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Dowry Death and Dowry System in India: Critically Analysis

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ABSTRACT

Dowry, a deep-rooted social issue in India, continues to plague society despite legislative efforts to curb it. This abstract explores the legislative measures aimed at prohibiting dowry in India, tracing the evolution of laws from antiquity to modern times. Beginning with an examination of ancient texts and religious scriptures, the abstract delves into the historical context of dowry and its transformation into a social menace. The study then shifts focus to the legislative response, starting with the Dowry Prohibition Act of 1961, a landmark legislation that criminalized the practice of dowry giving and receiving. Subsequent amendments to the Act are analyzed, including the incorporation of stringent provisions to strengthen enforcement and deterrence. The abstract also scrutinizes related laws such as the Indian Penal Code, which penalizes dowry-related offenses, and the Protection of Women from Domestic Violence Act, which offers additional safeguards to dowry harassment victims. Moreover, the abstract examines landmark judicial decisions that have shaped the interpretation and implementation of dowry laws in India. Furthermore, it critically evaluates the effectiveness of legislative measures in addressing the dowry menace, considering socio-cultural factors, enforcement challenges, and the persistence of dowry-related violence and exploitation. Drawing on empirical data and scholarly analysis, the abstract identifies gaps and shortcomings in existing laws and proposes recommendations for legislative reforms. These include enhanced enforcement mechanisms, public awareness campaigns, and socio-economic initiatives to address the root causes of dowry demand. Overall, this abstract provides a comprehensive overview of legislative measures on dowry prohibition in India, shedding light on the complexities and challenges of combating this entrenched social evil in contemporary Indian society.

***Keywords**: Dowry Prohibition, Legislative Measures, India, Social Reform, Gender Equality.*

I. INTRODUCTION

Marriage has been considered as the most sacred, pious and indispensable institution in Indian society. The most common endeavour of the mankind is an inherent instinct for companionship.

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Since ages, the underlying aim behind the institution of marriage has been the fulfillment of the need of companionship and lineage. As the institution of marriage came into existence, it gave rise to several marriage related rituals, customs, ceremonies and traditions. In many communities, gifts and valuables were given to the bride by her parents and relatives at the time of wedding while she had to leave her parental home and become part of her husband's family. It was considered as an auspicious custom that also served as a support to establish and arrange newly required household amenities. In those times, women were neither employed nor had any personal source of income. Hence the economical value of brides was considered to be lower in comparison to her bridegroom. Therefore the custom of dowry also originated as a compensation for this lower economic value of bride to her bridegroom and in-laws who were supposed to bear all her financial expenses after marriage. Dowry was also looked upon as a compensation paid by the father of the bride to his son-in-law for the maintenance of his daughter as well as to the parents of groom for the expense they had borne while in educating and upbringing their son. Moreover, the daughters were not given any share in the parental property therefore dowry was impliedly a kind of share in their father's wealth given to them at the time of their marriage."

"Though dowry was in its whispering stage, the first attempt related to dowry prohibition was done with the enactment of Sindh Deti-Leti Act, 1939.[2] It prohibited the giving and taking of any valuable article or dowry beyond permissible limit prescribed by the list enumerated by the *panchayats* or provincial governments.[3] The next step was Bihar Dowry Restraint Act, 1950 and The Andhra Pradesh Dowry Prohibition Act, 1958. Although the provincial enactments could not bring the desired results, but they stimulated the general public to raise a voice against dowry as the dowry system started strangulating the peace of society. Perhaps the Central government felt that The Hindu Succession Act, 1956 may be a suitable alternative to the eradication of dowry system as many provisions in the Act were made with regard to the women. All these enactments appeared to be really pro-women but due to the lack of effective awareness, and proper utilization, most of the Acts merely remained on papers rather than curbing the menace of dowry.[4]"

"In view of the persistent nature of the problem and thereby adverse consequences of dowry system, The Dowry Prohibition Bill, 1959 was introduced on 24th April, 1959 with an objective of eradicating the evil of dowry system. The underlying object behind this bill was to prohibit

[2] Vinay Sharma, Dowry Deaths, Deep and Deep Publications, New Delhi, 2007
[3] The Sindh Deti-Leti Act, 1939
[4] R. Revathi, Law Relating to Domestic violence, Asia Law House, Hyderabad, 2004.

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the giving and taking of dowry in connection to the marriage."

(A) Making of Anti- Dowry Legislation

"On 24th April, 1959, The Dowry Prohibition Bill, 1959 was introduced by the government. After a discussion and introduction of several changes, it was further moved to the joint committee. Finally the bill was taken into the consideration at a joint sitting of *Rajya Sabha* as well as *Lok Sabha* and was passed on 1st July 1961. Therefore after a long awaited time period, The Dowry Prohibition Act, 1961 was finally enacted to curb the menace of dowry with an objective of eradicating this practice. This Act is considered to be a remedial as well as a penal statute simultaneously. Originally, there were ten Sections in the Act and afterwards Sections 4A, 8A and 8B[5] were further added by the Amendment. Section 2 defines the term Dowry' and Section 3 prescribes the punishment for giving and taking dowry. Dowry is defined as any property or valuable security given or agreed to be given either directly or indirectly."

"The Amendment Act of 1984 has deleted the Explanation I of Section 2.[6] However Explanation II explains that the meaning of the term valuable security is same as given in the Section 30 of I.P.C. There are generally three types of the traditional presents that can be given to a bride in a Hindu marriage:"

(i) Property or valuable articles that are given with an intention that those would be exclusively and personally used by the bride like her personal jewellery, clothes etc.

(ii) Articles or property of dowry which may be for common utilization or use by her and the other members living in her matrimonial home.

(iii) "Articles or property exclusively given as gifts to her husband or the in-laws and other members of her husband's family. There is no control of the bride on such items and valuable property, once it is gifted."

"Consequently, the third type of gifts, property or valuable articles given exclusively to the husband or his relatives after delivery would pass into their ownership and obviously seize to be the property of the bride. The first category of gifts are generally considered as *'Stridhan'*, however the second and third category may fall under the ambit of dowry if the other essentials of Section 2 are fulfilled."

(B) Difference between Dowry and *'Stridhan'*

"The word *'Stridhan'* literally means property of a woman. This concept has originated from

[5] Section 8B, The Dowry Prohibition Act, 1961
[6] The Dowry Prohibition (Amendment) Act, 1986

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Hindu *Smritis'*, the traces of its origin are also found in D*ayabhaga* and *Mitakshara* school of Hindu law. Centuries ago, gifts given to the bride at the nuptial fire, at the bridal procession, gifts given as a token of love by in-laws as well as gifts given by her own parents and relatives were considered to be her *Stridhan'*. For determining the issue that whether a particular kind of property acquired by a woman is covered under the ambit of *Stridhan* or not the source of acquiring that property has to be scrutinized. However, the gifts made to the bridegroom or his relatives by the parents or relatives of bride during and after marriage are not considered as *stridhan."*

(C) Distinction between *Mahr*, Dower and Dowry

"*Mahr*, dower and dowry are entirely different concepts. While on one side dowry is a social evil against woman and is prohibited by law, on the other side, the object of dower is to provide financial security to a woman during and after her marriage and it is legally well permitted."

"*Mahr* differs from dowry in both legal as well as social aspects. According to the Muslim Personal Law, *'Mahr'* is a predetermined amount of money, assets or benefits that is bestowed with the wife which she is entitled to collect from husband. The underlying object is to provide independence to the wife and enable an indirect check over the husband's arbitrary power of taking divorce."

"In *Saburannessa* v. *Sabdu Sheikh*[7], it was clearly held by the Calcutta High Court that dower is an obligation imposed as a mark of respect for the women and not a consideration for the performance of the contract of marriage. *'Jahez'* is a term used in Islam for dowry and it is strictly prohibited under the Islamic Law. *'Jahez'* is regarded as a social and cultural evil in Islam and highly condemned. However, the concept of *'Mahr'* is considered to be an epitome of women empowerment under Islamic Law. It is considered as a right which is conferred to the wife/bride unlike the evil of dowry where a wrongful liability is imposed on the wife/bride or her family. *Mahr* is viewed as a tool for providing equality to the women in a different sense and giving a voice to them. *Mahr* has a significant importance in Muslim marriages as it acts as a tool to provide protection to the women against the discretionary abuse of the unlimited power of divorce conferred with the husband."

(D) Punishment for Giving or Taking Dowry

"Section 3 and 4 provide punishment for giving or taking dowry as well as demanding dowry which may extend to five years sentence and a minimum fine of fifteen thousand rupees or the

[7] AIR 1934 Cal 693

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fine equal to the amount of the total value of such dowry. Any person directly or indirectly demanding dowry, from the parents or other relatives or guardian of either side, shall be liable for a minimum sentence of six months and a maximum imprisonment of two years along with ten thousand rupees fine. Hence mere demanding any kind of dowry before marriage even without the fulfillment of such a demand is also a punishable offence.[8]"

(E) Judicial approach on Dowry Death

"Before the law commission report of 1983 and amendment passed in 1986 there was no separate provision of dowry death and such cases were dealt with under the offence of Murder u/sec 302 of IPC or Abetment to suicide u/sec 306 of IPC. In the case of Shobha Rani v. Madhukar Reddi[9], the appellant wife filed a divorce petition on the grounds of cruelty. She alleged that her husband and in-laws demanded dowry. Her case was rejected by the trial court as well as High Court and it was held that she seemed to be hyper sensitive and hyper imaginative. It was held by the Court that the main objective of Parliament to enact the Dowry Prohibition Legislation was to curb the evil practice of dowry. But as the deep rooted practice persisted, therefore, the considerable changes were suggested through the Amendments done in 1984[10]. Moreover, a new offence of cruelty was inserted in the criminal law. The dimension of cruelty has been changed by widening its scope."

"Cruelty is a ground of divorce even under Hindu Law.[11] However, no specific definition has been given in it. Such cruelty may be mental/ physical, intentional/unintentional. It is easy to determine physical cruelty; however, the court must be more sensitive and assertive in establishing mental cruelty."

"The Court held that, matrimonial conduct which constitutes cruelty as a ground for dissolution of marriage, if not admitted, requires to be proved on the preponderance of probabilities as in civil cases and not beyond a reasonable doubt as in criminal cases. There must be an evidence of harassment done to the wife for fulfillment of any unlawful demand for money to constitute cruelty in criminal law. The requirement of evidence of any unlawful demand for money is only under Section 498A of the I.P.C. but there is no such requirement under Section 13(1)(i)(a) of H.M.A."

"It was further held that there was sufficient evidence to draw an inference that dowry was demanded in this case. Therefore, the court was satisfied by the inference drawn and opined

[8] Pandurang Shivram Kawathkar v. State of Maharashtra, 2001 Cri LJ 2792
[9] Shobha Rani v. Madhukar Reddi (1988) SCC 105.
[10] The Dowry Prohibition (Amendment) Act, 1984
[11] Section 13,The Hindu Marriage Act 1955

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that it amounts to cruelty, therefore, the wife was entitled to get a decree for dissolution of marriage."

"The amendments introduced in the year 1986 inserted Sec 304 B and Sec 498 A in the penal law, Sec 113A and Sec 113B in the Evidence law and thereby provided a tight hand to the prosecution against the defense while dealing with matter. The judicial discourse has also undergone the similar change in certain pronouncements. In the case of Shanti and Anr v. State of Haryana[12], the accused along with three other co accused were charged for committing a dowry death. The trial under Section 201, 304 B and 498 A of I.P.C. was conducted against them. However, the trial court acquitted the three co accused but convicted two accused. In the appeal, the High Court upheld their convictions under Section 304 B and 201 of I.P.C. whereas they were acquitted under Section 498 A on the ground that once the cruelty under section 498A culminates in dowry death of the victim, Section 304 B alone is attracted."

"The appeal was filed in the Supreme Court on two major contentions. Firstly, the acquittal under Section 498A prescribes that cruelty was not proved, therefore, the "death" cannot be considered as dowry death. Secondly, the essentials under Sec. 304 B were not fulfilled and there was no direct evidence against the accused. In the instant case, it was never held by the High Court that prosecution has failed to establish cruelty done by appellants but merely considering it as an essential of Section 304B, has acquitted the appellants under Section 498A. Therefore, the Apex Court accepted it beyond all reasonable doubt that an offence under Section 304-B has been committed. The death occurred in such cases is neither natural nor accidental. These are unnatural deaths, either a suicide or a homicide. For an instance even if it is assumed as a suicide, still it would remain a death which occurred in the circumstances that were not natural and shall attract Section 304B."

"In the landmark case of State of Himachal Pradesh v. Nikku Ram and Ors[13], It was alleged that soon after marriage, the husband, mother- in-law, and sister-in-law started abusing deceased for bringing insufficient dowry. They were further alleged of treating her with cruelty, when their demands for television, electric fan and buffalo etc. were not fulfilled. After three years of marriage, the mother-in-law gave deceased a blow with a sickle causing a wound on her forehead. On the same day, being shattered by the torture, deceased consumed naphthalene balls and succumbed to death due to cardio- respiratory arrest. A sickle was recovered and some letters written by deceased to her father also came into light during police investigation. The

[12] Shanti and Anr v. State of Haryana (1991) 1 SCC 371.
[13] State of Himachal Pradesh v. Nikku Ram and Ors.1995 (6) SCC 219.

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aforesaid persons were charged and a trial was conducted against them under Sections 304B, 306 and 498A of I.P.C."

(F) Judicial Attitude on Invoking Presumption under Law of Evidence

"The offences related to dowry are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence is not easy to get. That is why the legislature has tried to strengthen the hands of prosecution by introducing Sections 113A and 113B in the Evidence Act. Section 113A and 113B permit a presumption to be raised if certain foundation facts are established and the death of women has been caused within seven years of marriage. But these presumptions must be invoked after applying a judicious mind so that all the people present the in-law's house must not be unnecessarily harassed. Judiciary has taken a very sensitive approach to invoke presumptions under Law of Evidence in certain judgments."

(G)Death Sentence in Dowry Related Cases

"The maximum punishment under Section 304 B of IPC is life imprisonment but the question to be determined here is that whether the dowry deaths can be equated with murder and that too fitting under the rarest of the rare category. The Supreme Court has taken a remarkable stand and directed all the trial courts to ordinarily add the charge of murder under Section 302 of IPC to the charge of dowry under Section 304B of IPC. The intent of Court is that the death sentence can also be imposed in such brutal and heinous crimes against women."

(H)Misuse and Abuse of Anti-Dowry Laws

"A huge number of women are every day ill-treated, harassed, killed for dowry and face cruelty behind the four walls of their matrimonial home. For safeguarding their interest, this provision is the utmost need of the hour and so is its stringent nature of being non-bailable and cognizable. Although there was an expressed apprehension of many legal luminaries that it would be misused and lead to a disastrous impact on the society. Unfortunately this apprehension took the face of reality and Supreme Court and High Courts have expressed deep anguish for this result. The Supreme Court, hence, in the landmark case of Sushil Kumar Sharma v. Union of India condemned this section as Legal Terrorism."

"In a famous case of Rajesh Sharma v. State of UP[14], the appellant and his parents were unhappy with the dowry given to them, although the father of complainant had given dowry to his full capacity. Later the appellant started beating and abusing his wife for bringing more dowries and this also led to the termination of her pregnancy. On account of termination of pregnancy, he

[14] Rajesh Sharma v. State of UP (2018) 10 SCC 472

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left his wife to her parental home. Later he was summoned by his wife under Section 498 A and 323 of I.P.C. and was found guilty under Section 498A of I.P.C. by the session court. But his wife also summoned his parents, brother and sister-in law and the session judge also accepted the said petition. Therefore, the appellant moved to the High Court against this petition and High Court rejected this petition as no ground of support was found. This also led to take care of tendency of pulling the entire family in the crime. But after the rejection of petition in H.C., he moved to Supreme Court. The Supreme Court in its judgment prescribed some measures to curb the misuse of Section 498A.The concern was to save the innocent family members of the accused when they are dragged and detained under the Act."

(I) Research Objective

1. To ascertain the extent of existence and prevalence of dowry system.

2. To identify the factors responsible for continuous prevalence of dowry despite stringent laws.

3. To enquire whether there is any gap between actual and the reported incidence of dowry.

4. To examine the efficacy of laws relating to dowry prohibition.

5. To enquire the reasons behind the non- compliance of society towards the laws relating to dowry prohibition.

6. To analyze the connection between the prevalence of dowry system and other offences against women.

7. To assess the efficacy of legal and police machinery in dealing with dowry related offences.

8. To identify the reasons for the abuse and misuse of the dowry prohibition laws.

(J) Research questions

1. What are the main reasons behind the dowry deaths in India?
2. What kind of offences is occurring against women in India?
3. What kinds of constitution remedy available for the safety of women?
4. What is the judicial approach for prevent dowry deaths?

(K)Research Hypothesis

"The custom of dowry and offences related to dowry are an age old concept. The increasing number of dowry related offences has been a constant area of concern for not only to the law and judiciary but it is also affecting the society. But with the passage of time, instead of getting

diminished and therefore loosing the significance, this social evil has deep rooted in the society. The present study is based on the hypothesis that: Lack of social will is an impediment in the effective implementation of laws relating to dowry prohibition and as well leads to the misuse of the laws."

(L) Research Methodology

"The present research work required both doctrinal and non-doctrinal study. The doctrinal work deals with the analysis of literature relating to dowry prohibition, legal provisions, legislative policies/measures and the judicial pronouncements dealing with the issue. For theoretical work the reliance has been kept on various statutes, books, commentaries, journals etc. The reports and recommendations by Law Commission, National Commission for Women, National Crime Record Bureau, as well as the committees that have been formulated so far for curbing the menace of dowry are thoroughly analyzed."

(M) Review of Literature

P.S. Narayana in his book "Laws Relating to Dowry Prohibition"[15] has covered the meaning, nature of dowry and various laws related to dowry prohibition. The author has aptly remarked upon a significant hurdle in the smooth functioning of laws related to dowry prohibition i.e. the social conditions in India are not favourable for effective implementation of such laws. The author has critically analyzed the efficacy of presumptions taken in Indian Evidence Act in the cases related to dowry.

S. Gokilwani in his book "Marriage, Dowry Practice and Divorce"[16], has given a comprehensive exposition of dowry and various laws related to dowry prohibition. It also deals with the changing dimensions of law related to dowry with the changing needs of society.

Veena Talwar Oldenburg in her book "Dowry Murder"[17], had pointed out the difference in the states of North India and South India with regard to the impact of the customs of bride-price and dowry on disturbed sex ratio in these states. The author has critically described the shift of custom of 'Mul' (a kind of bride price) to 'Daj' (a custom like dowry) in North India. She has also examined the views of other authors on the emergence of dowry and its connection with female infanticide.

Anjani Kant in her book "Women and the Law"[18], has done a historical study of position of

[15] P.S. Narayana, Laws relating to Dowry Prohibition, Gogia Law Agency, Hyderabad, 2001.
[16] S. Gokilavani, Marriage, Dowry, Practice and Divorce, Regal Publications, New Delhi, 2008.
[17] Veena Talwar Oldenburg, ―Dowry Murder,‖Oxford University Press, New York, 2002.
[18] Anjani Kant, Women and the Law, A.P.H. Publishing Corp., New Delhi, 2008.

Indian women. The author has examined the status of women in all the phases i.e. from Vedic era to modern India. The changing status of women with the changing era of society has also been discussed.35 It has been used to identify the causes of gradual increase in the offences related to dowry, to determine the impact of declining status of women on increasing crime rate against her in her marital home and to arrive on a solution to combat with these social evils and regain the previous status of women.

Mamta Rao in her book "Law Relating to Women and Children"[19], has elucidated the gradual change of sacred customs of Kanyadan and Vardakshina into the evil of dowry. The author has further remarked upon increasing rate of dowry deaths. She has thoroughly discussed the historical background of dowry. Moreover the study tends to analyze the reasons behind increase in dowry deaths and measures to control it.

P.K Majumdar and R.P. Kataria in their commentary "Law Relating to Dowry Prohibition, Cruelty and Harassment"[20], have deeply analyzed the offence of dowry. The authors have thoroughly discussed the provisions of The Dowry Prohibition Act, 1961 and all the provisions related to dowry in other statutes.

K.D. Gaur in his commentary on the "Indian Penal Code"[21], has deeply analyzed the agony of the victim of dowry death since these crimes are always committed in the safe four walls of victim's own house. Since these offences are always committed in the four walls of the house henceforth there is always a challenge to get sufficient evidence and eye witnesses.

II. HISTORY, EVOLUTION AND GROWTH OF DOWRY

Dowry is one of those social practices which no educated Indian would own up with pride, although many still adhere to this much deplorable practice. Dowry continues to be given and taken. Even among the educated sections of society, dowry continues to form an essential part of the negotiations that take place in an arranged marriage. During the marriage ceremony the articles comprising the dowry are proudly displayed in the wedding hall. Dowry is still very much a status symbol. A number of marriage-negotiations break down if there is no consensus between the bride's and groom's families. Dowry deaths of a newly married bride are still regularly in the news.

Although the practice of dowry exists in many countries, it has assumed the proportion of a

[19] Mamta Rao, Law Relating to Woman and Children, Eastern Book Company, Lucknow, 2012.
[20] P.K. Majumdar and R.P. Kataria, Law Relating to Dowry Prohibition Cruelty & Harassment, Orient Publishing Company. New Delhi, 2014.
[21] K. D. Gaur, Commentary on the Indian Penal Code, Universal Law Publishing, 2013.

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challenge to the force of modernity and change only in India. Many reasons are put forward for explaining this practice. It is said that a dowry is meant to help the newly-weds to set up their own home.

