accused. At the same time, the absence of an earlier police complaint does not in itself disprove abuse, since fear, dependence and pressure from the family can account for delay in reporting.[41]

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[37] BNS, *supra* note 2, § 86.
[38] BNS, *supra* note 2, § 86(a).
[39] *Kans Raj*, *supra* note 28; *Kahkashan Kausar v. State of Bihar*, (2022) 6 S.C.C. 599, [2022] 1 S.C.R. 558, ¶ 17 (India) (quoting *K. Subba Rao v. State of Telangana*, (2018) 14 S.C.C. 452, ¶ 6 (India)).
[40] BNS, *supra* note 2, § 86(a); *Manju Ram Kalita v. State of Assam*, (2009) 13 S.C.C. 330, ¶ 21 (India).
[41] *Manju Ram Kalita*, *supra* note 40, ¶ 21; *Kahkashan Kausar*, *supra* note 39, ¶ 17; *Preet Pal Singh v. State of U.P.*, (2020) 8 S.C.C. 645, [2020] 6 S.C.R. 967, ¶ 42 (India) (failure to lodge an FIR before the victim's death held inconsequential, on suspension of sentence).

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C. Distinction between sections 80 and 85–86

Dowry death needs an unnatural death within seven years of marriage together with dowry-related cruelty or harassment that is sufficiently close in time to the death. Cruelty needs no death and, under section 86(a), may arise without any dowry demand. Section 80 carries a much heavier punishment and brings into play the specific presumption in BSA section 118 once its foundational facts are proved. Where the separate ingredients of both are established, the same facts may support consideration of both offences, subject to the ordinary rules of criminal law.[42]

V. JUDICIAL DECISIONS AND THEIR SIGNIFICANCE

A. *Satbir Singh v. State of Haryana* (2021)

The Supreme Court considered the death by burns of a woman about a year after her marriage, in a case involving allegations of harassment for dowry.[43] It restated that "soon before" calls for a proximate and live link, and not for an incident occurring immediately before death.[44] The Court also explained that the statutory presumption arises only after the prosecution proves the foundational facts, and that death in other than normal circumstances is not limited to homicide.[45] The decision remains a leading authority for the corresponding BNS offence.

B. *Kaliyaperumal v. State of Tamil Nadu* (2003)

The Supreme Court set out the elements that make up dowry death and stressed that the cruelty or harassment must be connected with dowry and must be reasonably close to the death.[46] The ruling is important because it prevents the gravity of an unnatural death from taking the place of proof of the statutory connection.

C. *Kans Raj v. State of Punjab* (2000)

The Court dealt with the meaning of "soon before" and with the importance of closeness in time between dowry-related cruelty and death.[47] It also warned against drawing in the entire family of the husband without evidence of what each member did.[48] The protective aim of the law is better served by careful attribution of conduct than by blanket accusations.

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[42] BNS, *supra* note 2, §§ 80(2), 85; BSA, *supra* note 27, § 118; *Kaliyaperumal*, *supra* note 22 (distinct offences; conviction possible under both where the case is established).
[43] *Satbir Singh v. State of Haryana*, (2021) 6 S.C.C. 1, [2021] 7 S.C.R. 269, ¶¶ 2, 25, 28 (India).
[44] *Id.* ¶¶ 14–15.
[45] *Id.* ¶¶ 18, 36.
[46] *Kaliyaperumal v. State of Tamil Nadu*, (2004) 9 S.C.C. 157 (India).
[47] *Kans Raj v. State of Punjab*, (2000) 5 S.C.C. 207, ¶ 15 (India).
[48] *Kans Raj*, *supra* note 28.

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D. *Arnesh Kumar v. State of Bihar* (2014)

Arising under IPC section 498A, this decision addressed needless arrests and insisted that the statutory safeguards on arrest be followed.[49] Its procedural lesson still holds, and the safeguards it enforced under sections 41 and 41A of the Code of Criminal Procedure, 1973 now appear in section 35 of the Bharatiya Nagarik Suraksha Sanhita, 2023.[50] Serious allegations call for prompt and effective investigation, but arrest should not follow automatically from an accusation.