That Dowry is given as compensation to the groom's parents for the amount they have spent in educating and upbringing their son. These explanations may seem logical in the present day context, but they cannot explain how this practice originated. A search for the origins of dowry would have to move backwards into antiquity. Discussion about dowry has to take into account the less prevalent practice of bride p rice, which is but a reversal of dowry. Although it may not be possible to ascertain when and where these practices originated, it can be supposed that dowry and bride price are posterior to the institution of monogamy. This is the same as saying that dowry and bride price came into being after the practice of monogamous marriage had be come prevalent.

But monogamous marriage is itself a culmination of the human adaptation of animal promiscuity. Man's is the only species practicing monogamy, all other species are promiscuous. Thus it is a logical corollary that Man's institution of monogamy came into being at sometime in the long evolution of his species. The practice of monogamy itself evolved in stages as is evident from historical anecdotes as in the Mahabharata where the five Pandava brothers have one wife.

Promiscuity gave way to Polygamy/polyandry, and after various permutations and combinations, monogamy became the established system. As long as promiscuity existed there was no question of dowry or bride price. The origin of these two practices could be linked up with the discardin g of promiscuity in favour of Polygamy and Polyandry. These two forms of marriage are themselves mutual opposites. While in polygamy there is pairing between one male and multiple women and polyandry is the pairing of one woman with multiple men.

The existence of the diametrically opposite practices of dowry and bride price, possibly owe their origin to polygamy and polyandry. The formation of polygamous and polyandrous forms of marriage could have been made necessary by changes in the demographic balance between the sexes. A rise in the number of females as compared to that of males is a congenial situation for the emergence of polygamy. Here the chances of more than one female member of society being in wedlock with one male member are more.

In absence of polygamy, in a society having a larger number of females as compared to males, many female members would have to be deprived of marital life. The obligation to get more than one female member into wedlock with one male member could have been the situation

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which gave birth to dowry as a price exacted by the male and his family from the female's family.

The origin of bride-price could have taken place in opposite circumstances where the sex ratio favored females and as there were a large number of males for every female, polyandry and bride-price could have been the result. Along with this generalised hypothesis there were many factors specific to different situations which gave birth to dowry and bride-price. These factors can be identified with more certainty. In India's context, these practices can be seen to be a result of the dialectics of our caste system. The conflict of opposing tendencies of the caste hierarchy, as we know has resulted in endogamy, preventing inter-marriage between members of different castes. A reason for the origin of dowry and bride-price can also be seen in the same conflict. Hence discussion on these two practices would have to be intertwined.

Dowry (Dahej/Hunda) as we all know is paid in cash or kind by the bride's family to the groom's family along with the giving away of the bride (Kanyadanam). The ritual of Kanya - danam is an essential aspect in Hindu marital rites: Kanya = daughter, danam = gift. A reason for the origin of dowry could perhaps be that the groom and his family had to take up the 'onerous' responsibility of supporting the bride for the rest of her life.

Bride-price on the other hand involves the receipt of presents, in cash or kind, by the bride's family in return for giving away of the bride. Hence bride -price has the character of an exchange.

One feature about bride-price and dowry that is conspicuous is that the former was prevalent among the tribal's, Vaishyas and Shudras whereas later was prevalent amongst Brahmins and Kshatriyas. We can only conjecture as to why this curious combination could have come into being.

In ancient times, the Vaishyas and Shudras did most of the physical labour and menial work. The coming of a bride into the family meant an increase in the number of members who could work along with other members and become a source of income for the family. While the family from where the bride came suffered the loss of one earning member. Hence a bride - price was paid to the bride's parents to compensate for this loss.

The Brahmins and Kshatriyas had only priestly and martial duties allocated to them and no manual labour was assigned. A marriage meant an additional member who was to be supported and hence was a burden on the groom's family as the bride did not go out to earn and contribute to the family income. Thus a dowry was collected to provide the additional burden resulting from a bride's entry into the groom's family.

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(A) Definition of Dowry

"Dowry" is now defined as any property or valuable security given or agreed to be given, directly or indirectly: (a) by one party to the marriage to the other party to marriage, or (b) by parents of either party to the marriage, or by any other person to either party to the marriage or to any other person at or before or at any time, after the marriage "in connection with the marriage of said parties". In ***Pawan Kumar v. state of Haryana***,[22] it was held that agreement is not always necessary. Persistent demand for T.V. and scooter were held to be demand in connection with marriage, hence such demand would fall within the definition of dowry. It should be noticed that the Act uses the word "dowry" not merely in the sense of what, bride's parents give to the bride and bridegroom, but also the other way round. In other words, if property or valuable security is given by the bridegroom to the bride or bride's father in connection with the marriage of the parties, it would also be covered in the definition of dowry. In the definition as laid down in the original Act, the words were "as consideration for marriage" which have been substituted with words "in connection with the marriage". The new definition meets the objection of the Joint Parliamentary Committee and also widens it, but then it is hardly a definition. This comes into clear relief when one notes that wedding presents, whatever by their value, are excluded from the purview of dowry. It would have been better to say "whatever does not constitute wedding presents constitutes dowry". We have wasted too many words without achieving much. It is true, seemingly, two safeguards against the abuse of "presents" are laid down:

(a) All presents made to the bride or bridegroom at the time of marriage (but not those given before or after marriage) are to be put in a list, and

(b) Such presents should be commensurate to the financial status of the giver.[23]

One can be reasonably skeptical about the efficacy of rigmarole language of this provision which claims to define dowry.[24]

(B) Historical Background

An approved marriage among Hindu has always been considered a kanyadan,[25] be it a marriage in any form. According to the Dharmashastra, the meritorious act of kanyadan is not complete till the bridegroom was given a dakshina. In the Brahma form of marriage, this twin aspect of the meritorious act of kanyadan and varadakshina found expression in the enjoinment after

[22] AIR 1998 SC 958
[23] Section 3(2)
[24] Section 2: See State of Karnataka v. M.V. Manjunathegowda, AIR 2003 SC 809
[25] Manu Smriti, III, 27.

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decking his daughter with costly garments and ornaments and honoring her with presents of jewels, the father should gift the daughter to a bridegroom whom he himself has invited and who is learned in Vedas and of good conduct. (Manu) (The detailed qualifications and qualities and of the bridegroom were laid down). There are no two opinions that whatever presents were given to the daughter on the occasion of marriage by her parents, relations or friends constituted her stridhan.

Since varadakshina included ornaments and clothes and cash, one opinion was that this also constituted the property of the bride, i.e., stridhan. It was submitted that, that is an unnecessary twist. In fact, the varadakshina was a present to the bridegroom and obviously it constituted his property. It need not be doubted that then the varadakshina was given out of love and affection and with the feeling of honouring the groom, though its quantum obviously varied in accordance with the financial position of the father of the bride. It was given voluntarily and no compulsion was exercised. It should also be clear that presents given to the bride by way of ornaments, clothes and other articles as well as cash from the side of her father and husband constituted her stridhan. They were given to the bride by way of love and affection. These were probably meant to provide her with a sort of financial security in adverse circumstances. These two aspects of Hindu marriage, gifts to bride and bridegrooms got entangled and later on assumed the frightening name of dowry for the obtaining of which compulsion, coercion, and, occasionally, force began to be exercised, and ultimately most marriages became a bargain.

In course of time, dowry became a widespread evil, and it has now assumed menacing proportions. Surprisingly, it has spread to other communities, which were traditionally non - dowry taking communities. Cases have come to public notice where brides, on account of their failure to bring the promised or expected dowry have been beaten up, kept without food for days together, locked up in dingy rooms, tortured physically and mentally, strangulated or burnt alive or been forced to commit suicide. With a view to eradicating the rampant social evil of dowry from the Indian society, Parliament, in 1961, passed the Dowry Prohibition Act which applies not merely to Hindus but all people, Muslims, Christians, Parsis and Jews. But the act did not prove effective, and the evil of dowry continued to reign supreme. Several Indian states amended the Dowry Prohibition Act, 1961 with a view to give it teeth,[26] but to no avail. These did not succeed in curbing, much less eradicating, the dowry menace. The Joint Parliamentary

[26] For instance see, Dowry Prohibition (Bihar Amendment) Act, 1975; Dowry Prohibition (West Bengal Amendment) Act, 1975; Dowry Prohibition (Orissa Amendment) Act, 1976; Dowry Prohibition (Haryana Amendment) Act, 1976; Dowry Prohibition (Himachal Pradesh Amendment) Act, 1976; Dowry Prohibition (Punjab Amendment) Act, 1976. Most of these statutes provide for enhanced punishment for dowry offences; one or two years, imprisonment or fine of Rs. 5,000.

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Committee on dowry in its report of 1982 has opined that for the failure of the dowry prohibition law, there are two reasons: first, the explanation to Section 2 of the Act excludes all presents (whether given in cash or kind) from the definition of dowry, unless the same were given in consideration of marriage, and itis almost impossible to prove that gifts or presents given at, before, or after the marriage were given in consideration of marriage. The main reason is that no giver of the present will ever come forward to say that he gave the se in consideration of marriage, as giving of dowry is as much an offence as taking it.

Secondly, the Act did not have an effective enforcement instrumentality. No court can take cognizance of a dowry offence except of complaint, made by a person within one year from the date of the commission of a dowry offence. It is unrealistic to expect the bride or bride's parents or other relations to go to lodge a complaint. The parents are usually the victims of dowry.

They are unwilling (and certainly reluctant) to come forward because of their apprehension that it may lead to the victimization of their daughter. Unfortunately, the spread of education has not helped in curbing the social evil of dowry, rather the educated youth has become more demanding as he along with his parents want to recover every paisa spent on the education of youngman- some often demand expenditure for sending the youngman abroad for higher education! In fact, in some communities marriage is becoming a big source of exploitation and of getting rich of fulfilling all their unfulfilled and unsatisfied (and probably unsuitable) material wants. The, more highly educated is the youngman, higher are the demands for dowry. Thus, the law was found to fail to stall this evil. We may recall the word s of Pt. Jawaharlal Nehru:

"Legislation cannot by itself normally solve deep rooted social problems. One has to approach them in other ways too, but legislation is necessary and essential, so that it may give that push and have those educative factors as well as the legal sanctions behind it which help public opinion to be given a certain shape."[27]

With a view to giving teeth to the law, the Joint Parliamentary Committee on Dowry has made some recommendation, most of which have been accepted by Parliament pursuant to which the Dowry Prohibition (Amendment) Act, 1984, and the Dowry Prohibition (Amendment) Act, 1986 were passed.

Keeping all this in view, the Supreme Court has observed in ***Vakas v. State of Rajasthan***,[28] that the receipt and payment of dowry has to be controlled not only be effective implementation of

[27] Speaking from the floor of Parliament in the Joint sitting of both Houses of Dowry Prohibition Bill, 1961 on May 6, 1961.
[28] AIR 2002 SC 2830

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the Act but by society also. Society has to evolve ways and means to curb this menace.

(C) Causes and Effect of Dowry

Taking or giving of dowry or abetting to give dowry or abetting to take dowry continues to be offences. Similarly, demanding of dowry by any person, directly or indirectly from parents or guardian of bride or bridegroom is also a dowry offence. Under the original Act, the punishment for these offences was mild: the maximum punishment was six months' imprisonment, or a fine which could not be beyond a sum of Rs. 5,000; both the punishments could also be awarded. But now the punishment has been enhanced and minimum and maximum punishments have been laid down. The Amending Act of 1986 provides a punishment which shall not be less than five years' imprisonment with fine which shall not be less than Rs. 15,000 or the amount of the value of such dowry whichever is more. In regard to the punishment of inflicting fine, if the value of dowry is more than the sum of Rs. 15,000 or vice versa, then the amount which is more is to be awarded as punishment.[29] If these provisions are considered to have teeth, then the same are blunted by another provision which confers discretion on the court to impose a sentence of imprisonment for a term of less than five years. In awarding smaller punishment, the court is required to record in writing the adequate and special reasons for doing so.

The Joint Parliamentary committee on Dowry has opined that the giver of the dowry should not be treated as an offender as he is more a victim than an offender and further, when the giver of the dowry is considered to be as much an offender as offender as the taker to dowry, the prosecution of the taker or demander of dowry becomes difficult. In the words of the Committee:

"The parents do not give dowry out of their free will but are compelled to do so. Further, when both the giver and taker are punishable, no giver can be expected to come forward to make a complaint."

There is much substance in the above observation. It is a unique law which considers the person who commits the act as well as the person against whom the act is committed as offenders; how can the punishment of the offender succeed if along with him the victim may also be punished.

(D) Transfer of dowry to the bride

It may be that dowry has actually been received but its receiver is not the bride, but either the husband or some other person or someone from among the in-laws. In such a case the Act lays down that dowry has to be transferred to the bride.

[29] Proviso to Section 3(1) and Proviso to Section 4

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When any person has received dowry at, before, or after the marriage, he must transfer the same to the bride within three months of its receipt. If dowry was received when the bride was a minor then it must be transferred to her within three months of her attaining majority. Pending such transfer, he would hold the dowry as a trustee for the benefit of the bride. The failure to transfer the dowry to the bride within the stipulated period constitutes a dowry offence, for which the offender is liable to be awarded the same punishment as the taker of dowry, and in his case the court has no discretion to reduce the punishment below the minimum under any circumstances whatever. This punishment will be in addition to the one which may be awarded to him as taker of dowry, since both are separate offences. If the bride dies before the transfer of dowry is affected, her heirs will be entitled to it. It the woman dies within seven years of her marriage, the property will go to her children, and, in their absence, to her parents. Probably, the awarding of punishment to the offender may meet the ends of justice so far as the individual offender is concerned, but it may not provide any remedy to the bride. To meet this situation the Act provides that the court will make an order directing the offender to transfer the dowry to the bride, or her heirs, as the case may be, within the time specified in the order. If the offender still fails to comply with the order, the court is required to pass an order directing that an amount equal to the value of dowry should be recovered from the offender as if it was fine imposed by the court and should be paid to the bride or her heirs, as the case may be.

(E) Difference between Dowry and Stridhan

Section 14, Hindu succession Act, 1956, has introduced fundamental changes in the Hindu law of woman's property. Before 1956, the property of woman was divided into two heads: (a) Stridhan, and (b) woman's estate. The Hindu Woman's Right to Property Act, 1937 conferred some new rights of inheritance on certain Hindu females which had the effect of increasing the bulk of woman's estate, but apart from its side repercussions on the joint family property, it did not alter the basic division of woman's property into Stridhan and woman's estate. Section 14 of Hindu Succession Act, 1956 has abolished woman's estate and has virtually introduced Vijnaneshwara's interpretation of Stridhan.[30]

In this chapter, it is proposed to give the summary of the old Hindu law of Stridhan and woman's estate in Part I and of the Hindu Woman's Right to Property Act, in Part II, Part III is devoted to Section 14 of the Hindu Succession Act.

(a) Stridhan and Woman's Estate

Literally, the word stridhan means 'woman's property'. But in Hindu law it has, all along, been

[30] Mitakshara', II, ix, 2

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given a technical meaning. In the entire history of Hindu law, woman's right to hold and dispose of property has been recognized. At no time whether as a maiden, wife or widow, has the woman been denied the use of her property as an absolute owner (apart from the husband's dominant position in respect of certain type of stridhan).[31] It is also true that at no time the quantum of her property has been anything but meager. The Smritikars differ from each other as to what items of property constitute stridhan.

Gooroodass Benerjee very aptly said:

The difficulties besetting an enquiry into the question what constitutes stridhan, arise from the fact that majority of sages and commentators give neither an exact definition of stridhan, nor an exhaustive enumeration, and if the Mitakshara gives a simple and intelligible definition, that definition has been qualified and restricted in its application by our courts, in consequence of its disagreement with the view of other authorities.[32]

According to the Smritikars, the stridhan constituted those properties which she received by way of gift from relations which included mostly movable property (Though sometimes a house or a piece of land was also given in gift), such as ornaments, jewellery and dresses. The gift made to her by strangers at the time of the ceremony of marriage (before the nuptial fire), or at the time of bridal procession also constituted her stridhan. Among the Commentators and Digest-writers, there is a divergence of opinion as to what items of property constitute stridhan and what do not. Vijnaneshwara commenting on the words "and the like" in Yajanavalkya's text expanded the meaning of stridhan by including properties obtained by inheritance, purchase, partition, seizure and finding. (This expansion was not accepted by the Privy Council which resulted in the emergence of the concept of woman's estate).

Jumutvahana gave a different enumeration of Stridhan, so did the sub-schools of the Mitakshara. Whether the property is stridhan or woman's estate mostly depends upon the source from which it has been obtained.

(F) Enumeration of woman's property

1. Gift and bequests from relations.- From the early time this has been a recognized head of the stridhan. Such gifts may be made to woman, during maidenhood, covertures or widowhood, by her parents and their relations, or by the husband and his relations. Such gifts may be made intervivos or by will. The Dayabhaga school does not recognize gifts of immovable property by husband as stridhan. The property coming under this head was

[31] Mitakshara, II, ix, 2.
[32] Hindu Law of Marriage and Stridhan, (3rd Ed.) 280

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technically known as stridhan.

2. Gifts and bequests from Strangers.—Property given by gift inter vivos or by will by strangers (i.e., other than relations) to a woman, during maidenhood or widowhood, constitutes her stridhan. The same is the position of gifts given to a woman by strangers before the nuptial fire or at the bridal procession property given to a woman by a gift intervivos or bequeathed to her by strangers during coverture is stridhan according to Bombay, Benares and Madras schools, but not according to the Mithila and the Dayabhaga schools. The position before 1956 was that the gifts received from strangers during coverture were stridhan, but these were during her husband's life time under the husband's control. On his death these became her full fledged stridhan.

3. Property acquired by self-exertion and mechanical arts.—A Woman may acquire property at any stage of her life by her own self-exertion, such as by manual labour, by employment, by signing, dancing, etc., or by any mechanical art. According to all schools of Hindu law, the property thus acquired during widowhood or maidenhood is her stridhan. But the property thus acquired during coverture does not constitute her stridhan according to the Mithila and Bengal schools, but according to rest of the schools it is stridhan. Again, during the husband's life-time it is subject to his control.

4. Property purchased with stridhan.—In all schools of Hindu Law, it is a well settled law that he properties purchased with stridhan, or with the savings of stridhan, as well as all accumulations and savings of the income of stridhan, constitute stridhan.

5. Property acquired by compromise.—When a person acquires property under a compromise, what stake he will take in it, depends upon the compromise deed. In Hindu law there is no presumption that a woman who obtains property under a compromise takes it as a limited estate. Property obtained by a woman under a compromise where under she gives up her rights to her stridhan will be stridhan. When she obtains some property under a family arrangement, whether she gets as stridhan or woman's estate will depend upon the terms of the family arrangement.

6. Property obtained by adverse possession.—In all schools of Hindu law, it is a settled law that any property that a woman acquires at any stage of her life by adverse possession is her stridhan.

7. Property obtained in lieu of maintenance.—Under all schools of Hindu law, the payments made to a Hindu female in lump sum or periodically for her maintenance and all the arrears of such maintenance constitute her stridhan. Similarly, all movable and immovable

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properties transferred to her by way of an absolute gift in lieu of maintenance constitute her stridhan.

8. Property obtained by inheritance. –A Hindu female may inherit property from a male, or a female. She may inherit it from her parent's side or from husband's side. The Mitakshara considered all inherited property as stridhan. But the Privy Council in a series of decisions held such property as woman's estate. In one set of cases, the Privy Council held that property inherited by a female from males, is not her stridhan but woman's estate.[33]

In another set of cases, it took the same view in respect of property inherited from the females. This is the law in all the schools except the Bombay school.[34] According to the Bombay school, the property inherited by a woman from females, is her stridhan,[35] as to the property inherited from a male, the female heirs are divided into two : (a) those who are introduced into the father's gotra by marriage, such as intestate's widow, mother, etc., and (b) those who are born in the family, such as daughters, sisters, brother's daughters, etc. in the latter case the inherited property is stridhan, while in the former case it is woman's estate. After the coming into force of the Hindu Succession Act, 1956, she takes all inherited property as her stridhan.

9. Share obtained on partition.— When a partition takes place, except in Madras, father's wife, (not in the Dayabhaga school) mother and grandmother take a share in the joint family property. In the Mitakshara jurisdiction, including Bombay[36] and the Dayabhaga School, it is an established view tha the share obtained on partition is not stridhan but woman's estate.[37] This property is also now her absolute property or stridhan after the coming into force of the Hindu Succession act, 1956.

(G) Characteristic features of stridhan

The property falling under heads (1) to (7) is Stridhan property, in a Bombay school, certain categories of inherited property are also Stridhan. The pre-1956 Hindu law classified stridhan from various aspects so as to determine its characteristic features; such as source from which the property was acquired, the status at the time of acquisition, i.e., whether the female was maiden, married or widow, and the school to which she belonged. Without going into details, broadly speaking, the stridhan has all the characteristics of the absolute ownership of property.

[33] Bhagwandeen v. Maya Baee, (1867) 11 M.A.I. 487; Thakur Dayhee v. Raj Baluk Ram, (1966) 11 M.I.A. 140.
[34] Sheo Shanker v. Devi Saha, (1903) 25 All. 468; Sheo Partap v. The Allahabad Bank, (1903) 30 I.A. 209; See also Gayadin v. Badri Singh, (1943) All. 230.
[35] Kasserbai v. Hunsraj, (1906) 30 Bom. 431; Gangadhar v. Chandrabhagabai, (1983) 17 Bom. 690 (F.B.).
[36] The Vyavahara Mayukha takes the view that such property is stridhan, but the Privy Council 'Legislated' and held that such property is woman's estate; Devi Mangal Prasad v. Mahadeo, (1919) 39 I.A. 121.
[37] Devi Prasad v. Mahadeo, (1912) 39 I.A. 121.

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This implies two features:

(1) The Stridhan being her absolute property, the female has full rights of its alienation. This means that she can sell, gift, mortgage, lease, exchange or if she chooses, she can put it on fire. This is entirely true when she is a maiden or a widow. Some restrictions were recognized on her power of disposal, if she was a married woman. If she was a married woman, the stridhan was classified under two heads:

(a) the saudayaka (literally it means gift of love and affection), i.e., gifts received by a woman from relations on both sides (parent's and husband's), and

(b) the non-saudayaka, i.e., all other types of stridhan such as gifts from stranger, property acquired by selfexertion or mechanical art. Over the former she had full rights of disposal, but over the latter she had no right of alienation without the consent of her husband. The husband also had the power to use it.

(2) She constituted an independent stock of descent. On her death all types of the stridhan passed to her own heirs. The pre-1956 Hindu law laid down a different law of succession to stridhan. The law was different in different schools and it was different for different kinds of the stridhan.

The old law of succession to stridhan has been abrogated by the Hindu Succession Act, 1956. The new law of succession to woman's property has been laid down in Sections 15 and 16 of the Hindu Succession Act, 1956.

(H) Characteristic features of woman's estate

Of the above enumerations of woman's property, the last two heads, (8) and (9) constituted the Hindu female's limited estate, known as woman's estate, sometimes also called as widow's estate. The characteristic feature of woman's estate is that the female takes it as a limited owner. However, she in an owner of this property in the same way as any other individual can be owner of his or her property, subject to two basic limitations: (a) she cannot ordinarily alienate the corpus, and (b) on her death it devolves upon the next heir of the last full owner.[38] In Janki v. Narayanasami,[39] the Privy Council very aptly observed : "Her right is of the nature of right of property, her position is that of owner; her powers in that character are however, limited. So long as she is alive, no one has vested interest in succession."[40] Kerry,[41] the Privy Council said

[38] Bijay v. Krishna, 44 I.A. 87
[39] (1916) 43 I.A. 20
[40] Moni Ram v. Kerry, (1889) 7 I.A. 115.
[41] Ram Sumran v. Shyam, P.C. 356; Hurrydas v. Uppoonaa, (1856) 6 M.I.A. 433.

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: "The whole estate is for the time vested in her."

Her powers of disposal over the property are limited and it is these limitations which go to define the nat ure of her estate. These limitations are not imposed for the benefit of the reversioners. Even when there are no reversioners, the estate continues to be a limited estate.

Power of management.—Like the Karta of a Hindu joint family, she has full power of management. Her position in this respect is somewhat superior to the Karta. The Karta is merely a co-owner of the joint family, there being other coparceners, but she is the sole owner. Thus, she alone is entitled to the possession of the entire estate and she alone is entitled to its entire income. Her power of spending the income is absolute.[42]

She need not save, and if she saves, it will be her stridhan. She alone can sue on behalf of the estate, and she alone can be sued in respect of it.[43] She continues to be its owner until the forfeiture of estate, by her re -marriage, adoption, death, or surrender.

Power of alienation.—The female owner being a holder of limited estate has limited powers of alienation. Like the Karta her powers are limited and she can like the Karta alienate property only in exceptional cases. The principle on which restrictions have been placed on woman's power of disposal was thus explained by the Privy Council: "It is admitted on all hands that if there be collateral heirs of the husband, the widow cannot, of her own will, alienate the property except for special purposes. For religious and charitable purposes or those which are supposed to conduce to the spiritual welfare of her husband, she has larger powers of disposal than that she possesses for purely worldly purposes. On the other hand, it may be legitimate, may become so if made with the consent of her husband's kindred. But, it surely is not the necessary or logical consequence of this latter proposition, that in the absence of collateral heirs of the husband, or on their failure, the fetters on the widow's power of alienation altogether drop."[44]

She can alienate the property for: (a) a legal necessity, i.e., for her own need and for the need of the dependents of the last full owner, (b) for the benefit of the estate, and (c) for the discharge of indispensable religious duties such as marriage of daughters, funeral rites of her husband, his sraddha and gifts to Brahmans for the salvation of his soul. In short, she can alienate her estate for the spiritual benefit of the last full owner, but more or less the same as that of the Karta. The rule in Hanooman Prasad applies to her alienations also. If need be, she can alienate the entire estate. Restrictions on her power of alienation are an incident of the estate, and not for the

[42] Ramsumran v. Shyam, 1922 P.C. 356 Hurrydas v. Uppoornaa, (1856) 6 M.I.A. 433.
[43] Radharani v. Brindarani, 1936 Cal. 392; Viraraju v. Venkataratnam, 1939 Mad. 98
[44] Collector of Musulipatam v. Covery Venkata, (1861) 8 M.I.A. 529

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benefit of reversioners.[45] She can alienate the property with the consent of presumptive reversioners.[46]

As to her power of alienation under the third head, a distinction is made between the indispensable duties for which the entire property could be alienated and the pious and charitable purpose for which only a small portion of property can be alienated. She can make an alienation for religious acts which are not essential or obligatory for the salvation of husband's soul.[47]

An improper alienation made by her is not void but voidable in any case, an alienation made by her is binding on her during her life time, as a grantor cannot derogate from her own grant. As the reversioners have no right to get it set aside until the estate devolved upon them, an improper alienation is valid and binding on her for the duration of her life.[48]

When a female holder of a limited estate enters into a family arrangement or into a compromise with the consent of presumptive reversioners or when reversioners are party to it, even if it amounts to alienation of property, it will be binding on the reversioners and their descendants.[49] She can also acknowledge liability in respect of the estate.

(I) The Hindu Women's Right to Property Act, 1937

Its effect on law of succession.—In respect of separate property of a Mitakshara Hindu and in respect of all properties of a Dayabhaga Hindu, the Act introduced three widows, viz., intestate's own widow, his son's widow and his son's widow as heirs along with the son, grandson and great grandson, as also in their default. The widow took a share equal to the share of a son and, in default of the son took the entire property. If there were more than one widow, all of them together took one share. In the case of the Mitakshara joint family property, the widow of a deceased coparcener took the same interest in the property which her deceased husband had in the joint family property at the time of his death. In all cases, the widows took a woman's estate in the property.

Its effect on the Mitakshara coparcenary. The Act affected the Mitakshara coparcenary fundamentally and introduced for reaching changes in its structure. Section 3(2) laid down that in the joint family property, the widow of the deceased coparcener would have "the same interest as he himself had". This was irrespective of the fact whether the deceased coparcener

[45] Jaisri v. Rajdewan, (1962) S.C.J. 578
[46] Sahu v. Mukand, 1955 S.C. 481.
[47] Kamla v. Bachulal, 1957 S.C. 434
[48] Kalishander v. Dhirendra, 1954 S.C. 505
[49] Ramgonnda v. Bhasahed, 1927 I.A. 396

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left behind a son or not. This virtually means abrogation of the rule of survivorship. Section 3(3) gave her the same right of claiming partition as a male owner.

These provisions led to some controversy among the High Courts. The Supreme Court has now resolved the controversy.[50] As to whether the interest of the widow arose by inheritance or by survivorship or by statutory substitution, the Supreme Court held that it came into existence by the statutory substitution. She was given the same power of partition as any coparcener had, but thereby introduced into the coparcenary, and between the surviving coparceners of her husband and the widow so introduced, there arises community of interest and unity of possession. But the widow does not, on that account, become a coparcener. Though invested with the same interest, which her husband had in the property, she did not acquire the right which her husband had in the property, she did not acquire the right which her husband could have exercised over the interest of the other coparceners. Because of statutory substitution or her interest in the coparcenary property in place of her husband, the right which the other coparceners had under the Hindu law of the Mitakshara school of taking that interest by the rule of survivorship remains suspended so long as that estate endures. But on the death of the coparcener there is no dissolution of the coparcenary so as to carve out a defined interest in favour of the widow in the coparcenary property.[51]

Dowry.—Dowry and traditional presents made to the wife at the time of the marriage constitute her Stridhan,[52] and if the husband or her in-laws refuse to give it back to her, on her demand, they would be guilty of criminal breach of trust.[53] Similarly, if any item of stridhan is entrusted to them at the time of the marriage or thereafter and if they refuse to give it to her on demand, they would be guilty of criminal breach of trust under Section 405, Indian Penal Code.

Succession.—A Hindu female succeeding to the property takes it absolutely.[54]

Hindu widow's right to property.—There was entrustment of suit property to wife by husband after its purchase towards maintenance prior to the enforcement of the Act by way of family settlement. Subsequent possession and enjoyment by her after the death of the husband was corroborated by oral and documentary evidence. Suit properties had been for both agricultural purpose and for running a cinema theatre. She should have pre-existing right in property and, as such, after coming into force of the Hindu Succession Act, she would become full or absolute

[50] Bakshri Ram v. Brij Lal, 1995 S.C. 395
[51] Satrughan's case, 1967 S.C. 272; per Shah, J. at 275; Padmanabha v. Harsamoni, (1972) 1 C.W.R. 775
[52] Vinod Kumar v. State of Punjab, 1982 P.& H. 372 (B.B.)
[53] Pratibha Rani v. Suraj Kumar, 1985 S.C. 628; overruling Vinod Kumar v. State, 1982 P.&H. 373.
[54] Monomoyee v. Upeswari, AIR 1994 Gau 18.

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owner of that property.[55] After the widow becomes the absolute owner, subsequent remarriage would not divest her.[56]

(J) Dowry and Wedding Presents

The wedding presents by parents, relatives, friends and close acquittances at or about the time of marriage do not come in the definition of dowry, unless there were demanded or agreed to be given in connection with the marriage. Voluntary and affectionate presents are not caught in the definition of dowry and giving and taking them do not constitute dowry offence. The Joint Committee also recommended that it is neither desirable to put a complete ban on these presents nor does it seem reasonable to prescribe a standard ceiling thereon for different sections of the society for the reasons that it would be neither possible to implement it nor would it be acceptable to the society.

(K) Application of Dowry Prohibition Act to all communities

The evil of dowry may be rampant among Hindus, but it does not mean that it does not exist among others. The Joint Committee of both the Houses of Parliament has observed : "It is equally prevalent among the Muslims and Christians. Among the Muslims in many parts, there is a custom of giving cash to the bridegroom (popularly known as salami). The Christians of Mangalore follow their pre-conversion custom of Kanyadaan."

(L) Dowry Subsequent to Marriage

The Joint Committee observed that dowry is not one isolated payment initially made at the time of marriage but a series of gifts given over a period of time before and after the marriage. There is no disputing the statement of the Committee, but the real difficulty arises as to how to make a distinction between genuine gifts and extorted gifts between what is voluntarily given and what is not given voluntarily. It is true that in some cases, even after the marriage demands for dowry are continuously made on the father of the girl, and when they are not met, cruelty and harassment is purported on the girl, and when they are not met, cruelty and harassment is purported on the girl, to force her present to meet the demand and it is this which results in worst, wife battering and dowry death too.

(M) Dowry offences are to be non-bailable and non compoundable

There has been a strong public opinion in favour of making dowry offences as cognizable offences. The Joint Parliamentary Committee observed:

[55] Pappayammal v. Palanisamy, AIR 2005 Mad. 431
[56] Cherotte Sugathan v. Cherotte Bharathe, AIR 2008 S.C. 1467.

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"The committee feels that they are in favour of the offences under the Act, being made cognizable, but there is an apprehension that it may lead to some harassment, particularly at the time of the solemnization of marriage, as the police will have power to make arrest without warrant is such cases. The Committee are, therefore, of the opinion that in order to ensure that no harassment is caused to the parties involved, the offence should be made cognizable subject to the condition that no arrest shall be made by the police without a warrant or an order of the magistrate."

The Committee was in favour of making the offence compoundable. Dowry offences are not cognizable; they are cognizable for the purpose of investigation. This is a welcome provision, since in the case of non-cognizable offences the police make the investigation only when a complaint is lodged. Now the police have the freedom to make investigation of its own, and if it comes to the conclusion that an offence has been committed, it can approach the court. The Act lays down that no person accused of dowry offence can be arrested without a warrant or without an order of the Magistrate of the First Class.

The dowry offences are non-compoundable offences. This means once a case goes to the court, the parties are not free to compromise. The offences relating to dowry are non-bailable. An agreement for giving or taking dowry is void, i.e., it cannot be enforced in a court of law.

(a) Trial of dowry offences

The Dowry Prohibition Act gives jurisdiction to try dowry offences only to the Metropolitan or the Magistrate of the First Class. No other court is competent to try these offences. Cognizance of dowry offences can be taken by the Magistrate himself or on the basis of a police report of the fact which constitute a dowry offence, or on a complaint lodged by a parent or other relation of such person, or by a recognized welfare institute or organization. That now the court can be moved on the complaint of a social organization or institution is a welcome provision. The fact of the matter is that practically no prosecution of any dowry-offender could take place under the original Act as neither the aggrieved party nor her or his parents or relation came forward to lodge the complaint to the Magistrate or to the police, as they did not want to land into any complications, particularly when the welfare of the bride was involved. They apprehended that whether the offender was brought to book or not, the victimization of the bride would have begun. This seems to be the justification of conferring a power of lodging complaint on the welfare organization. However, with a view to preventing abuse of the provision as any Tom-Dick-or Harry may rush to lodge a complaint about dowry offences on the slightest suspicion or with a malicious intention, the right to lodge the complaint has been conferred only on the

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recognized welfare organizations or institutions.

Under the original Act, no cognizance of the offence could be taken by a Magistrate if the complaint was made after one year of the commission of the offence. Probably, the framers of the Act then did not realize that offences relating to dowry are offences of a totally different type; they are not like ordinary offences of theft, extortion or dacoity. The fact of the matter is that no one is likely to come forward to lodge a complaint immediately after the commission of the offence. Such offences are brought to light after the lapse of considerable period after the solemnization of the marriage, when continual harassment and torture of the bride compels her to take her parents, relatives or a friend into confidence and expose her husband and in -laws.

The Amending Act has removed this limitation. Now complaint can be made at any time after the commission of the offence. But, of course, if a complaint has been lodged after considerable delay amounting to laches, the court may not entertain the complaint if no reasonable explanation for the delay is forthcoming.

In developing countries it is a unique paradox that social progress lags behind the law. Dowry is a deep rooted social evil and legislation alone cannot eradicate it. Legislation can only help the social movement for the eradication of dowry. It is unfortunate that most of our social legislations are no more than half-hearted efforts. Social legislation should not merely bark, but should be able to bite. It does not appear that the dowry prohibition law is a biting law.

III. LEGISLATIVE MEASURES ON LAW RELATED TO DOWRY PROHIBITION

"Dowry" is a word that is very prevalent and common in Indian households. It is a practice that has become a parasite for the Indian society and which has eroded the beautiful institution of marriage. It is not a new practice but has been followed from ages, and its impact is such in Indian society that one can make efforts to reduce it, but it cannot be totally eradicated. Several laws have been enacted to prohibit the practice of dowry, but the legal clutches are weaker than the ambit of the practice of dowry. Further, the article shall enumerate the social and legal consequences of practicing dowry along with its other various aspects.

(A) What is dowry?

According to section 2 of Dowry Prohibition Act, 1961, the term "dowry" means any property or valuable security given or agreed to be given either directly or indirectly.

(a) By one party to a marriage to the other party to the marriage, or

(b) By the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before [or anytime after the marriage] [in connection with

the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat).

In ***Arjun Dhondiba Kamble v. State of Maharashtra***[57], the court held that, "Dowry" in the sense of the expression contemplated by Dowry Prohibition Act is a demand for property of valuable security having an inextricable nexus with the marriage, i.e., it is a consideration from the side of the bride's parents or relatives to the groom or his parents and/or guardian for the agreement to wed the bride-to-be. But where the demand for property or valuable security has no connection with the consideration for the marriage, it will not amount to a demand for dowry.

In ***Rajeev v. Ram Kishan Jaiswal***[58], the court held that any property given by parents of the bride need not be in consideration of the marriage, it can even be in connection with the marriage and would constitute dowry.

(B) Who would be an offender under the law?

According to section 3 of the Dowry Prohibition Act, 1961, it is an offence to both take dowry and give dowry. So the family of bridegroom would be liable for taking dowry so would the family of bride be to consent to give dowry.

a. Legal framework in India for prohibiting dowry

i. **Dowry Prohibition Act, 1961**

Penalty for giving and taking dowry (Section 3) – According to section 3, if any person after the commencement of the Act gives or takes, abets the giving or taking of dowry shall be punished with an imprisonment for a term not less than five years and with fine which shall not be less than fifteen thousand rupees or the amount of the value of dowry, whichever is more.

Penalty for demanding dowry (section 4) – According to section 4, if any person directly or indirectly demands dowry from the parents, relatives or guardians of the bride or the bridegroom shall be punished with an imprisonment of not less than six months and which shall extend to two years and with fine which may extend to ten thousand rupees.

The Supreme Court has held in ***Pandurang Shivram Kawathkar v. State of Maharashtra***[59] that the mere demand of dowry before marriage is an offence.

In ***Bhoora Singh v. State of Uttar Pradesh***[60], the court held that the deceased had before being set on fire by her in-laws written a letter to her father that she was being ill-treated, harassed

[57] 1995 AIR HC 273
[58] 1994 Cri LJ NOC 255 (All)
[59] 2001 Cr LJ 2792 (SC)
[60] 1993 Cri LJ 2636 All

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and threatened with dire consequences for non-satisfaction of demand of dowry. Thus an offence of demanding dowry under section 4 had been committed.

Ban on advertisement (section 4-A) – According to section 4-A, the advertisement in any newspaper, journal or through any other medium or a share in the property, business, money, etc by any person in consideration for marriage shall be punished with an imprisonment which shall not be less than six months and which may extend to five years or with fine which may extend to fifteen thousand rupees.

Cognizance of offence– According to section 7, a judge not below the rank of a Metropolitan Magistrate or Judicial Magistrate of First Class shall try an offence under this Act. The court shall take cognizance of the offence only on the report by the victim, the parents or relative of the victim, police report or on its own knowledge of the facts of the offence.

According to section 8 certain offences under this Act shall be cognizable, non-bailable and non- compoundable.

ii. Indian Penal Code, 1860

Dowry Death (section 304 B)- Section 304(B) reads as follows-

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 relatives shall be deemed to have caused her death.

Explanation – For the purposes of this sub section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961.

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.

In ***Vemuri Venkateshwara Rao v. State of Andhra Pradesh***[61], the court has laid down the following guideline for establishing an offence under section 304(B) and they are-

That there is a demand of dowry and harassment by the accused,

That the deceased had died,

That the death is under unnatural circumstances. Since there was demand for dowry and harassment and death within 7 years of marriage, the other things automatically follow and

[61] 1992 Cri. LJ. 563 A.P

offence under section 304-B is proved.

Husband or relative of husband subjecting women to cruelty (section 498-A) – Section 498- A reads as follows-

Husband or relative of husband of a woman subjecting her to cruelty- Whoever, being the husband or the relatives 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.

Explanation – For the purpose of this section "cruelty" means –

Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman, or

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 or is on account of failure by her or any person related to her to meet such demand

In ***Bhoora Singh v. State***[62], it was held that the husband and in-laws subjected the wife the cruelty for bringing insufficient dowry and finally burnt her down, thereby inviting a sentence of three years rigorous imprisonment and a fine of Rs.500/- for an offence committed under section 498-A of Indian Penal Code.

iii. **Indian Evidence Act, 1872**

Presumption as to dowry death (Section 113 B) – Section 113 B reads as follows-

When the question is whether a person has committed dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation – For the purpose of this section "dowry death" shall have the same meaning as in section, 304B of the Indian Penal Code (45 of 1860).

b. **Social evils of dowry**

The practice of dowry has many ill effects on society and has eroded the beautiful institution of marriage to a mere contract of giving and taking of money and valuable assets in exchange for marriage. A few social evils which the practice of dowry bring along itself are-

[62] 1993 Cri. LJ 2636 All

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Female foeticide– Even today, when there are so many for prohibiting female foeticide laws yet the statistics of the same are much more to one's expectations. One of the biggest reasons behind this practice is the thought that if a female child is born then she would turn out to be a burden on the exchequer of her parents as a lot would have to be spent in her marriage. Therefore, people find it better to eradicate the root of the problem- "Female Child".

Suicide by Young Girls– Many times when the parents are not able to marry off their daughters because of dowry, this brings in harassment to the family which leads the young girls to commit suicide to bring an end to the mental harassment to their families.

Uneducation to girls– Many families do not give good education to their daughters with a thought of saving the money being used for education to be used for the purpose of dowry.

Often the girls are subjected to mental harassment because of them being of dark colour, fat or any other lack in physical appearance because the parents or the relatives think that to marry them off a lot of dowry would have to be given and their constant taunts and statements not only mentally harass the girls but also bring in them an inferiority complex.

c. Misuse of dowry laws by women

There are always two sides of a coin; similarly, every law has its use as well as misuse. The anti-dowry laws have proved to be a panacea for women at the same time they have also proved to be a nuisance for men. Not all dowry cases filed by women are true and in more than 40% cases filed; the allegations made by women are false.

The two-judge bench of the Supreme Court headed by Justice Chandramauli Kumar Prasad recently in a 21-page order said that the simplest way to harass the husband is to get him and his relatives arrested.

The Judges stated a notable point that in many cases the bedridden grandfathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested.

The judges also reminded the authorities that they must follow a so-called nine-point checklist that has been part of the anti-dowry law before noting down a dowry-related complaint.