E. *Social Action Forum for Manav Adhikar v. Union of India* (2018)

The Supreme Court reconsidered the procedural safeguards that had been built around complaints of matrimonial cruelty, in particular the Family Welfare Committees directed in *Rajesh Sharma v. State of U.P.*, and disapproved of a structure that had no footing in the Code of Criminal Procedure and could obstruct lawful criminal investigation.[51] The decision shows the need to protect complainants while relying on procedures authorised by the legislature and not on barriers created by courts.

VI. Critical analysis

Three tensions affect how well these provisions work. The first is the difficulty of proving violence that happens in private: such crimes usually take place in secrecy within the home, members of the family seldom come forward to depose against one another, and neighbours are often reluctant to testify.[52] The second is the gap between prevention and punishment. A prosecution that begins after a death cannot make up for early protection, safe housing, financial help and a responsive police. The third is the danger of overbreadth when accusations against several relatives are not individualised.[53] A sound system has to treat complaints seriously without treating membership of a family as proof of guilt.

The presumption for dowry death is justified by the unusual evidentiary setting in which these deaths occur, but it retains its integrity only if the threshold facts are actually enforced.[54] As for cruelty, the two alternative clauses should not be merged. Wilful and grave conduct under section 86(a) is different in kind from coercive, property-related harassment under section

[49] *Arnesh Kumar v. State of Bihar*, (2014) 8 S.C.C. 273, ¶ 11.1 (India).
[50] Code of Criminal Procedure, No. 2 of 1974, §§ 41, 41A (India); BNSS, *supra* note 3, § 35.
[51] *Social Action Forum for Manav Adhikar v. Union of India*, (2018) 10 S.C.C. 443, [2018] 12 S.C.R. 19, ¶¶ 33–34, 38–39 (India), *modifying Rajesh Sharma v. State of U.P.*, (2018) 10 S.C.C. 472 (India).
[52] *Trimukh Maroti Kirkan v. State of Maharashtra*, (2006) 10 S.C.C. 681, ¶ 13 (India).
[53] *Kahkashan Kausar*, *supra* note 39, ¶ 17.
[54] *Satbir Singh*, *supra* note 22, ¶¶ 12, 18.

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86(b).[55] Keeping them apart supports accurate charging, open judicial reasoning and predictable outcomes.

VII. Suggestions and recommendations

First, police and hospitals should follow uniform protocols for preserving medical records, digital communications, financial evidence and witness statements in suspected dowry-death cases. Second, investigators should prepare accused-specific chronologies that show who is alleged to have made a demand, what was demanded and how the conduct related to the death. Third, victim-support services should link criminal complaints with shelter, counselling, legal aid and protection orders under the Domestic Violence Act. Fourth, training should stress the difference between the elements of section 80 and those of sections 85–86. Fifth, judicial orders should state the foundational facts expressly before applying BSA section 118. Sixth, education in schools and communities should address coercive dowry practices and the rights of women and children before abuse escalates.

VIII. Conclusion

India's penal safeguards against dowry death and cruelty within marriage reflect a serious commitment to dignity and security inside the family. Section 80 BNS deals with a narrowly drawn but grave result: an unnatural death within seven years of marriage, preceded by dowry-linked cruelty or harassment that is sufficiently close in time. Sections 85 and 86 step in earlier, penalising defined forms of serious wilful conduct and coercive harassment even when no one dies. The presumption in the BSA strengthens accountability, but it depends on proof of the statutory preconditions. A credible system of protection therefore needs more than severe sentences. It needs early help, competent gathering of evidence, accurate legal classification and careful fairness to every party. Protection of women and children is strongest where prevention, victim support and rigorous adjudication work together.

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[55] BNS, *supra* note 2, § 86(a)–(b).

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