The court also said that in case the police makes an arrest, a magistrate must approve further detention of the accused.

According to the National Crime Records Bureau statistics, nearly 200,000 people, including 47,951 women, were arrested in regard to dowry offences in 2012, but only 15% of the accused were convicted.

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(C) Conclusion

"DOWRY" as a practice is deeply rooted in Indian society, and it cannot be totally eradicated. The major reason that this practice cannot be eradicated is the mentality, thought and mindset of Indians. In India, a boy is made highly educated so that parents can demand a huge dowry for him in the marriage. The more educated the man is, and the more stable his financial situation is, the more he gets dowry. Similarly, the parents of girls will educate them a lot so that they can marry her to a rich family. They are not hesitant in giving dowry because this practice has now become a custom and despite many laws, a very few percentage of offenders are convicted. This social evil can only be eradicated when there would be a change in the mentality of the people. When people might understand that giving and taking dowry is like selling your daughters and sons may be from then the roots of the practice would start eroding, and the practice shall get totally eradicated but that period seems to be very far off.

IV. JUDICIAL APPROACH ON DOWRY PROHIBITION

There has been a plethora of judicial pronouncements on dowry deaths cases ever since the enactment of the dowry prohibition law, but even the domestic violence Act and drastic changes introduced by the amending Acts have not been able to contain this menace, on the contrary, it is on a constant increase.

In protecting the women the Indian judiciary has removed all the procedural shackles and has completely revolutionised constitutional litigations. The judiciary has encouraged widest possible coverage of the legislations by liberal interpreting the terms. The judiciary by its landmark judgements had filled up the gap created by the legislative machinery. The judiciary had extended helping hands to women. The vibrant judiciary has recently exalted the dignity of women by its golden judgements.

Criminal justice is a mirror image of the state of affairs in a society and the status of its governance. It is one of the primary functions of any civilized government. At the same time, in democratic societies governed by rule of law and guaranteed human rights, it is not easy to organize crime control and administer criminal justice according to the expectations of the people. The problems are many and varied. They become more complicated with technological developments, unstable governments and economic globalization.1 With the rise of crimes against women being on the increase, it should have followed that judges trying the cases would display not only a greater sense of responsibility but also be more sensitive while dealing with cases of violence against women. But this has not always happened not only in the lower courts but even in some of the high courts and unfortunately even in the Supreme Court.

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In this regard, the observations of the Orissa High Court are very instructive, the High Court observed that-

"Courts are called upon to adjudicate the complex question whether 'in-laws' have become 'out-laws' and have directly or indirectly contributed to snuff out the life of a woman. Dowry deaths are result of their disgraceful acts. But the courts have to be careful in sifting the evidence to see whether the accusations are true or are aimed at false implication. In the present day complex world, it is extremely difficult to gauge the machinations of a mischievous mind. The courts have to trend on very slippery grounds while dealing with such cases, because, sometimes, emotions overrun realities."[63]

Analysis of some decisions delivered by the higher judiciary would reveal the active judicial efforts in dealing with cases of violence against woman. The court commented critically on 'attendency' which has developed for roping in all relatives of the in -laws of the deceased in matters of dowry death which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In a judgement, Supreme Court expressed 'strong reservations against the practice of the police to file charges against all the in-laws in dowry death cases on the basis of the allegations of the parents of the deceased.' The Supreme Court stated that involving other relatives ultimately weakens the case.

Judicial trend has been most encouraging as the same is evident from analysing the following cases. Judiciary ha s time to time been also issuing suitable directives for such cases.

(A) The Changing Scenario of Dowry Death: Judicial Approach

To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between th e parties had deteriorated to such extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence

[63] Baby v. State of Orrisa, (1984), Cr.L.J., 1684 Orissa High Court.

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is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Hindu Marriage Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party and the sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure canalso amount to mental cruelty. The respondent's act of humiliating the appellant and virtually turning him out of house also amount to cruelty.

The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However, insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life.

Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-today married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non - violent."

(B) Humiliating, turning out of house and not taking care during illness

Ordinarily, mere words do not amount to cruelty, but since one of the marital obligations is sobriety and kindness, habitual use of rough language, or systematic and continued use by one spouse of vile, profane and unkind language in the presence of and towards the injured spouse, constitutes cruelty if it is causing immense mental suffering and injury to the latter's health. The mere use of profane and abusive language does not constitute cruelty, at least when used only once or at intervals.

However, cruelty may consist of remarks, statements, language or words that render the life of the spouse burdensome, even if no personal violence is inflicted or threatened. Words uttered without justifiable cause and for the purpose of inflicting pain, or words tending to wound the feelings to such a degree as to affect the spouse's health or cause grave and weighty mental

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suffering constitute cruelty.[64]

Further observed by Hon'ble Supreme Court of India that respondents act of humiliating the appellant and visually turning him out of house and did not take care of the appellant during his prolonged illness and never enquired about his health even when he underwent the bye-pass surgery amounts to cruelty. Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to cruelty.[65]

In another case husband has been thrown out of the house by the wife and had been forced to live sexless life amounts to cruelty by wife.[66]

In another case it has been held that the husband did not cohabit with deceased wife from very first day of marriage till her death, thereby compelling her to live a life of celibacy amounts to cruelty.[67] Wife retaining house of husband and turning him out of house without any reason is illtreatment by wife amounts to cruelty to husband.[68]

It has been observed by Hon'ble Rajasthan High Court, while deciding an appeal against Divorce on the aground of wife's cruelty to husband and his family and False case of cruelty and dowry demand under section 498-A IPC, that:

The respondent husband, as AW I has narrated the events of cruelty meted out to him and his family members. According to him, he has been verbally abused by the appellant wife in front of the neighbors. His family has been humiliated by the false complaint lodged with the police and with the District Woman Development Tribunal. Moreover his wife has taken away money, jewellery and utensils from the matrimonial home and given them to her parental family. In view of the repeated acts of cruelty, he finds it impossible to live with the appellant.

His testimony has father's testimony as AW 2, Shadi Ram and by the testimony of the Independent witne sses AW 3, Balu Ram and AW 4 Khairati Ram. There is no reason for this court to doubt the testimonies of the independent witnesses and of the respondent's father.

Even the learned Judge has noted that the appellant is in the habit of leveling false charges against the respondent husband and his family members. She is also prone to change her stand. She had lodged a criminal report against the respondent and his family members. In her testimony she clearly admits that a negative final report was filed by the police. But, she does not state that she had filed a protest petition against the negative final report. Although Mr.

[64] J.D. Kapoor (J.), Law and Flaws in Marriages, Konark Publishers Pvt. Ltd., Delhi.
[65] Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511.
[66] Smt. Krishana Devi v. Brij Bhusan, AIR 2007 P & H, 43
[67] Alok Haldar Vimal v. State of Uttaranchal, 2007, Cr. L.J. (NOC) 3 (U.T.R.).
[68] Smt. Krishana Devi v. Brij Bhushan, AIR 2007 P & H, 43.

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M.K. Jain had claimed, during the course of the arguments, that the trial court in the criminal case has taken cognizance on the basis of the protest petition filed by the appellant, but the cognizance order has to been produced before this Court. Hence, we are not in a position to accept the said contention. The appellant had also refused to implement the decision of the caste Panchayat and had refused to cohabit with the respondent. Without any rhyme or reason, she has refused to fulfill her matrimonial duties. Her omission does amount to mental cruelty towards the respondent husband.

Although the appellant claimed in her testimony that she is willing to resume her cohabitation with the respondent husband, but the fact that the she is staying away from the husband for thelast four years, the fact that she refused to resume her cohabitation despite the direction of the caste Panchayat, the fact that she has false cases both before the police and before the District Women Development Tribunal clearly prove her intention not to live with the husband.

Since in the present case the marriage has become a dead wood, since there is no possibility of resurrecting the marriage, it is better to dissolve the said marriage interfere with the judgment dated 30.8.05.[69]

(C) Husband refused to effectuate marital obligation

Marital intercourse is just one marital right or duty. There are many other important rights and duties. The obligations of the parties to each other and to society do not depend on this single duty. The other obligations include fidelity, sobriety and kindness.

Sexual relations between man and woman are given a socially and legally sanctioned status only when they take place within marriage. But, this obligation is of a very personal and delicate nature depends on sentiment and feelings to such an extent that it would be an intrusion into the privacy of domestic life to stipulate that reasonable denial on the part of either party to submit to marital intercourse constitutes cruelty. Thus, such denial does not constitute cruelty even though refusal to have marital sexual relations undermines the essential structure of a marriage.

If refusal is occasional, or for a short period, it is against public policy to treat it as cruelty. However, complete failure to have sexual intercourse over a prolonged period, or its total and irrevocable negation, despite advances and requests, does constitute cruelty as in the absence of an adequate excuse, such refusal strikes at the basic obligations springing from marriage, undermining its essential structure.[70]

In recent case, it has been held that husband not capable of performing matrimonial obligations

[69] Sumitra v. Luna Ram, 2007(2) RLW, Rajasthan High Court, (JB)
[70] J.D. Kapoor (J.), Law and Flaws in Marriages, Konark Publishers Pvt. Ltd., Delhi.

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and marriage could not be consummated moreover, husband not ready for medical check -up, held, marriage without sex is an anathema and amounts to cruelty[71].

It was observed by the Rajasthan High Court that it is established that respondent husband refused to effectuate his marital obligations. He had avoided consummation of marriage on one pretext or other; persistent refusal to consummate marital intercourse and discharge marital obligation amounts to cruelty.[72]

(D) False allegation of extra marital relationship

In this case decided by Andhra Pradesh High Court held that where the husband in divorce petition had only said that he was subjected to harassment and cruelty which cannot be put on record since the kind of allegations leveled by his wife were not only harmful and derogatory to. him in society but also to family of his sister-in-law but the wife had blown up the allegations in counter and made such elaborate allegations and same unethical and unholy allegations linking up character of husband with the character of sister-in-law and thereby bringing down reputation of the family of sister-in-law of husband it only indicates the amount of abhorrence the wife gathered against her husband. Her thought process was absolutely going wrong in a short span of 11 months of marital life instead of understanding the husband or correcting the husband, if at all he was at fault and thereby make a good family by herself and for herself, the wife had resorted to demolish her own family and her future and the future of other family members of the husband. Thus the conduct on the part of wife was such that her desertion was not justified and cruelty if at all was to be attributed to wife only. Subsequently she made a complaint to Bar Council of Andhra Pradesh, Hyderabad making the same allegations targeting the husband and the sister-in-law of the husband. She can have grievance against the husband for any reason but has absolutely no right to demolish or to destroy the family fabric of the sister- in-law of the husband. She had lodged criminal proceeding against husband and in -laws under S. 498-A. IPC and said proceedings ended in acquittal. In view of above facts on the ground of cruelty the husband was held entitled to decree of divorce.[73] Further Punjab and Haryana High Court held while granting a decree of divorce on the ground of cruelty and irretrievable breakdown of marriage to the husband observed that denial of sexual intercourse by wife to husband constitute mental torture toward husband.[74]

[71] Vinita Saxena v. Pankaj Pandit, 2006(1) HLR 586 (S.C.)
[72] Smt. Kusum v. Omparkash, AIR 2007, Raj. 5.
[73] B. Srinivasulu v. Mrs. Veena Kumari, AIR 2008 Andhra Pradesh 20.
[74] Jasminder Singh v. Mrs. Prabhjinder Kaur, AIR 2008 P&H 13

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(E) Physical violence for demand of dowry

Sometimes words inflict a more painful blow but, under Section 498-A, IPC physical harassment for the demand of dowry is a punishable offence. In a recent case, the accused husband threatened that whenever his wife comes to his house, she will not come alive to her parents. On another occasion accused slapped his wife. These two incidents are sufficient to hold accused guilty of offences under section 498-A and 306 IPC where wife committed suicide.[75] In another case it has been observed that there had been persistent demand of colour T.V., scooter and Rs. 20,000/- deceased was subjected to harassment, humiliation and physical violence and beating by the husband and her-in-laws. Dead body was secretly and clandestinely cremated causing disappearance of evidence of offence, without even intimating the parents of the deceased who were living only a few miles away from their village. The above acts fall within the definition of cruelty under section 498 -A IPC.[76]

In Sahebrao's case[77] it has been held that where the husband and brother of the husband of deceased were demanding Rs. 10,000. She was constantly troubled and given beating. Her father was insulted in her presence, the Act of the accused is sufficient to cause cruelty. In another case, accused husband and in-laws subjected deceased to cruelty and harassment for not bringing balance dowry amount, leading her to commit suicide is sufficient to convict the accused u/s 498-A.[78]

In a recent case, it has been observed by the High Court that the accused husband given beating to deceased because the wife sold some agriculture product without permission of the husband and she committed suicide. The accused husband is convicted for causing cruelty and abetment of suicide.[79] In another case, the accused husband was not satisfied with the quality of articles given during marriage. The husband did not allowed the deceased to meet anybody and, in fact, she was kept confined within her room. She was not given proper food and finally, there was persistent demand for a scooter by the accused to be brought from the father of the deceased wife. These all act would bring the appellant/accused within the mischief of sec. 498-A of the IPC.[80]

In another recent case decided by Hon'ble Supreme Court, it has been held that the accused demanded Rs. 25000/- from the father of the deceased for purchasing a tempo. This demand

[75] Raj Kumar v. State of MP, 2006 (4) RCR (Criminal) 508 (MP) (Jabalpur Bench)
[76] Ram Badan Sharma v. State of Bihar, 2006(4) RCR (Criminal) 104 S.C.
[77] Sahebrao & others v. State of Maharastra, 2006 (2) RCR (Cri.) 855 (SC)
[78] Pathan Hussain Basha & ors. v. State of A.P., 2007 Cr. L.J., (NOC) 1 (A.P.) (DB)
[79] Shankar Rajwar and another v. State of Jharkhand, 2007, Cr. L.J. (NOC), 97 (Jhar.)
[80] Tapas Kumar Ghosh v. State of Bengal, 2007 Cr. L.J. 434.

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was not fulfilled due to weak financial position of the father of deceased. The deceased was often beaten and was sometimes not given food. After the wife was murdered, information was sent to her parents that she had died on account of snake bite. The accused had been convicted for dowry death and cruelty.[81]

In another recent case decided by Hon'ble Supreme Court, it has been observed by the Apex court that the deceased had been harassed due to demand of dowry. About six months prior to the occurrence, the appellant husband demanded Rs. 80,000/- for purchase of tractor. However, the brother of the deceased could not fulfill the demand of money. Suren der, the deceased husband started beating the deceased and ultimately she was turned out of the matrimonial house and went to her parent's house. Thereafter, she was taken aback by the appellant, but 10 days after she committed suicide. Accused are convicted for cruelty and dowry death.[82]

(F) Demand of Dowry

a. **Repeated and reiterated demand of dowry immediately after marriage**

In India, there is a tendency to club most marital violence under the overall heads of 'dowry death' and 'dowry violence'. This categorisation glosses over the other causes of violence which pervade the familial context. However, to argue that dowry is not always the cause behind marital discord is not to ignore the fact that it is one o the major factors responsible for domestic violence. While keeping this fact in mind it is necessary to work towards a fuller understanding of the institution of dowry and its impact on inter-family relationship.[83]

Recently, Hon'ble Apex Court while deciding an appeal from order of conviction and sentence recorded by the Addl. Sessions Judge, Gurdaspur and confirmed by the Punjab and Haryana High Court held that both the Courts were right in rejecting defence version that since the accused possessed scooter as well as motorcycle, there was no necessity to make demand of scooter. The High Court observed that it was a matter of common knowledge that even if in-laws had several things in the house, still they demand dowry. Even if we may not go to that extent, in our opinion, in the present case, there was sufficient evidence in the form of sworn testimoney of PW2 - Sudershana Rani, PW4-Gopal Singh and PW-7 Dharminder Singh that there was a demand of dowry by accused and deceased Reeta Kumari had made such complaint immediately after marriage which was repeated and reiterated. The deceased used to inform about such demand by the accused to her parents. It is, therefore, totally irrelevant whether

[81] Trimukh Maroti Kirkan v. State of Maharastra, 2007 Cr. L.J. 20 (S.C.)
[82] Surender v. State of Haryana, 2007 Cr. L.J. 779(SC).; Mustt. Sureya Begum v. Md. Abdul Wahid and another, 2007, Cr. L.J. (NOC) 136 GAU.
[83] Preeti Misra, "Domestic violence against women", Deep & Deep Publications, Delhi, 2007.

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accused possessed motorcycle or scooter. Demand of dowry in this case was clearly proved and conclusively established by the prosecution.

We also find no substance in the contention of the appellants that there was material contradiction in the deposition of prosecution witnesses as to the occasion of making demand, i.e. as shagun or as dowry. From the evidence, it is proved that accused persons insisted for scooter and golden bangle as they has obliged parents of Reeta Kumari by allowing her to marry to accused No. 1-Manmohan Singh. In our opinion, therefore, both the Courts were right in coming to the conclusion that there was demand of dowry by the accused.[84]

b. **Demand of scooter and video by unmarried sister in law**

Whenever, if at all there is a demand of dowry from the unmarried sister of the Husband. She may not demand for a scooter, she could have demanded such items which she can use. In a recent case, there were an allegation against the unmarried sister of the husband of deceased is that, she taunted deceased for not bringing scooter and video. The Punjab & Haryana High Court did not believe the prosecution version and acquitted the appellant No. 2 and while allowing appeal observed that from the oral evidence on record, it is, thus, apparent that while all the witnesses are consistent in leveling allegations against appellant No. 1 for demanding dowry and /or causing harassment to the deceased on that count, they are discrepant in that regard so far as appellant No. 2 (Vijay Kumari) is concerned.

On a critical analysis of the evidence led by the prosecution, it stands concluded that the demand for dowry was for two specific items, namely, scooter and video. If the said demand, as alleged by PW 2, PW 3 and PW 4 has been made by appellant No. 1, namely, husband of the deceased, it appears inconceivable as to why appellant No. 2 would also demand the same items from her sister-in-law. Normally, if appellant No. 2 too had agreed for dowry, she could have demanded such items as were for her own use like jewelry, dresses or other gifts etc. it is not the case of the prosecution that appellant no. 2 caused any harassment or cruelty to the deceased "for not fulfilling the demand for dowry made by her brother". The allegation for demand for dowry has been leveled independently and separately against appellant no. 2. Any young unmarried girl, about whom the evidence on record suggests that talks for marriage were going on, in my view, would have neither demanded nor expected, a scooter or video from her sister-in-law. While allegations against appellant No. 2 made by PW 2, PW 3 and PW 4 are on the basis of what the decea sed had allegedly told them, they had directly confronted appellant No. 1 (Kewal Krishan) and allegedly told him that his demand for scooter and video could not be fulfilled by Jagan

[84] Kishan Singh & Anr. v. State of Punjab, AIR 2008 SC 233.

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Nath (PW 3) for want of means.

Thus, the evidence in relation to the dema nd for dowry and of causing cruelty and harassment to the deceased for non - fulfillment of such demand, in the case of appellant No. 1 on one hand and appellant No. 2 on the other hand, is not the same in terms of credibility, admissibility and acceptability. While there is direct and convincing evidence on record in that regard against appellant No. 1, the same, in the case of appellant No. 2, suffers from legal and factual infirmities leading to a needle of suspicion towards the prosecution case against her.

The conviction and sentence awarded to appellant No. 2 (Vijay Kumari) by learned Additional Sessions Judge Ferozepur, vide his judgement and order dated January 16, 1988 is set aside and she is acquitted of the charges.[85]

c. Suicide by pregnant woman on demand of dowry

Supreme Court has observed while deciding an appeal against conviction that it has come in the evidence of PW2 Prem. PW-4 Sombir and PW-10 Dilbag Singh that the deceased-Pushpa had been harassed due to the demands of dowry. About six months prior to the occurrence, the appellant visited the house of Sombir, the maternal uncle of the deceased where Pushpa had studied upto class VIII and demanded Rs. 80,000/- for purchase of a tractor. However, when PW-4 Sombir refused to pay the amount, Surender started beating the deceased and ultimately she was turned out of the matrimonial house and went to her parent's house where she stayed for about three months. Thereafter she was taken back by the appellant with the assurance that he will treat Pushpa well, but ten days thereafter she committed suicide. It has come in evidence that Surender gave beating to Pushpa to such an extent that she became unable even to walk.

The deceased-Pushpa was pregnant at the time of the suicide and we agree with the High Court that a young pregnant woman having a child in the womb would not ordinarily commit suicide unless she was compelled to be so. We also agree that she would not have felt depressed if she has not been harassed on account of demand for dowry.

It has also come in evidence of PW-10 Dilbag Singh, father of deceased- Pushpa, that when the demand for dowry was not met. Pushpa was beaten and she had injury marks when she came to the house of her father. Thus, there is no merit in the appeal.[86]

In another recent case, accused husband and in -laws alleged to have subjected deceased to cruelty and harassment for not bringing balance dowry amount leading her to commit suicide Specific version of witnesses that an amount of Rs. 10,000/- remained due from out of dowry

[85] Kawel Krishan and another v. State of Punjab, 2005 (4) RCR (Criminal), 484 P & H
[86] Surender v. State of Haryana, 2007, Cr. L.J., 779 SC

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amount promised by father of deceased. Evidence showing that accused used to harass the deceased for not bringing balance amount. Death occurred within the period of seven years from date of marriage, ingredients of Sec. 498-A and Sec. 304-B are attracted.[87]

In another case under Ss 3, 4 of the Dowry Prohibition Act, 1961 and Section 498-A of IPC cruelty to wife-torture and assault to victim lady by husband and in-laws because of nonfulfillment of demand of wrist watch as dowry after marriage proved by evidence of witnesses, the Conviction of accused is proper.[88]

Again, it has been held by Apex Court that the evidence of witness fully established that wife was ill treated, often beaten harassed and some time not given food on account of non - fulfillment of demand of money amounts to cruelty.[89] In another recent case, Calcutta High Court held that, it has been proved by witnesses that soon after marriage victim was tortured both physically and mentally over demand of dowry in form of scooter by the accused husband. It amount to harassment and cruelty.[90]

Recently, it has been held by Hon'ble High Court that, unless there had been some harassment from the accused, a lady aged about 21 years who just got married 7 –8 months back will not died of her own. There was demand of dowry and due to that she committed suicide.[91] In another recent case decided by Apex Court it has been held, that husband and his brother were demanding Rs. 10,000/- and she was constantly troubled and given beating. Her father was insulted in her presence. She was even reluctant to go to her matrimonial home. It is proved that the accused by series of acts and conduct created such a difficult and hostile environment for the deceased that she was compelled to commit suicide.[92] In another case, where the deceased wife committed suicide by hanging. The deceased was harassed by the accused-husband and in-laws on account of demand of dowry and was compelled to commit suicide. It has been observed by Apex Court that a young pregnant woman having a child in womb would not ordinarily commit suicide unless she was compelled to do so.[93]

In another recent case of cruelty and harassment, it has been observed by M.P. High Court that it appears that the deceased was being harassed on demand of Rs. 50,000/- in the shape dowry and on account of the same, she committed suicide in her marriage. This harassment had started

[87] Pathan Hussain Basha & Others v. The State, 2007 Cr. L.J., (NOC) 1 (A.P.) (DB).
[88] Tahrul Islam & Ors. v. State of Jharkhand, 2007, Cr. L. J. (NOC) 43 (Jhar.)
[89] Trimukh Maroti Kirkan v. State of Maharastra, 2007 Cr. L.J. 20 (S.C.).
[90] Tapas Kumar Ghosh v. State of West Bengal, 2007 Cr. LJ 434 (Cal.)
[91] Radha Krishan v. State of Punjab, 2006 (1) RCR (Cri.) 854 (P & H)
[92] Sahebrao & onr. v. State of Maharastra, 2006(2) RCR (Cri) 855 (SC).
[93] Surender v. State of Haryana, 2007 Cr. L.J. 779 (SC).

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within 18 -20 days of her marriage. The nature of demand was that sufficient dowry has not been given in their marriage and unless the aforesaid amount is paid, the harassment will continue in the same way.

Even two days will continue in the same way. Before commission of suicide, the deceased informed her parents on telephone that she was being beaten on such demand, because it could not be fulfilled by her parents. On perusal of the statement, although it appears that there was no settlement of dowry at the time of marriage but it started immediately after a few days of marriage and the same was in shape of dowry on allegation that the same was given insufficient at the time of marriage. As per the definition of dowry, prima facie, the allegation cannot be said that the same was not in connection with the marriage.

The statement of Gaurishankar is very specific that the demand was with regard to dowry on the ground the sufficient dowry was not paid in the marriage. There appears immediate proximity in harassment with demand of dowry on the ground that the same was given insufficient at the time of marriage. With the above observation, the revision is dismissed.[94]

d. **No allegation of harassment and demand of dowry**

In a recent case the mother of the deceased and the mother of the accused been produced as prosecution witness. The mother of the deceased categorically stated "The accused h as not demanded for the jewels and saree: The teacher only demanded. The teacher is responsible for my daughter's death." The mother of the accused as prosecution witness said that she committed suicide for not being allowed to go to her parent's house by the appellant and there was no other reason therefore. The couple had been leading a happy life. She also not has been declared hostile witness. Husband gave the information to the police regarding suicide of deceased. Allegation of dowry demand and harassment not believed.[95]

In another case it has been held by Delhi High Court that it is true that in the FIR, serious allegations of dowry demands and dowry related harassment have been made against both the petitioner but at this stage, this Court must see as to whether prima facie, there is any circumstances on record to indicate that the allegations contained in the F.I.R. are false. One circumstances which strongly goes against the allegations against the two petitioners is that about an year before the death of deceased Poonam, there were 107/151 Cr.P.C. proceedings before the Special Executive Magistrate against the petitioners' son Sunil in which statements were recorded not only by the Police but by the SEM also. Copies of these statements have been

[94] Gopal Garg & Anr. v. M.P. Govt., 2008 Cr, L.J. 221. (M.P. High Court)
[95] T. Aruntperunjothi v. State through S.H.O., Pondicherry, 2006 (2) RCR (Cri.) 521 (SC)

placed on record. In these statements, there was no allegation at all in regard to the dowry demands or dowry related harassment against the present petitioners. The allegations were against the husband Sunil Kumar Yadav only. In the statement of brother of the deceased, it had come that petitioner Ved Prakash Yadav had even tried to persuade his son to behave properly but he did not agree. The disinheritance of his son by petitioner Ved Prakash Yadav prior to the incident in question indicates that the petitioners were not having any control over their son regarding his conduct towards his wife and as such he was disinherited and was also made to live with his wife in a separate house in Rohini. These facts and circumstances satisfactorily indicate that the allegations of dowry demands and harassment now being made against the petitioner are not true.

At this stage, therefore, the possibility of a false case against these two petitioners cannot be overruled. It would be a travesty of justice if two old and aged petitioners are made to languish in jail in spite of the fact that there are circumstances on record to suggest that they are innocent and not connected with the offence.[96]

(G)Demand of Property/Money Not Related To Dowry

(a) Taunting the deceased to insist on her father to keep promise

Demand of money from bride in a routine manner which was promised by her father at the time of marriage is not cruelty. Father of bride had promised to pay Rs. 3000/- and a plot to husband. Promise was not kept. Father an d mother of the husband taunted the deceased to insist on her father to keep the promise. They never made demand of dowry at the time of marriage or as consideration for the marriage. No offence of cruelty under section 498-A IPC.[97]

In a recent case it has been held that the demand for ornaments worn by wife for the purpose of sale will not come within demand of dowry. Therefore, suicide by the bride consequent on demand of ornaments for the purpose of sale will not come within the offence punishable under Section 304B I.P.C.[98]

(b) Demand for money on financial stringency

In a case, it has been held by Hon'ble Supreme Court that a demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. As per the definition of 'dowry' as given in 1961 Act, the giving or taking of property or valuable

[96] Ved Parkash Yadav v. State, 2006(1) HLR 63
[97] Abdul Sab Nabi Sab Kittur v. State of Karnataka, 2006(3) RCR (Criminal) 470 (Kar.)
[98] Babu v. Padmanabhan, 2005 (1) RCR (Criminal) 373 (Ker.)

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security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed.

Dowry is a fairly well-known social custom or practice in India. It is well settled principle of interpretation of Statute that is the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning.

In the instant case, what was allegedly asked for by the accused-husband and mother-in-law of decreased was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304 -B, I.P.C. viz., demands for dowry is not established, the conviction of the appellants cannot be sustained.[99]

(c) Demand for motorcycle will come within dowry ambit:

Supreme Court Demands relatable only to marriage will come within the mischief of dowry. Any demand for money, property or valuable security made from the bride or her parents or other relatives by the bridegroom or his parents or other relatives or vice versa in connection with the marriage will fall within the mischief of "dowry' under the Dowry Prohibition Act, the Supreme Court has held.

A Bench of Justices Aftab Alam and R.M. Lodha said "The mere demand for 'dowry' before marriage, at the time of marriage or any time after the marriage is an offence. The 1961 Act has been amended by Parliament on more than one occasion and by the Dowry Prohibition (Amendment) Act, 1986, Parliament brought in stringent provisions and provided for offence relating to dowry death."

The Bench upheld a judgment of the Punjab and Haryana High Court confirming seven-year imprisonment awarded by a trial court to Bachni Devi and her son for causing the death of Kanta, wife of the second appellant, after their demand for a motorcycle for development of his business was not met by the victim's father, Pale Ram, a rickshawman.

Writing the judgment, Justice Lodha rejected the contention of the appellants, that the demand for a motorcycle for development of business would not come within the ambit of dowry.

The Bench said the term 'dowry' "is defined comprehensively to include properties of all sorts

[99] Appasaheb & Anr. v. State of Maharashtra, AIR 2007 SC 763.

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as it takes within its fold ‘any property or valuable security' given or agreed to be given in connection with a marriage either directly or indirectly to be given or demanded ‘as consideration for the marriage'.”

Any demand which was not properly referable to any legally recognised claim and was relatable only to the consideration of marriage would come within the ambit of ‘dowry' under the Act.

“The Act is a piece of social legislation which aims to check the growing menace of the social evil of dowry and it makes punishable not only the actual receiving of dowry but also the very demand for dowry made before or at the time or after the marriage where such demand is referable to the consideration of marriage. Dowry as a quid pro quo for marriage is prohibited to be understood as it is defined in Section 2 of the Act.”

From the facts of the case, it was clearly established that Kanta died other than under normal circumstances within seven years of marriage and she was subjected to harassment and ill treatment by the appellants after Pale Ram refused to accede to their demand, the Bench said.

Dismissing the appeal, it directed Bachni Devi to surrender herself for undergoing the sentence. Her son is already in jail.

(H) Jurisdiction in Dowry Cases

Chapter XIII of Cr.P.C. contains provisions dealing the jurisdiction of the criminal Courts in enquiries and trials. There are seven provisions in the said chapter. Section 177, which is a general provision, lays down that every offence shall ordinarily be enquired into and tried by a Court within whose local jurisdiction it was committed. There can always be situations and situations where other Magistrates can as well as enquire into and try the offence.

Section 178. Place of Inquiry or trial-

(a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) Where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) Where it consists of several acts done in different local areas.

It may be inquired into or tried by a Court having jurisdiction over any of such local areas. Section 179. Offence triable: Where act is done or consequence ensures- When an act is an offence by reason of anything which has been done and of a consequence which has ensured, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing

has been done or such consequence has ensured.

A reading a Section 177 & Section 178 Cr.P.C. would make it clear that Section 177 provides for ordinary place of enquiry and trial. Section 178, inter alia, provides for place of enquiry and trial where it is uncertain in which of several local area and offence was committed partially in one local area and partially in another and where it consisted of several acts done in different local areas. It could be enquired into or tried by a court having jurisdiction over such local areas.[100]

The three provisions, namely, Section 177 to 179 of Cr. P.C., indicate that in the case of offence under Section 498 -A of IPC, the case can be filed by the aggrieved wife/woman at a place where the demand was made for dowry or property thereby causing cruelty and also at a place where the woman was forced to live. In a recent case it has been observed by Jharkhand High Court that from the perusal of the entire complaint/ petition as the statement of the complainant recorded on solemn affirmation and the statements of the witnesses recorded during the course of enquiry under Section 202 of the Code of Criminal Procedure, it is evident that the overt act as alleged against the petitioner is said to have been taken place in the State of Uttar Pradesh at village Bakhira and not at Bokaro in the State of Jharkhjand.

Therefore, the court in the state of Uttarpardesh has the jurisdiction. In this view of the matter this application is allowed and the order taking cognizance dated 19 -2-2003 passed by the Sub-Divisional Judicial Magistrate. Bokaro. In C.P. Case No. 341 of 2002 as well as the entire criminal prosecution / proceedings of the petitioner for the offence under Sections 498- A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act pending in the Court of the Sub -Divisional Judicial Magistrate, Bokaro, is hereby quashed.[101]

In another recent case Andhara Pradesh High Court observed that on perusal of the complaint and also statement recorded under Section 161 Cr. P.C. and the averments in the charge sheet would go to show that all the acts alleged against the petitioners, which got to constitute the alleged offences have taken place at Chittoor. The marriage of 2nd respondent with AI was performed at Chittoor. The alleged payment of dowry in cash and in the form of other valuables at the time of marriage was also at Chittoor and the alleged harassment and ill treatment of 2nd respondent demanding additional dowry also took place at Chittoor and the complainant was driven out of the house at Chittoor. It is not disclosed either in the complaint or in the record of investigation or in the charge sheet, as to which part of the alleged offences has taken place at

[100] Victor Auxilium and ors. v. State and anrs., 2008 Cr. L.J., 774 (Madras)
[101] Radhe Raman Naik & Anr. v. State of Jharkhand & Anr. 2008 CRI. L.J. 317 (Jhar HC)

Hyderabad or how the cause of action for the offences arose at Hyderabad.

In the present case as no part of cause of action is shown to have arisen at Hyderabad within the jurisdiction of learned IX Metropolitan Magistrate, Kukatypally, Cyberabad and the entire cause of action as can be seen from the record, is alleged to have arisen at Chittoor. In view of the principles laid down by the apex Court in CC No. 1176 of 2005 on the file of IX Metroploitan Magistrate, Kukatpally, Cyberabad are not maintainable and they are accordingly quashed. It is however, open to the complainant to file a fresh complaint before the appropriate Court having jurisdiction to deal with the matter.[102]

In a recent case Rajasthan H.C. Observed that in a case under section 498-A/406 IPC where Husband and Wife resided at Delhi, acts of cruelty committed at Delhi but wife came to reside at Ajmer with her parents and filed criminal complaint at Ajmer is not competed under section 177 Cr.P.C., Court had that every offence is to be enquired and tried by Court within whose jurisdiction the offence committed therefore, the Court at Delhi had jurisdiction.[103] But Andhra Pradesh High Court held that where the women leaving matrimonial home due to dowry harassment, She can file the complaint under Section 498-A of IPC at the place of her parents or where she intent to live or at a place where she is forced to reside.[104]

(I) Judicial Response on Dying Declaration In Case Of Dowry Death

The principle on which dying declaration is admitted in evidence is indicated in legal maxim " nemo moriturus proesumitur mentiri- a man will not meet his maker with a lie in his mouth."

The expression dying declaration has not been used in any statute- It essentially means statements made by a person as to the cause of his death (sec. 32 of Evidence Act). The grounds of admission are: firstly necessity for the victim being generally the only principal eye-witness to the crime, the exclusion of the statement might deflect the ends of justice; and secondly, the sense of impending death, which creates a sanction equal to the obligation of an oath. Dying declaration is only a piece of untested evidence and must like any other evidence, satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it.[105]

Recently, Hon'ble Supreme Court held that, in dowry cases, the trial court can convict the accused on the basis of the victim's dying declaration if prosecution witnesses turn hostile. Further held that, "once the court is satisfied that the declaration was true and voluntary,

[102] Venkatapathi Naidu & Ors. V. State of Andhra Pradesh & Anr. 2008, Cri. L.J. 179 (A.P, H.C.)
[103] Rajesh Kumar and another v. State of Rajsthan 2006(3) RCR (Criminal) 717. Rajsthan H.C.
[104] Syed Khaja Mohiuddin v. State of A.P. 2005(4) RCR (Criminal) 548. A.P., H.C.
[105] Shyam Shankar Kankaria v. State of Maharastra, 2006(4) RCR (Criminal) 239 SC.

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undoubtedly, it can base it conviction without any further corroboration. It cannot be laid down as an absolute rule of law that dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence."

(J) Judicial Interpretation of The Word "Relative"

(a) Relatives relative or class of relative

The relative of the Husband must necessarily be a class of relative and not a relative's relative. In a recent case of Punjab and Haryana High Court, it has been observed that the Gurmit Singh is the brother of Balbir Kaur who is Chachi of main accused i.e. Husband of deceased Gurmit Singh has filed this criminal revision petition to challenge the order of the, learned Additional Sessions Judge, Roop Nagar dated January 24, 2000 whereby an application filed by the State under Section 319 Cr.P.C. for summoning Ratti Ram, Gurmit Singh (petitioner herein) and Balbir Kaur wife of Ratti Ram was allowed and these three persons were summoned to stand trial along with Paramjit Singh and others:

The precise argument of the learned counsel for the petitioner is that Gurmit Singh, cannot be tried under Section 304 B I.P.C. because he is not "a relative of her husband" meaning thereby that he is not a relative of Paramjit Singh. Reference has been made to the exact words used in Section 304 -B I.P.C. in support of this contention.

Learned counsel for the petitioner also referred to the provisions of Section 198-A Cr.P.C. which relates to prosecution of offence under Section 498-A I.P.C. and has tried to draw a corollary with the present case. However, before referring to this contention, it deserves to be noticed that Gurmit Singh is the brother of Balbir Kaur who is Paramit Singh's aunt (Chachi).

In the present case, Gurmit Singh would not fall in any of the categories mentioned in section 198-A Cr.P.C. Therefore, would he fall in any of the categories of relatives mentioned in Section 304-B I.P.C. although the phraseology is "any relative of her husband". Similar phraseology has also been used in Section 113-A but not in Section 113-B of the Indian Evidence Act. In this case, Gurmit Singh is not a relative of Paramjit Singh but his aunt's (Chachi's) brother. As a matter of fact even the aunt would not come in the list of relatives given in Section 198 -A Cr. P.C. but may be covered by being related through marriage which is an accepted category of course, by the leave of the Court.

Even the dictionary meaning of a relative is one who is related by blood or marriage Gurmit Singh is certainly not related to Paramjit Singh either by blood or by marriage. Gurmit Singh would not fall in the category of relative of the husband. Therefore, Gurmit Singh must be

excluded from the array of the accused.[106]

(b) Second wife inflicts cruelty on the legally wedded wife of the Husband

In a recent case of Kerala High Court, an interesting question arises. Can the so-called "second wife" of the husband who married her during the subsistence of his earlier legal marriage, be treated as "the relative of the husband" for the purpose of Section 498-A of the Indian Penal Code? If so, under what circumstances? Will an offence under Section 498 -A of IPC lie against such a "second wife" if she inflicts cruelty on the legally-wedded wife or the husband? Here are the relevant factual details, as unfurled from the records: Second respondent herein filed a complaint against the petitioners as accused 1 and 2, and also against four other members of the husband's family as accused 3 to 6 alleging offence under Sections 498 -A, 494 and 34 of IPC before the Magistrate's Court. The complaint was forwarded by the lower court to Police under Section 156(3) Cr.P.C. for investigation and report. Police after investigation, registered a crime and filed charge -sheet against accused 1 to 6 for the offences under Section 498-A, 494 and 34 IPC. But, the court below did not take cognizance of offence under Section 494 IPC. Specific instances of matrimonial cruelty are narrated in the complaint. Here, the accused are proceeded against only under Section 498-A and 34 IPC.

According to learned counsel appearing for the petitioners, an offence under Section 498-A IPC will lie only against the husband and/or 'the relative of the husband' of a woman. But, the second petitioner who is not a legally-wedded wife as per the allegations in the complaint itself cannot be treated as 'the relative of the husband' and hence she cannot be held liable for offence under Section 498-A IPC.

So, the meaning of word ‘relative’ coming under Section 498-A IPC requires to be interpreted independently, looking into the circumstances in which it is used in the section, relaising the purpose of the legislation, understanding the intention of the law-maker behind introduction of the provision, discerning the object sought to be achieved and the mischief sought to be suppressed by the particular provision. In short, mainly purposive construction has to be the rule which the court must follow to interpret the relative expression in Section 498 -A of IPC.[107]

(c) Member Panchayat is not relative of the husband

In Divya @ Babli v. State of Haryana,[108] Hon’ble Punjab & Haryana High Court observed while deciding a petition under section 482 Cr.P.C. in a complaint under section 498 -A and 406 IPC,

[106] Gurmit Singh v. State of Punjab, 2006(1), RCR (Cr.) P & H, 563
[107] John Idculla & another v. State of Kerala & another, 2005(3) RCR (Criminal), 987, Kerala High Court.
[108] 2006 (4) RCR (Criminal) P & H.

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in which petitioner No. 4 Daya Kishan who is member of Panchayat is implicated as an accused for instigating the other family member of her-in-laws to mal-treat the complainant with regard to bringing insufficient dowry.

Further it has been observed that after heaving rival contentions of either side or going through the records minutely, I am of the view that the complainant has no case against Daya Kishan. A bare perusal of the compla int indicates that it has been drafted with certain oblique reasons so that all the family members of in-laws of the complainant are taken in. Daya Kishan, a member of Panchayat is also implicated in this case, who is not related to the husband of the comp lainant, with the allegation that the complainant was being harassed at the behest of aforesaid persons. In para 2 of the complaint it is stated that several dowry articles including Istridhan was given to the respondents exclusively as well as jointly. I am surprised as to how Daya Kishan petitioner can be said to have any nexus with the entrustment of dowry articles. Further, it has been observed that it is to be noted that the role of investigating agencies and courts is that of watch dog and not of a blood hound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations.

Taking into consideration the totality of facts and circumstances for the instant case in my considered view, the instant petition qua petitioners Daya Kishan deserves to be allowed.

(d) Another woman in Husband's life

A woman having an extramarital affair with a married man cannot be booked under Section 498-A of the Indian Penal Code which seeks to punish "cruelty to a married woman". The order was passed by Justice V. R. Kingaonkar of Aurangabad bench of Bombay High Court, while quashing an FIR against a 24-year-old woman from Aurangabad who was hauled to the police station by the aggrieved wife of the man she was having an affair with. The high court held that the wording of the "law made it clear that it was applicable only to "the husband and his relatives" who subjected a wife to cruelty, and another woman in a man's life could not be considered a relative falling under its purview.

The complaint was filed at Gadgenagar police station in Amravati by Vishal Bhawar's wife, Suhasini, who said that she had "noticed Bhawar having an extramarital affair with a woman called Rakhi", When she tried to dissuade him, he retorted that his "relations with Rakhi could not be snapped and would continue throughout his life", Suhasini subsequently alleged that she was subjected to cruelty by Vishal and his relatives, and filed a complaint under Section 498-A of the IPC in which Rakhi was also named as an accused.

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Suhasini's advocate argued in court that Rakhi had been named because "she was the main reason why Suhasini was subjected to cruelty".

Justice Kingaonkar said that even if one assumed that "Rakhi was the cause of bickering between the spouses (sic)... and Suhasini was being ill-treated or subjected to harassment because of the extramarital relation between Vishal and Rakhi... the police complaint against her was not maintainable under Section 498-A as Rakhi was not related to Vishal.[109]

In a recent case it has been observed by High Court that the allegation against the petitioner No. 3 is that husband of deceased i.e. petitioner No. 1 herein has illicit relationship with her. The question is whether by virtue of having illicit relations of her husband, the petitioner No. 3 may be considered to be relative of her husband for the purpose of drawing presumption under Section 113-A of the Evidence Act.

As per the case of the prosecution in the charge -sheet the petitioner No. 3 is wife of one Basant Kumar Rai, who resides as tenant in the house of petitioner No. 1 herein and therefore, the presumption under Section 113-A of the Evidence Act cannot be drawn against her merely on the allegation that petitioner No. 1 has illicit relationship with her. There is no allegation in the charge sheet that petitioner No. 3 subjected the deceased to cruelty or harassment in the name of demand of dowry. Even if the entire evidence available in the charge -sheet, which the prosecutor proposes to adduce to prove the guilt of the accused persons, is fully accepted before it is challenged by the cross examination or rebutted by the defence evidence, then also it cannot be said that the petitioner No. 3 committed dowry death within the meaning of Section 304-B of the IPC or abetted the deceased to commit suicide and the learned Sessions Judge was not justified in framing the charge under Sections 304 -B and 306 of the IPC against the petitioner no. 3. In the result, the revision preferred by the petitioner Nos. 3 is allowed.[110]

(K) Judicial Verdict on The Abuse Of The Process Of Law

(a) The Abuse of the beneficial provision of Section 498 -A

The provisions of "Sections 498-A, IPC was conceived with the noble intention of protecting women from dowry harassment and domestic violence; it is lamentable that the law is being rampantly misused."[111] Whenever there is a matrimonial dispute between husband and wife, for the fault of the husband, other relations of the husband i.e. brothers, sisters and parents, are also roped in the litigation on the allegation of demand of dowry, whether they are living joint or

[109] The Times of India, New Delhi, 24th April, 2008.
[110] Santosh Kumar Singh & ors. v. State of Chhattisgarh, 2008 Cr.L.J., 1091, Chhattisgarh HC
[111] K.G. Balakrishan, C.J.I., 'Asian Age', 23 Sept., 2007.

separate. Sometimes, the parents who are aged about 80 to 90 years and unable to walk or talk and the sisters living at far off places in the matrimonial house are also involved.

In a recent case u/s 498-A/406 IPC, against whole family of the husband (Sanjay Kumar). In this case the unmarried sister of the husband namely Meenakshi @ Soni @ Manisha has been implicated. Justice Virender Singh of Punjab & Haryana High Court held in this case that, while arriving at this conclusion, I have not only appreciated the totality of the facts and circumstances of the case in hand but also kept in consideration that the things have taken a reverse trend now a days and women are abusing beneficial provision of section 498 -A IPC by implicating all the members of her in-laws. It is quite notices by the court that case of this type create somewhat formidable hurdle in reconciliation efforts and gave rise to a lot of bickering between the two families and the efforts to be made by the court are being hurried. In some judgements a suggestion is also given to law commission and the parliament that if section 498 -A IPC has to continue on the statute book in the same form, it should be made a non-cognizable and a bailable offence, so that the provisions are not misuse to harass innocent people.

Further, it has been observed by the court that, "I am surprised how Meenakshi been arrayed as accused with general allegations of demand of dowry, entrustment of dowry articles and harassment at her hand. Meenakshi @ Soni @ Manisha petitioners is unmarried sister-in-law. She is still unmarried as the parents have not arranged her marriage on account of the pendency of the criminal proceedings against her. In my considered view her involvement in the instant case is an outcome of usual hatred in the mind of the complainant side after the matrimonial discord. This rather goes to strengthen my observation that a tendency has developed for rop ing in all the relations in dowry cases.[112]

In a case where the bride either commits suicide or is murdered by her in-laws family, the tempers run high. So much so that attempt is made to rope in the entire family of the husband of the victim. Almost all the family members of the husband are attributed one role or the other so as to implicate them, although they may not have done anything in the entire occurrence. Under these circumstances, duty is cast upon the Court to sift the grain from the chaff and find out if some of the accused have been falsely roped. The facts and circumstances of the present case also point towards the false implication of accused Kanwal Singh, Jaibeer, Bhateri and Reena. Their part and participation in the occurrence was highly doubtful. Two out of them were also able to prove their respective pleas of alibi. As a measure of abundant caution we extend the benefit of doubt to the four accused, namely. Kanwal Singh, Jaibeer, Bhateri and

[112] Divya @ Babli v. State of Haryana, 2006(4) RCR (Cri.) 323 (P & H).

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Reena.[113]

A failed marriage is not a crime. However, provisions of Section 498-A IPC, are being used to convert failed marriage into a crime and people are using this as a tool to extract as much monetary benefit as possible.

In another recent case where the wife made complaint against whole family of her husband. It has been held by the court that, the complainant and her husband and in -laws of the complainant were staying at Gaziabad. But the husband, Yashwant Singh, alongwith her wife, after marriage was residing separately from his parents and brothers. He was residing at Rewari, Haryana. There were no specific allegations with respect to entrustment of dowry items to the accused persons. Since, the complainant stayed with her husband at Rewari, Haryana. The entrustment of dowry articles can be presumed to be to the husband. There were no specific allegations of entrustment to the accused person, (who are the brothers and parents of the husband).[114]

In another case decided by Hon'ble Punjab and Haryana High Court, it has been observed that the fact further remains that parents in-law were residing separately and they would not require scooter and would not raise and demand. In a judgement of Hon'ble Supreme Court reported in Kans Raj v. State of Punjab and others,[115] it had been observed that for fault of the husband the in-laws or other relations cannot, in all cases, be held to be involved in the demand of dowry. Any overt acts attributed to the persons other than the husband were required to be proved beyond doubt and by mere conjectures and implications, such relations cannot held guilty for the offence relating to dowry deaths.

In the present case, initially Bawa Singh, father of the deceased did not say that there is any demand of scooter. He had otherwise suspected that in-laws might have killed Sikhvinder Kaur. The allegation of demand of scooter was made after ten days of the death in a complaint made to the SSP by Bawa Singh. The parents of the husband would not have been benefited from that scooter when they were living separately. Under these circumstances, prosecution case against Sohan Singh, father-in-law Naib Kaur, mother-in-law is not proved. Their appeal is accepted and they are acquitted.

(b) False implication of minor under Section 498 -A, IPC

There is growing tendency to come out with inflated and exaggerated allegations roping in each and every relatives of the Husband whenever there is marital dispute or a case of cruelty against

[113] Kanwal Singh and others v. State of Haryana, 2006(3) RCR (Criminal) (P & H) (DB) 783.
[114] Smt. Neera Singh v. The State (Govt. of NCT Delhi) & ors. CRL M.C. 7262/2006
[115] 2000(2) RCR (Criminal) 695 as quoted in Sohan Singh v. State of Punjab, 2006 (2) RCR (Criminal) 606

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wife. The statement of the complainant wife is sufficient to put all the relatives including school go ing minor brothers and sisters of the Husband behind the bar. Such was neither the intention nor the object of the legislation.

While discussing the facts of the case of Bhupinder Kaur[116] it was observed by Hon'ble High Court that all the members of the family of husband roped including two minors. FIR against the minor was quashed holding that from the reading of the FIR, it is evident that there is no specific allegation of any act against Petitioner No. 2 and 3, which constitute offence under section 498-A IPC. I am satisfied that these two persons have been falsely implicated in the present case, who were minor at time of marriage and even at the time of lodging the present FIR. Neither of these two persons was alleged to have been entrusted with any dowry article nor did they allege to have ever demanded any dowry article. No specific allegation of demand of dowry, harassment and beating given to the complainant by these two accused has been made. The allegations made are vague and general. Moreover, it cannot be ignored that every member of the family of the husband has been implicated in this case. The initiation of criminal proceedings against them in the present case is clearly are abuse of process of court.

(c) Implication of Old and infirm Mother -in-law

Social and legal system take for granted the notion that the Indian Husband, his relatives harass his wife and ignore the instances where it is the wife and her relatives who harass the husband. India has a long and ancient tradition of entrenched and dominant women perpetrating harassment of man, and this has grown only grown worse as the norms of Indian society has evolved from joint family to the Nuclear family, making the husband, his parents and other relatives more susceptible to domestic violence. As in most Indian families the Husband's parents live with him, so the wife can be also cruel to them. It is normally seen that whenever there is marital discord between the husband and wife the old and infirm parents are easy prey to be involved in the cases filed under section 498-A, IPC. Recently a women filed a case u/s 498-A IPC against her husband, mother in-law and nine others relatives of the husband. The mother in-law is of 92 years old and unable to walk. She has been brought before court in Bhadrak (Orrissa). The complaint alleged in her complaint that her mother in-law is harassing her for demand of dowry and even she tried to burn her. By seeing the old and infirm women, Judge granted the bail and ordered that the Superintendent of Police will investigate the case.[117]

[116] Bhupinder Kaur v. State of Punjab, 2003 (2) RCR (Cri.) 413
[117] Sandhya Times, Edition: Delhi, dated 7 Jan., 2008

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(d) Malafide complaint of harassment

An increasing numbers of cases of marital discord are filed, day in and day out under section 498 -A, IPC and the Dowry Prohibition Act in India. By this the authorities make themselves accessories and accomplices to deliberate and malafide misrepresentations by the wife of every marital dispute as a case of dowry harassment by the husband and his relatives.

There is also a trend now days of the wife's parents wanting her to divorce or file a deliberately false case under Section 498 -A, IPC against her husband and parents on trivial disputes between the husband and other relatives of the wife by making them into ego-issues and the scapegoat is always the dowry.

In a recent case, it is observed by Delhi High Court, terming the allegations of a woman against her in -laws as "false", the Delhi High Court has quashed the FIR against them and other relatives on the charge that they had illegally retained the 'Stridhan' (gifts given to girl after marriage) besides dowry articles.

"The complaints and FIR were filed just to harass the petitioners without any basis or truthfulness. Police investigation also revealed the complaints to be false," said Justice S. N. Dhingra, quashing an FIR lodged by Meena Dhawan against her father in-laws, sister in-law and nephew for allegedly retaining 'stridhan'."

"The FIR and the complaints were actuated by malafide against the petitioners. The complaint is based on facts which are totally false," the court added.

(e) Complaint filed by way of revenge after 38 years of the marriage

Almost every marriage has to go through a period of turmoil and tempests before things finally smoothen out, but these days with the charge of dowry being made the scapegoatfor every little tension in the family. It may, however, be pointed out that there have been incidents where the family life of the husband and wife is not running smoothly, in many case they reside separately and not interested to live together. If the husband file a suit for divorce naturally there will be a case under section 498-A, IPC or under Dowry Prohibition Act laws.

In a recent case, it has been observed by High Court that from the material on record, it appears that marriage of the petitioner with opposite party No. 2 was solemnized in the year 1965 and this complaint case has been filed in 2003 levelling allegations of subjecting her to cruelty right from the day after marriage and also assuring her but for last so many years, even after perpetration of cruelty and assault on her, as per complaint petition, she did not come to knock the door of the court, but when a matrimonial suit under Section 13(1) (ia) of the Hindu Marriage

Act was filed and two months thereafter this case has been filed with various allegations. It has been held that case filed by way of revenge should be quashed and it will amount to abuse of the process of Court.[118] Further Punjab and Haryana High Court held that where wife filling FIR u/s 498-A and parties entering into compromise and wife undertook to withdraw criminal proceedings, decree of divorce by mutual consent pasted. Then the wife not withdrawing criminal proceedings. Proceedings has been quashed by High Court and held that to continue the proceeding it will be abuse to process court.[119]

(L) Inherent Criminal Jurisdiction Of Court U/S 482 Cr. P.C.: Recent Approach

(a) Use of power under Section 319 Cr.P.C.

The plan words of Section 319, Cr.P.C. makes it clear that it is only on the basis of evidence in the course of an enquiry or trial of an offence that the power to summon a person under section 319, Cr.P.C. can be exercised. So the essential need to proceed against the person other than the accused, appearing to be guilty of offence, arises only on evidence recorded in the course of any enquiry or trial.

In a recent case, it has been observed by Punjab & Haryana High Court, while deciding a petition u/s 482 Cr. P.C. for quashing the summoning order in case u/s 498-A and 406 IPC filed by wife against husband and other relatives. During investigation the petitioner No. 2 Mullah Latif @ Abdul Lalit, who is Father in-law of sister of husband of complainant was not challaned and kept in column 2 of FIR. After framing the charge, the evidence of the complainant was recorded and she made statement with regard to involvement of the petitioner. The judicial Magistrate Ist class summoned the petitioner on the ground that reasonable prospects appear for conviction. The petitioner filed revision against order of the Judicial Magistrate.

It was pleaded that petitioner have no role to play in commission of the offence for which summoning order has been issued against him and he is in no manners concerned with the family affairs of the complainant and her husband.

In the present case, undisputedly, the petitioners were found to be innocent during investigation by the police and they were placed in Column No. 2 in the challan submitted by the police. There is no fresh evidence against the petitioners except the statement of Meena, complainant wherein the allegations are similar to that the complaint filed by her. All the petitioners except Sham Lal were residing separately from the complainant and her husband. Even in her statement

[118] Arun Kumar Singh v. State of Jharkhand and anothers, 2006(1) RCR (Criminal), 590 (Jhar. HC).
[119] Kamal Kishore and others v. State of Punjab and another, 2006(2) RCR (Criminal), 342 (P & H). Mohd. Shamim v. Smt. Nahid Begum, 2005(1) RCR (Criminal) 697 SC.

before the Court no specific allegations as to how the complainant was hara ssed by the present petitioners, have been made. The complainant herself stated that she has gone to her in-laws house only three times after the marriage. The powers under Section 319 of the Code of Criminal Procedure should be used sparingly and only if there is convincing evidence against the persons sought to be arraigned as accused.

In another case, the petitioner is the niece of mother-in law of respondent No. 2 and is residing at Chandigarh in her own matrimonial home. The petitioner has prayed for quashing of order dated 10.7.2002, passed by Judicial magistrate I Class, Patiala, vide which she has been summoned under Section 319 of the Code of Criminal Procedure on the application moved by the prosecution.

It has been further alleged in the petition that investigation was, thereafter, conducted by the police and challan was presented against the aforementioned persons, but finding no allegation against the petitioner, she was put in column No. 2. The learned trial Magistrate framed charges against the aforementioned persons, a copy of which is annexed with the petition as Annexure P-2. Subsequently, after two years of the registration of the FIR, respondent No. 2 moved an application for summoning the petitioner under Section 319 of the Code of Criminal Procedure, mentioning therein that her name figured in the FIR and consequently, the learned trial Magistrate, vide order dated 10.7.2002, on the basis of the statement of complainant-respondent no. 2, while appearing as PW-1 before him, wherein she pointed out the name of the petitioner specifically mentioned therein that she gave beating to her by participating in the commission of the crime, ordered to summon the petitioner. Further it has been observed by High Court that having heard the learned counsel for the parties and going through the pleadings of the parties, to my mind, the petitioner is in distant relation of mother-in-law of respondent No.2 (Complainant). She has no role to play in the alleged commission of the crime. There is growing tendency to come out with inflated and exaggerated allegations, roping in each and every relation of the husband. I find that the only vague allegations have been made against the present petitioner, who is the real niece of mother-in-law of respondent No. 2. In fact, the learned trial Magistrate fell in error, while summoning the petitioner under Section 319 of the Code of Criminal procedure by passing the order dated 10.7.2002. In view of the above discussion, the instant petition is allowed.[120]

(b) Quashing of FIR where the investigation had not even started

In this case, the Hon'ble Supreme Court observed that FIR under Section 498-A, 406-IPC, has

[120] Smt. Harmohan Kaur v. State of Punjab, 2006(3) RCR (Cri.) 932-933 (P & H).

been quashed by the High Court where the investigation had not even started, order of the High Court set aside by the Apex Court and held that, this was too premature a stage for High Court to give such as finding when even the investigation had not started and investigating agency had no occasion to find out whether there was material to file a charge-sheet or not. 65

(c) Vague and omnibus allegations against family members

Whenever there is matrimonial discord between the husband and the wife and same reached to a stage where they are unable to live together, normally wife file a complaint under section 498-A, IPC and the other provisions of Dowry laws. In such a situation the wife or the parents of the wife make false allegations which are ill omened or ill starred against the other family members who are not even residing with the complainant.

In a recent petition under Section 482 of Cr. P.C. has been made before Delhi High Court and it has been observed by High Court that the petition on behalf of petitioner for quashing/setting aside the order dated 20 t h July, 2006 passed by learned Additional Sessions Judge, Del hi whereby the learned ASJ upheld the order of the Trial Court discharging appellants Bishan Pal Singh, Smt. Santosh Devi, Gajendar Singh and Toshan Singh. Bishan Pal Singh is the father-in-law of the complainant, Smt. Santosh Devi is the mother-in-law of complainant and Gajender Singh and Toshan Singh are the brothers-in-law (husband's brothers) of the complainant. The complainant made allegations involving almost every member of the family of her in laws. Learned Metropolitan Magistrate, after going through the evidence observed as under? Perusal of record shows that the allegations of the complainant are against the accused person except the accused husband with respect of taunting for bringing insufficient dowry. But there is not a single allegation that the accused persons made any subsequent demand for dowry and consequent harassment for not meeting with their demands. Admittedly the complainant and her husband and in laws for the complainant were staying at Ghaziabad. Whereas the complainant most of the time resided with her husband at Rewari. It was held in AIR 1996 (Supreme Court) 67 that taunting for not bringing sufficient dowry is distinct from demand of dowry is also an uncivilized act but does not come within the purview of Section 498-A, sufficient to constitute the offence i.e. the cruelty to the complainant with respect to not fulfillment of demand of dowry. There is not a single allegation that except for the alleged taunting the complainant was ever harassed with respect to further demand of dowry. Hence the prima facie case under Section 498-A is not made out against accused Bishan Pal, Santosh Devi, Gazender Singh and Kaushan Singh.

Against this order, the petitioner preferred a revision petition before the Court of Sessions and

the learned Sessions Judge after considering the entire material observed as under? In the present case, husband, Yashwant Singh, after marriage was residing separately from his parent and brother. He was residing at Rewari, Haryana. The Ld. Trial Court found that allegation of the complainant are against the husband only. There were no specific allegations against the accused persons, namely, Bishan Pal Singh, Smt. Santosh Devi, Gajender Singh and Toshan Singh. The Ld. Trial Court was of the opinion that there was not even a single allegation that the accused persons made any subsequent demand of dowry and harassed the complainant for not fulfilling their demand. The complainant most of the time was residing with her husband at Rewari, Haryana. There might have been one or two instances of taunting for not bringing sufficient dowry but they are not sufficient enough to attract Section 498-A. There are not specific allegations with respect to entrustment of dowry items to the accused persons. Since, the complainant stayed with her husband at Rewari, Haryana, the entrustment of dowry articles can be presumed to be to the husband. There were no specific allegation of entrustment to the accused person, namely, Bishan Pal Singh, Smt. Santosh Devi, Gajender Singh and Toshan Singh.

A perusal of the complaint would show that as per allegations dowry demand was made even before marriage i.e. at the time of engagement and an AC was demanded from her father by her in-laws and her father had assured that AC would be given at the time of marriage. However, she told her father? You have given car and AC at the demand of in laws, what will happen if they demand a flat tomorrow? Despite her this conversation with her father and despite her knowing that dowry demand had already been made, she married in the same family irrespective of the fact that she was well-educated lady and was an engineer and her brother was in police. In fact, these kinds of allegations made after breakdown of the marriage show the mentality of the complainant.

It is only because the Courts are not insisting upon compliance with the relevant provisions of law while entertaining such complaints and action is taken merely on the statement of the complainant, without any verification that a large number of false complaints are pouring in. I consider that the kinds of vague allegation as made in the complaint by the petitioner against every member of the family of husband cannot be accepted by any court at there face value and the allegation have to be scrutinized carefully by the Court before framing charge. A perusal of the complaint of the petitioner would show that she made all kinds of allegations against her husband regarding beating, that her husband was having illicit relationship with 35 girls; he forced her to write suicide note, abused her, taunted her, threatened and told her that he was getting another bride of more richer family while she was in Rewari with her husband she had

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also given phone to one of the her parents who came to Rewari and took her to parental home.

She had also given phone to one of her friends Jigyasa. A perusal of the statement of Jigyasa would show that she told Jigyasa that it was her husband who was torturing her and behaving with cruelty. However, in her complaint, she made vague and omnibus allegations against every other family members. The statement made by her and other witnesses have been scrutinized by me, except vague allegations and allegations of taunting, there are no allegations of perpetuating cruelty on her by any of the four respondents in order to compel her to bring more dowry or any particular items.

In view of many foregoing discussion, I find no reason to disagree with the order of two Courts below. The petition is here by dismissed being devoid of merits.[121]

(d) Filing of divorce petition cannot be ground to quash criminal proceedings

It is well settled that criminal and civil proceedings are separate and independent and the pendency of a civil proceeding cannot bring to an end a criminal proceeding even if they arise out of the same set of facts. Filing of a divorce petition in a Civil Court cannot be a ground to quash criminal proceedings under Section 482 of Criminal P.C.

In a recent case, it has been observed by Hon'ble Supreme Court that the quashing of F.I.R. alleging dowry harassment, by drawing adverse inference against complainant on ground that the complaint was filed, about six months after she was forced to leave her matrimonial home and after filing of divorce petition by husband was improper. The Court failed to appreciate that the complainant and her family members were, during this period, making all possible efforts to enter into a settlement so that the husband would take her back to the matrimonial home. If any complaint was made during this period, there was every possibility of not entering into any settlement with the husband. The complaint was filed only when all efforts to return to the matrimonial home had failed and husband had filed a divorce petition.

The High Court while exercising its powers under Section 482 of the Code is not, justified in relying on the investigation report which was neither filed before the Magistrate nor a copy of the same supplied to the complainant. Relying on the investigation report in quashing the F.I.R is in excess of its jurisdiction under S. 482. High Court was also wrong in directing the report to be submitted before it. It is well settled that it is for the investigating agency to submit the report to the Magistrate.[122]

[121] Smt. Neera Singh v. The State & Others (Govt. of NCT, Delhi), Cr. M.C. 7262/ 2006 decided on 23.02.2007 by Delhi High Court.
[122] Pratibha v. Rameshwari Devi & Ors., 2008 Cri. L.J., 329 SC

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(e) Restraints on the use of power under Section 482 Cr.P.C.

In Manjula Sinha's[123] case while rejecting a prayer for quashing the FIR in a case involving allegations of commission of offence under Section 406 and 498-A IPC, the Supreme Court reiterated the need for exercising restraints on the u se of power under Section 482 thus:

"The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of state should normally refrain from giving a prima facie decision in a case, where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal are magnitude and cannot be seen in their true perspective without sufficient material."

(M) Recent Judicial Approach on Delay In Lodging FIR In Dowry Case

It is well settled that the delay in lodging the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions, as they are, we cannot expect villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all, it is but natural in these circumstances for them to take some time to go to the police station for giving the report. There is no hard and fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful.[124]

Again, it has been held by Punjab and Haryana High Court that, delay of 12 hours in lodging FIR is not fatal, where the families are involved, it may not be unusual f or the relations and other members of the society to delay the matter by a few hours or so.[125]

In another recent case, the Uttrakhand High Court observed that the incident is said to have taken place on 12 -2- 1987 and the FIR was lodged by the brother of dece ased on 22-2-1987 at Srinagar Police Station. As per the prosecution case, deceased had died in the house of present appellant on 12 -2-1987 and he has sent three persons namely Matvar Singh, Binnu and Saru to the house of Jeet Singh, uncle of the deceased on 13-2-1987. On the next day morning, the Uncle of the deceased namely Jeet Singh gave a telegram to the brother of deceased Vikram Singh Bisht who received teleram on 18 -2-1987, who was a doctor in the Indian Army had posted as Captain and after getting the leave from the Army, he had reached to the village on

[123] Manjula Sinha v. State of U.P., Cr. App. No. 860 of 2007
[124] Amar Singh v. Balwinder Singh & Ors. 2003(1) RCR (Criminal) 701 (SC): Sahebrao and Ors. v. State of Maharastra, 2006(2) RCR (Criminal) 855 (SC).
[125] Anoop Singh v. State of Haryana, 2006(2) RCR (Criminal) 824.

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21-2-1987 and after inquiring the matter from the villagers, when he was confident that his sister was murdered by the present applicant in his house and he has burned the dead body of deceased in order to destroy the evidence of deceased in order to destroy the evidence of murder, then he had lodged the FIR is explained and it is proved by the circumstances that the FIR is not delayed and the delay is not international but it was compulsion.[126]

In another case, it has been observed by Apex Court that it has come in evidence that when the father reached Village Babulkheda at about 1.00 P.M. on 08-09-1990 he found his daughter dead and nobody was present in the house. When the police came and made inquiries he said that he was shocked and was not mentally fit to lodge the complaint and would do so later on. After finding her newly wedded daughter's dead body in her matrimonial home where he had left her just before a day of incident, it was very natural for a father to lose his tranquility of mind. Hence, if such grief-stricken father had told the police that he would give the complaint afterwards, it was not unnatural or unusual. PW-6, who was posted at Shivoor Police Station, had also deposed about the fact that when the father was asked about the incident he had stated that he would lodge the complaint later on as he was disturbed. Two courts below have found the explanation given by the prosecution to be satisfactory and sufficient for a delay in complaint.[127]

(N) Bail And Anticipatory Bail In Dowry Cases

Section 498-A, IPC is incorporated by the Legislature basically in the interest of women and to safeguard them from harassment. But, it has become somewhat counter productive. In several cases, women are harassed arrested and humiliated on the complaints given under Section 498-A. I. P. C. The truth or otherwise of the allegations is subject to proof. For giving complaint absolutely no authentic and prima facie material like medical evidence is required, but no such complaints, in several cases, number of women are being arrested. In cases of arrest of married young women, they might face problems from their husbands and in-laws; in case unmarried women are arrested their marriage prospects would be badly affected and if Government servants are arrested their service prospects are affected. In the present case, only one woman is the alleged victim, but at least four women might have to go to jail even before trial, affecting their reputation. Subjecti ng them to rude treatment at Police Station etc. Only in cases where strong and authentic evidence like letters written by the accused -husband to the spouses or their parents etc. are available and where there is sufferance of serious injuries or death of the victim

[126] Brahm Singh Patwal v. State, 2008 Cr. L.J., 629. Uttrakhand HC
[127] Sahebrao and anr. v. State of Maharastra, 2006 (2) RCR (Criminal) 855 HC.

only, perhaps; it is desirable to refuse anticipatory bail, that, too for the accused-husband.[128] These are the general consideration for refusing bail. They are:

(i) The likelihood of the accused person absconding.

(ii) If the alleged offence is likely to be continued or repeated.

(iii) If there is danger of tampering with evidence.

(iv) If there is the danger of tutoring or intimidating witness.

(v) If the accused is guilty of an offence punishable with death or imprisonment for life.

(vi) If the accused had been previously convicted on two or more occasion of a non-bailable and cognizable offence.

Besides these general consideration taken into account by the courts while granting and refusing bail in cases of cruelty and dowry death. Some cases are discussed below in which bail was granted.

It has been observed that, "There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence. It is necessary for the Courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail, they are:

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;

2. Reasonable apprehension of tampering of the witness or apprehension of threat to the complaint;

3. Prima facie satisfaction of the Court in support of the charge."[129]

The Apex court held that while granting the bail under section 304B and 498-A of IPC, the order should indicate reason for grant of bail particularly where offence was serious and High Court must mention the facts and reasons while granting the bail under the circumstances and also must mention that what was the stand of state, bail should be granted with the application of judicial mind.[130]

Further it has been held by Supreme Court that where the accused aged 79 years and 75 years, both are ready and willing to co-operate with investigation bail is allowed.[131]

[128] Kamireddy Mangamma Reddy & ors. v. State of A.P., 2008 Cri. L.J. 1083.
[129] Bimal Kumar Khetan & Anr. v. State of Orissa, 2007, Cr. L.J. 958.
[130] Gajanand Agarwal v. State of Orissa, 2006(4) RCR(Cri.) 311 SC
[131] Pandurang Baliramji Kharad v. State of Maharastra, 2006(2) RCR (Criminal) 61 SC.

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V. CONCLUSION AND SUGGESTIONS

According to Hindu mythology, marriages are made in heaven indeed, but mothers-in-law, sisters-in-law, husbands and other relatives are being increasingly involved in the breaking of the wedlock for the lust of dowry. Dowry death, murder, suicide, and bride burning are symptoms of peculiar social malady and are an unfortunate development of our social set up. During the last few decades India has witnessed the black evils of the dowry death system in a more acute form in almost all parts of the country since it is practised by almost every section of the society. It is almost a matter of day -to-day occurrence that not only married women are harassed, humiliated, beaten and forced to commit suicide, leave husband, etc., tortured and ill treated but thousands are even burnt to death because parents are unable to meet the dowry demands of in-laws or their husbands.

It is quite apparent that the new member of the family may have little volition to exercise and in such a state of affairs cannot regard her own things to be hers. Such treatment finds roots in the traditional Hindu belief that children are the 'property' of their parents. Therefore, along with the son, his bride is also treated as the property of the family where the dowry she brings is utilized as per the wishes of the in -laws and in most cases for marrying their daughter, leaving the bride completely at the mercy of the husband and his kin. Very often dowry is regarded as more important than th e girl herself. Little thought is given to her procreative power which seemed to have been the original basis of marriage. She is increasingly being viewed as a convenient tool of amassing recurring wealth and fortune. As already stated, dowry demands very often continue to be made even after the solemnization of marriage and an unfulfilled demand may result in the continual harassment of the bride and even death.

When the humanity marched in the twentieth century with the slogans of equality of law and equal protection of laws, such pitiable, miserable and appalling was her condition that these slogans have no meaning for her, with the result that laws of protective discrimination have to be enacted so that equality and equal protection of laws have some meaning for her.

We come across the reports regarding dowry deaths, mentioned in the newspapers daily. An accurate picture is difficult to obtain, as statistics are varied and contradictory. In 1995, the National Crime Bureau of the Government of India reported about 6,000 dowry deaths every year. In 2007 dowry deaths under Section 304B of IPC have been reported total of 8093 by National Crime Record Bureau, New Delhi. A more recent police report stated that dowry deaths had risen by 170 percent in the decade to 1997. All of these official figures are considered to be gross understatements of the real situation.

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Unofficial estimates cited in a 1999 article by Himendra Thakur "Are our sisters and daughters for sale?" put the number of deaths at 25,000 women a year, with many more left maimed and scarred as a result of attempts on their lives. Some of the reasons for the under-reporting are obvious. As in other countries, women are reluctant to report threats and abuse to the police for fear of retali ation against themselves and their families. But in India there is an added disincentive. Any attempt to seek police involvement in disputes over dowry transactions may result in members of the woman's own family being subject to criminal proceedings and p otentially imprisoned. Moreover, police action is unlikely to stop the demands for dowry payments.

Many of the victims are burnt to death—they are doused in kerosene and set on fire. Routinely the in-laws claim that what happened was simply an accident. The kerosene stoves used in many poorer households are dangerous. When evidence of foul play is too obvious to ignore, the story changes to suicide—the wife, it is said, could not adjust to new family life and subsequently killed herself. Research done in t he late 1990s, revealed that many deaths are quickly written off by police. The police record of interview with the dying woman—often taken with her husband and relatives present—is often the sole consideration in determining whether an investigation should proceed or not. As Vimochana 6 (a) was able to demonstrate, what a victim will say in a state of shock and under threat from her husband's relatives will often change markedly in later interviews.

Of the 1,133 cases of "unnatural deaths" of women in Bangalore in 1997, only 157 were treated as murder while 546 were categorised as "suicides" and 430 as "accidents". But as Vimochana activist V. Gowramma explained: "We found that of 550 cases reported between January and September 1997, 71 percent were closed as 'kitchen/cooking accidents' and 'stove - bursts' after investigations under section 174 of the Code of Criminal Procedures." The fact that a large proportion of the victims were daughters-in-law was either ignored or treated as a coincidence by police.

Young married women are particularly vulnerable. By custom they go to live in the house of their husband's family following the wedding. The marriage is frequently arranged, often in response to advertisements in newspapers. Issues of status, caste and religion may come into the decision, but money is nevertheless central to the transactions between the families of the bride and groom.

The wife is often seen as a servant, or if she works, a source of income, but has no special relationship with the members of her new household and therefore no base or support. Some 40

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percent of women are married before the legal age of 18. Illiteracy among women is high, in some rural areas up to 63 percent. As a result they are isolated and often in no position to assert themselves.

Demands for dowry can go on for years. Religious ceremonies and the birth of children often become the occasions for further requests for money or goods. The inability of the bride's family to comply with these demands often leads to the daughter-in-law being treated as a pariah and subject to abuse. In the worst cases, wives are simply killed to make way for a new financial transaction—that is, another marriage.

A recent survey of 10,000 Indian women conducted by India's Health Ministry found tha t more than half of those interviewed considered violence to be a normal part of married life—the most common cause being the failure to perform domestic duties up to the expectations of their husband's family. The underlying causes for violence connected to dowry are undoubtedly complex. While the dowry has roots in traditional Indian society, the reasons for prevalence of dowry -associated deaths have comparatively recent origins.

A number of studies have shown that the lower ranks of the middle class are particularly prone. According to the Institute of Development and Communication, "The quantum of dowry exchange may still be greater among the middle classes, but 85 percent of dowry death and 80 percent of dowry harassment occurs in the middle and lower stratas." Statistics produced by Vimochana in Bangalore show that 90 percent of the cases of dowry violence involve women from poorer families, who are unable to meet dowry demands.

There is a definite market in India for brides and grooms. Newspapers are filled with pages of women seeking husbands and men advertising their eligibility and social prowess, usually using their caste as a bargaining chip. A "good" marriage is often seen by the wife's family as a means to advance up the social ladder. But the catch is that there is a price to be paid in the form of a dowry. If for any reason that dowry arrangements cannot be met then it is the young woman who suffers.

One critic, Annuppa Caleekal, commented on the rising levels of dowry, particularly during the l ast decade. "The price of the Indian groom astronomically increased and was based on his qualifications, profession and income. Doctors, charted accountants and engineers even prior to graduation develop the divine right to expect a 'fat' dowry as they bec ome the most sought after cream of the graduating and educated dowry league."

The other side of the dowry equation is that daughters are inevitably regarded as an unwelcome burden, compounding the already oppressed position of women in Indian society. There is a

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high incidence of gender-based abortions—almost two million female babies a year. One article noted the particularly crass billboard advertisements in Bombay encouraging pregnant women to spend 500 rupees on a gender test to "save" a potential 50,000 rupees on dowry in the future. According to the UN Population Fund report for the year 2000, female infanticide has also increased dramatically over the past decade and infant mortality rates are 40 percent higher for girl babies than boys.

In many parts of our country, even today, the expectant mothers with all their expectations are afraid to give birth to a girl child, as she is threatened of the consequences if a baby girl is born. The girl child brings to the family a fear of harassment of dowry.

Critics of the dowry system point to the fact that the situation has worsened in the 1990s. As the Indian economy has been opened up for international investment, the gulf between rich and poor widened and so did the economic uncertainty facing the majority of people including the relatively well-off. It was a recipe for sharp tensions that have led to the worsening of a number of social problems.

One commentator Zenia Wadhwani noted: "At a time when India is enjoying unprecedented economic advances and boasts the world's fastest growing middle class, the country is also experiencing a dramatic escalation in reported dowry deaths and bride burnings. Hindu tradition has been transformed as a means to escaping poverty, augmenting one's wealth or acquiring the modern conveniences that are now advertised daily on television."

Statistics paint a terrifying picture of married women. In India woman is burnt alive or beaten to death or forced to commit suicide every six hours. As many as 6500 women are killed every year. Twenty out of every 100 married women are beaten daily. An outstanding number of women are battered about 3-4 million. "Battering at home constitutes the most universal form of violence against women" says the United Nations. Despite all these cruelties towards women only one in 10 cases is reported.

Domestic violence against women is certainly not isolated to India. The official rate of domestic violence is significantly lower than in the US, for example, where, according to UN statistics, a woman is battered somewhere in the country on average once every 15 seconds. In all countries this violence is bound up with a mixture of cultural backwardness that relegates women to an inferior status combined with the tensions produced by the pressures growing economic uncertainty and want.

An idea about the gravity of the problem can be had from the large number of reported cases of cruelty and torture by the National Record Bureau during 1997 the number was 36592, in 1998

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- 41376 and 1999 – 43823, in 2007 -75930 respectively that demonstrate an increase of 5.9 per cent.

The object of this chapter is to punish a husband and his relatives who torture and harass the wife with a view to coerce her or any person related to her to meet any unlawful demands or to drive her to commit suicide. To make the offence more deterrent, Section 498A prescribes a sentence of three years and also fine for the husband or the relatives of the husband of a woman who subject her to cruelty.

In India, however, where capitalism has fashioned out of the traditions of dowry a particularly naked nexus between marriage and money, and where the stresses of everyday life are being heightened by widening social polarisation, the violence takes correspondingly brutal and grotesque forms.

The anti-dowry laws in India were enacted in 1961 but both parties to the dowry—the families of the husband and wife—are criminalized. The laws themselves have done nothing to halt dowry transactions and the violence that is often associated with them. Police and the courts are notorious for turning a blind eye to cases of violence against women and dowry associated deaths. It was not until 1983 that domestic violence became punishable by law.

In the wake of the recommendations made by the 91st report of the Law Commission in August 1983 some changes were introduced in the I.P.C. 1860, Cr. P.C. 1973 and the Evidence Act, 1872 to deal more effectively with dowry deaths and cruelty to married women. For violence at home, behind closed doors, by husband and his close relatives had to be dealt on different place. 11 It was by the Criminal Law (Second Amendment) Act No. 46 of 1983, which received the President's assent on 25 December 1983, that section 498 -A was inserted in the Penal Code. The statement of objects a nd reasons of the said amending Act referred to the increasing number of dowry deaths, which was a matter of serious concern. The extent of the evil was commented upon by the joint committee of both the Houses to examine the working of the Dowry Prohibition Act 1961. It was found that cases of cruelty by the husband and relatives of the husband which culminate in suicide by, or murder of, the hapless woman concerned, constitute only a small fraction of cases involving such cruelty. An offence in the nature of abetment to commit suicide may also attract the provisions of section 306, IPC, which was already on the statue book. It was, therefore, proposed to suitably amend the Indian Penal Code, Code of Criminal Procedure 1973 and the Indian Evidence Act 1872 to effectively deal with not only the cases of dowry deaths, but also the cases of cruelty to married women by their in -laws. It was with a view to achieving this object that, inter alia, Section 498 - A was inserted in the

Indian Penal Code.

During the last three decades, India has witnessed the emergence of three great social evils, namely:

(a) the dowry system

(b) the cruelty and harassment to women

(c) the resultant suicide.

Incorporation of Section 304B in the Indian Penal Code and Section 113 B in the Evidence Act

In view of the increasing dowry deaths and the demand of the society to check such inhuman acts being meted out upon women, in 1986 a new offence known as "Dowry Death" was inserted in the Indian Penal Code as Section 304B by the Dowry Prohibition (Amendment) Act, 1986 with effect from November 19, 1986. The provisions under Section 304B, Indian Penal Code are more stringent than that provided under Section 498A of the Penal Code. The offence is cognizable, non -bailable and triable by a court of Session. In view of the nature of the dowry offences that are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence necessary for conviction is not easy to get.

Accordingly, the Amendment Act 43 of 1986 h as inserted Section 113 B in the Evidence Act, 1872 to strengthen the prosecution hands by permitting a certain presumption to be raised if certain fundamental facts are established and the unfortunate incident of death has taken place "within seven years of marriage". The period of seven years, has been considered cut off period for the reason that a marriage is complete after the bride and bride-groom have taken seven steps before the sacred nuptial fire. One step being considered equivalent to one year. The period of seven years has also been fixed for bigamy under Section 494, IPC to exonerate the husband or wife for marrying again during the lifetime of such husband or wife, if at the time of the subsequent marriage the other party is continuously a bsent from such person.

Therefore, the period of seven years, as explained by the Supreme Court in Iqbal Singh 13, is considered to be turbulent one after which the legislature assumed that the couple would have settled down in life. Section 113B of the Evidence Act 14 states that if it is shown that soon before the death of a woman such woman has been subjected to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person has caused the dowry death under Section 304B, IPC. The burden of proof of innocence accordingly shifts on defence.

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(A) Constitutional Validity of Amendments

The amendments to Indian Penal Code for incorporating Section 304B and 498A have been declared valid by various courts. In Polavarpu Satyanarayana v. Soundaravalli, the husband who was prosecuted under Section 498A, I.P.C. for subjecting his wife t cruelty, challenged the very definition of 'cruelty' as given under the Section as 'arbitrary' and 'delightfully vague', and as such ultra vires of the fundamental right to equality, guaranteed under Article 14 of the Constitution.

The Andhra Pradesh High Court while admitting that the expression 'cruelty' was not capable of precise definition, held that there was no vagueness in its meaning and as such it is not ultra vires of the Constitution. Each case has to be adjudged in the light of the facts of that particular case in the historical circumstances which necessitated the amendment. Similarly, with regard to the second contention that some relatives, i.e., in laws, cannot be singled out by legislation for punishment and as such new provisions violated the fundamental right to equality, the court replied in the negative. Since dowry deaths are a hazard faced by woman, the husband and relatives may be treated as a class. This classification is not unreasonable and is intended to achieve the object of the new law.

In case of death of a woman caused under the above circumstances, the husband and the husband's relatives will be presumed to have caused a 'dowry death' and be liable for the offence, unless it is proved otherwise. This is to say, the burden of proof shifts on the part of the accused to prove his innocence unlike other offences wherein the accused is presumed inn ocent. Clause (2) prescribes a minimum punishment of 7 years of imprisonment which may extend up to life imprisonment in case of dowry death. An important feature of crimes that led to dowry deaths are that they are invariably committed within the safe precincts of home and the culprits are mostly close relations – brother-in-law, mother-in-law and sister-sin-law living under the same roof. The phenomenon is a by-product of the exploitation of newly married women by husbands and their relations in direct connivance with each other. The family ties are so strong that the truth will never come out and there would be no eye witness to testify against the guilty in a court of law.

The circumstances are hostile to an early or easy discovery of the truth.

Punitive measures may be adequate in their formal content, but their successful enforcement is a matter of great difficulty. This is why guilty men go scot-free and are seldom brought to book and punished.

To curb the practice of dowry death there is an urgent need to enforce effectively the punitive

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and preventive measures with iron hands. At the same time, the law must be made more effective. Police should be more watchful with respect to such offences, as pointed but by the Supreme Court in V.N. Pawar v. State of Maharashtra-

…. Wife-burning tragedies are becoming too frequent for the country to be complacent. Police sensitization mechanisms which will prevent the commission of such crimes must be set up if these horrendous crimes are to be avoided. Likewise, special provisions facilitating easier proof of such special class of murders on establishing certain basic facts must be provided for by appropriate legislation. Justice Dr. A.S. Anand in Kundula Bala Subrahmanyam observed:

"There has been an alarming increase in cases relating to harassment, torture, abetted suicides and dowry deaths of young innocent brides. This growing cult of violence and exploitation of the young brides, though keeps on sending shock waves to the civilized society whenever it happens, continues unabated. There is a constant erosion of the basic human values of tolerance and the spirit of "live and let live". Lack of education and economic dependence of women have encouraged the greedy perpetrators of the crime. It is more disturbing and said that in most of such reported cases it is the woman who plays a pivotal role in this crime against the younger woman, with the husband either acting as a mute spectator or even an active participant in the crime, in utter disregard of his matrimonial obligations. In many cases, it has been noticed that the husband, even after marriage, continues to be 'Mamma's baby' and the umbilical cord appears not have been cut even at that stage!".

There is no denying the fact that women are still the oppressed class and therefore need protective laws and procedures but what is disturbing is that some laws and procedures have a potential of misuse. Barbarity against married women in India despite stringent laws is one aspect-broadly discussed, debated, analyzed and often becoming headlines.

There is another aspect too of the issue -equally sad and disturbing, but undiscussed, undebated, unanalysed, uncared and unheeded by those who matter. And that is – gross and growing misuse of the anti-dowry laws by estranged wives and their relatives to falsely implicate the innocent husbands and their relatives." There is a growing tendency among women to implicate a large number of members of the husband's family to teach them a lesson. Reason is simple–larger the number of members implicated, higher the chances to extract hefty amount to "settle" the matter.

Many husbands and their relatives are being harassed by unscrupulous wives and their ill-advised parents by involving dowry related laws to the verge of, or in fact, driving them to suicide. Special statutory provisions are aimed at guarding the interests of wives but unfortunately, they are double -edged weapons and if misused they cause a lot of harassment to

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the non-compliant. Not that alone, the differences become irreconcilable and there are no chances left of rapprochement between the parties. So great is the fear of being implicated and harassed by a women on a false dowry charge that the husband and his parents prefer to say good-bye and end the marriage rather than patch up and subject themselves to the risk of getting into trouble and lose their respect and mental peace, and these fears are not wholly unfounded.

For the fault of the husband, the in-laws or the other relatives cannot, in all cases, be held to be involved in the demand of dowry. In cases where such accusations are made the overt acts attributed to persons other than husband are required to be proved beyond reasonable doubt. By mere conjectures and implications such relatives cannot be held guilty for the offence relating to dowry deaths. A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry-death which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused.

The provision of the Dowry and Cruelty laws (Criminal Laws) were with good intentions but the implementation has left a very bad taste and the move has been counterproductive. There is a growing tendency amongst the women which is further perpetuated by their parents and relatives to rope in each and every relative including minors and even school going kids nearer or distant relatives and in some cases against every person of the family of the husband whether li ving away or in other town or abroad and married sisters, unmarried sisters, sister-inlaws, unmarried brothers, married uncles and in some cases grand-parents or as many as 10 to 15 or even more relatives of the husband. Once a complaint is lodged under the Dowry and Cruelty laws (Criminal Laws), whether there are vague,

unspecific or exaggerated allegations or there is no evidence of any physical or mental harm or injury inflicted upon woman that is likely to cause grave injury or danger to life, limb or health, it comes as an easy tool in the hand of the police to bound them with the threat of arrest making them run here and there and force them to hide at their friends or relatives houses till they get anticipatory bail as the offence has been made cognizable and non-bailable. Thousands of such complaints and cases are pending and are being lodged day in and day out.

No doubt, there has been awareness amongst married women regarding the rights to seek grievance for cruelty committed on them by their husbands and in-laws. However, at the same time, cases of misuse of this provision have come up particularly cases of implication of all

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members of the husband's family as accused. It is true that in many cases the women are being harassed but it is not so in all cases as it has been observed by Hon'ble Apex Court in Kansraj v. State of Punjab, that:

"for the fault of the husband the in-laws or the other relatives cannot in all cases be held to be involved. The acts attributed to such persons have to be proved beyond reasonable doubt and they cannot he held responsible by mere conjectures and implications. The tendency to rope in relations of the husband, as accused has to be curbed."

Further, in State v. Srikanth, the Karnataka High Court observed that:

"Roping in of the whole of the family including brothers and sister-in-laws has to be depreciated unless there is a specific material against these persons; it is down right on part of the police to include the whole of the family as accused."

There may be many reasons where the women may feel harassed and tortured such as marriage against her wishes, financial stress, lack of privacy due to joint family, incompatibility, drinking, smoking, sexual dissatisfaction or other habits of the husband, psychopathi c problems or not begetting children but the ultimate recourse to come out of these problems is normally the accusation for harassment and demand of dowry by husband and her in-laws.

In scores of cases across India, the courts have witnessed misuse of dowry prohibition laws, while deciding disputes of domestic nature. The law, designed to help women regain social and economic empowerment in a highly patriarchal society, has been misused in several cases, as is observed even by the apex court. As was in the case of Preeti Gupta v. State of Jharkhand (2010) and Sushil Kumar Sharma v. UOI (2005), where not only the husband but all his immediate relations were implicated under false charges. Such acts of 'over-implication,' are often resorted with the sole motive to wreck personal vendetta, unleashing a sort of 'new legal terrorism.'

Scores of cases have come to light where the greed for 'quick money' has lured young women to slap false cases against the in -laws, whose life-long earnings and savings are claimed by the bride and her family. At the same time , women are victimised in a patriarchal system. The law is double -edged and needs a re-think. Or, should be used with utmost care.

The irony of Dowry Prohibition Act was exposed by an interesting case when the chief judicial magistrate of Noida ordered to book a woman, Natasha Jayal, a call centre employee, and her parents for giving dowry under section 3 of Dowry Prohibition Act, in 2008. The action was taken on her husband Namit Juyal's complaint, who, harassed by his wife's complaint of dowry harassment case which claimed that her parents paid Rs 10 lakh in dowry to Namit. He was

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arrested and jailed as per law.

Under RTI he demanded to know under what section he had been jailed. When he learnt that on a mere verbal complaint of Natasha, without any investigation he had been arrested, his lawyer slapped the very same section against Natasha's family - for giving dowry. He also demanded investigation as to how her father could give money that was beyond his means. Under section 3 of DPA, giving and taking dowry, both are criminal offence.

Also, the conviction rate in dowry cases remains 4 to 5 %, a National Family and Health Survey shows that only 2% distressed women seek institutional intervention, putting a serious question mark on the law and the manner of its implementation.

The object of the Dowry and Cruelty laws (Criminal Laws) is to strike at the roots of dowry menace. But by misuse of the said provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not as an assassin's weapon. If the cry of "wolf' is made too often as a prank, assistance and protection may not be available when the actual "wolf' appears. May instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial.

Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra -vires, does not give a licence to unscrupulous persons to wreak personal vendetta or unleash harassment. Ther e is a rapidly accelerating social evil in our societies, namely the misuse of the Dowry and Cruelty laws (Criminal Laws), which were originally meant to act "as a shield" for the protection of harassed women.

Nowadays, the educated urban Indian women have turned the tables. They have discovered several loopholes in the existing Indian judicial system and are using the dowry laws to harass all or most of the husband's family that includes mothers, sisters, sister-in-law, elderly grandparents, disabled individuals and even very young children. We are not only talking about the dowry deaths or physical injury cases but also dowry harassments cases that require no evidence and can be filed just based on a singly - sentence complaint by the wife. Dowry is being ma de a scapegoat for all problems in the family. A man whose wife is not happy in her marriage for whatever reasons is placed in a very vulnerable position.

True, in many of these cases a women may be a victim of dowry harassment but surely not all cases of unhappy or strained relations can be attributed to dowry demands. A women may feel harassed and frustrated for many other reasons like, lack of privacy or independence in joint

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family, incompatibility, drinking, smoking or other habits of the husband, financial stresses, psychopathic problems and so on. Why then should dowry be made a scape-goat for every unpleasant situation.

Once a family has been tortured by using the Dowry and Cruelty laws (Criminal Laws) weapon, the chances of reconciliation between the husband and wife is nil. The divorce that ensues is another mode of harassment for the already impoverished husband because he is forced to pay the hefty alimony/ maintenance demanded by his wife. Families who have never spent a single minute with lawyers, courts and police, are forced to run frantically from pillar to post to defend an alleged crime which they never committed and they are bound to get depressed with the judiciary and police system. A lot of productive time, energy and money of the accused family are spent in proving themselves innocent. Eventually, the institution of marriage might become more like a business transaction in which a man and wife will have to document each and every agreement in writing in front of the lawyers.

There are multifarious ways in which cruelty is committed on the wives if one make a critical survey of the cases that come to the police station as well as women's cell daily. In majority of these cases women agree to compromise with their husband as they want to patch up with the erring husband for the sake of social stigma for being a deserted wife or it is for the sake of children.

(B) Suggestions

The need of the hour is to replace hatred, greed, selfishness and anger by mutual love, trust and understanding and if women were to receive education and become economically independent, the possibility of this pernicious social evil dying its natural death may not be a dream. As regards the implementation of the dowry prohibition laws, it is often alleged that anti-dowry legislation is observed more in breach than in implementation. Be that as it may, but the fact remains that dowry being a socio-legal problem, it cannot be tackled by law alone unless members of the society come forward and actively cooperate with the law-enforcement agencies to abate this menace. There is also need to create social awareness and mobilise public opinion against dowry through an intensive educational programme at all levels, particularly in the rural pockets. More recently, a number of vo luntary nongovernmental agencies and social organisations are doing a commendable work in helping the dowry victims and exposing the perpetrators of dowry crimes with the help of community assistance and guidance, the legal aid workers including the law teachers and students should also take initiative in dowry eradication campaign through an intensive legal literacy programme not only in urban cities and towns but

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in remote village areas as well.

In view of the foregoing discussion and observations, the following suggestions are made to modify the relevant provision by means of suitable amendments and by sensitizing the police, judiciary and to some extends the women and the society at large.

1. Appointment of Dowry Prohibition officer :- Preventive steps like appointing Dowry Prohibition Officer should be immediately undertaken by all the State Government. The duty of the officer should also include creating awareness against the practice of dowry among the public by conducting seminars, etc. Some state government had created the institution of Dowry Prohibition Officers, to prevent giving or taking of dowry, but in several states not a single case has ever been reported by DPOs. The institution like DPO should be strengthened for controlling dowry deaths.

2. Speedy clearance of Dowry cases:- Under the directive of the Supreme Court, these cases should be cleared within six months. Instead, some of the cases have been lingering for 12 to 16 years, since the arrests made under dowry related sections are nonbailable. Those who lack resources to get legal aid remain locked in jail for years. Most of these victims are senior citizens.

3. Legal help to victims:- Since most victims cannot interpret the law, while many accused had not even 'heard of' 498 A & 304B till they found themselves behind bars. Legal help may be provided to protect the interest of thousands of accused and arrested men and their family members.

4. Using of dowry prohibition laws with double edge:- Under section 3 of DPA, giving and taking dowry, both are criminal offence. The very same section can be slapped against bride family- for giving dowry. Scores of cases have come to light where the greed for 'quick money' has lured young women to slap false cases against the in -laws, whose life-long earnings and savings are claimed by the bride and her family. At the same time , women are victimised in a patriarchal system. The law is double - edged and needs a re-think. Or, should be used with utmost care. If greed is to be treated under a criminal law, it should be understood that it is not monopolised by the groom's family alone.

5. Re think on Legal terrorism of dowry sections under IPC:- The need to discourage unjustified and frivolous complaints by making the dowry offence under the provisions of the Code of Criminal Procedure (CrPC) as compoundable and bailable instead of non-compoundable and non-bailable.

It is not inclined to take a view that dilutes the efficacy of dowry related sections to the extent

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of defeating its purpose- to protect women against atrocities. 'A balanced and holistic view has to be taken on weighing the pros and cons.

6. Handing the cases of dowry demand by the civil court :- In the cases of cruelty and harassment for the demand of dowry the Investigating Agency Should Be Civil Authorities. In view of the sensitivity of the offence and in order to avoid clumsiness in human relations it is required that the investigation into these offences be vested in civil authorities like Executive Magistrates. This would enable the civil court to sort out matters of over-reach and over implications with the added advantage of exploring the possibility of matrimonial reconciliation.

In the event, the Magistrate decides that a particular case falls in the realm of criminal law without the possibility of resuscitating the matrimonial relationship, he may pass an appropriate order for its trial by the criminal court.

7. Creating awareness about penal provisions:- It has suggested that there is a dire need to create awareness about the penal provisions of the section amongst the poor and hapless rural women 'who face quite often the problems of drunken misbehaviour,' by having 'easy access' to the Taluka and District level Legal Services Authorities and/or credible NGOs. The lawyers and the police should also be reminded what is expected of them 'morally and legally.'

8. Declare Dowry Killing a social stigma:- Purely a punitive approach towards the dowry issue is not appropriate. Some kind of social stigma is needed to be attached to it. Dowry killing is a crime of its own kind where elimination of bride becomes immediate necessity so that the groom can again be sold in the marriage market and could fetch more money. Eliminating which seems to provide a solution towards resolving the problem. Social reformist and legal jurists may evolve machinery for debarring such a boy from remarriage irrespective of the member of family who committed the crime and in violation penalize the whole family including those who participate in it.

9. Education of women to curb dowry deaths:- A social movement of educating women of their rights particularly in rural areas is needed. It also seems that once education and economic independence for women are achieved, the evil of dowry would vanish itself .For better results a publicity drive should also be started to inform people at every level about the nature of legal control of dowry. A major thrust to enforcement schemes should also be given. Awakening of the collective consciousness is the need of the day.

10. Responsibility of courts:- Courts have to assume a greater responsibility and it is expected that the courts would deal with such cases in a more realistic manner and would not

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allow the criminals to escape on account or procedural technicalities.

11. NGO and Police Partnership:- Dowry deaths happened when suffering of women crosses the limit of tolerance. In view of the growing cases of domestic violence against women, the police leadership at the state level should take adequate measures to sensitize and to motivate the police staff at district level and to co - ordinate with local NGO's. Govt. should not interfere in the working of their NGOs and these NGOs may be given legal status for the purpose of providing helping hand to women. Further, I suggest that :

(a) The NGO-Police partnership experiment can be very effective in proactive policing. Many more such centers for NGOs, particularly for counselling the female victims, need to be opened in all parts of the country.

(b) The police are callous in their attitude towards women. They refer the FIRs from one police station to another police station, without taking action. State Commissions for women should be given powers to intervene in such situation and police should be sensitized to deal with women's issues and trained to be sympathetic to women victims. Entire investigative and trial procedure should be reviewed.

(c) To contain police atrocities in the police stations, we should ensure amendments in the police procedures that whenever a woman victim goes to the police station, a woman constable or a woman NGO should be called in before registering the FIR. If there is no female in the police station, police should call in a female witness. Necessary legal/administrative provisions should be introduced prescribing punishment to police officials for refusing to register FIRs. Courts should be empowered to take cognizance of the matter and proceed further.

(d) Police stations need to be made women friendly, the process starting from top to bottom. Police stations should organise a Women's Week every year, as an educative-cum-goodwill programme for NGOs and other concerned. Political interference with police is a hindrance to the impartial working.

(e) Cases have occurred when reports of dowry torture/death have been deliberately delayed/ignored by the concerned police officers. It appeared, as if, they were taking sides with the offenders, reportedly acting under the influence of bribe or political pressures. Police and judiciary should also be made responsible for societal awareness of women's problems. All personnel involved in crime against women (Cell) should be welfare -oriented. Community policing and the involvement of local NGOs at the very initial stage, could reduce crime against women.

(f) The statements of parents and relatives recorded at the inquiry stage may not reveal the

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true picture, when taken immediately after the accident. At times, short statements were recorded by police without the knowledge of the victim, and in connivance with in - laws. Here the role of NGO cannot be overemphasized. If one of the representatives of the local NGO, working in the field was made to remain present during the recording of statements, such manipulation could be negated.

(g) Special 'Mahila police inspector' be appointed, after appropriate training, under the directives from the Home Ministry of the Government, to deal with crimes against women. Similarly, special mahila police prosecutors should be appointed in every family court. Police recruitment must include evaluation of the attitudinal orientation of the candidate vis-a-vis gender so that crime against women can be handled with sensitivity. The complainant should be informed of the outcome or the progress of the case over phone or through a letter.

This exercise would in still a lot of confidence and satisfaction in the complainant.

(i) Normally the FIR in dowry case is being dictated by the parents of the victim or the police officials. The victim should be allowed to write her own compliant in the presence of an NGO and video-recording of the complaints, should be made mandatory and it should be treated as FIR.

12. Establishment of the family courts:- The family courts have not been established by most of the state governments though the Family Courts Act was enacted in 1984 with a view to promoting conciliation and securing speedy settlement of family disputes. Family Courts should be accessible and have jurisdiction to try all issues pertaining to the family unit, from dowry harassment to domestic violence.

13. Videography of the dying declaration:- Videography of the dying declaration is strongly recommended. The Dowry (Prohibition) Act does not take into account the social realities of a woman's life. The procedural law should be changed to make it compulsory to record the statement of a victim of bride burning immediately. The dying declaration should be recorded by the Superintendent of Police, in case the magistrate does not reach in time.

14. Women's Commissions with magisterial powers:- When an action is initiated under Section 164 Cr. P.C., the dying declaration of the victim should be taken in presence of a Magistrate. Women police should be given a free hand for immediate, on the spot arrest and the Women's Commissions with magisterial powers must be set up in all states to enforce justice. Such Commissions would be of great help to women in distress. This will also instill fear in the criminals, and act as deterrent. The manner and method in which accident cases relating to women were handled u/s. 174 of the Cr. P.C. needed urgent attention as the statements of

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parents and relatives more often than not created a second set of evidence. Information of accidental injury or death was merely recorded as an entry in DDR, without recording FIR simultaneously at the first instance. Much time was lost in the preliminary verification and before FIR was registered. This led to destruction of evidence in a large number of cases.

15. Appointing an advisor to the police department to handle women's issues:- At present the police department is primarily dominated by men; women are side lined to occupy subsidiary positions. Even though senior lady police officer behaves and acts professionally, objectively and in a socially acceptable manner.

16. Sensitization of police:- (a) The provisions of the Dowry Prohibition Act should be strictly implemented and the police should be directed to immediately act on dowry complaints and conduct search and recovery of dowry.

(b) In matrimonial matters, there are many important limitations that act adversely upon the victims. The limitation of language and limitation of time are two serious impediments in law enforcement. Women victims, more often than not, are mentally tortured by obscene language and ill-conceived gestures. When a woman goes to a police station, in a traumatic condition, she needs compassion. Polite and sympathetic language need to be used while dealing with her. Regarding the time factor, matrimonial cases decided after four to five years of filing of petition, act very harshly on the victim. The third issue relates to compensation. Divorce cases should lead to adequate compensation. Besides, women are also facing problems due to paucity of courts in the vicinity where cases could be filed.

(c) In many cases of dowry whole family members of the husband including aged, sick and even in firm persons are involved. The court must use The Criminal Procedure Code provision for granting exemption from physical appearance to the accused on hearing so that to minimize the harassment physically, as well as financially to the accused.

(d) The collateral relatives of the husband should not be put behind bars because a lot of the relatives, who are accused of the crime, are sometime minor, infirm, old age and very distant relatives, who has nothing to do with dowry and cruelty to the victim and moreover, they are not even in town / country at the time of reported harassment.

17. Establishment of reconciliation centre :- A widespread network for the counseling services to the families should be established in a large number of states. In these centres there should be a panel of experts consisting of social worker, doctor and a psychiatric who not only assess the well-being of the battered women but also go on investigating her disputes. Further, I would like to suggest that:

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(a) A permanent Statutory Conciliation Agency should be set up to deal with cases of matrimonial breakdown to attempt conciliation of the crucial matrimonial issues like maintenance, custody of minor child, partition of family property, even before they reach the Family courts so that, if possible, the family can be saved from ruination and minor differences can be sorted out by sympathetic judicial officers. Only women judges need to be appointed on this statutory body. Lord Denning while disposing of a matrimonial appeal had observed that "Presiding judge of a matrimonial court should not act like a microscope but should act as a stethoscope so that the judge could feel the rival matrimonial parties and try to reconcile them to unite as a happy family".

(b) Married women, who are supposed to look after their family children and contribute to the welfare of the family are made to run from one court to another court either as complainant's or as accused persons. In order to deal with these cases in a better way, reconciliation should be done by a judicial officer and reconciliation centres should be constituted by the High Courts for this purpose. The Judicial Officers incharge of these conciliation centres may be given the power to recommend criminal prosecution in case they find reconciliation not possible between the parties.

(c) Emphasis should be given to counseling of the parties during the pre-litigation and litigation periods. However, reconciliation should not be sole objective of such counseling and it should be kept in mind that the aim of the legislation is to prevent domestic violence and not to keep the family unit together irrespective of the health and safety of the woman.

(d) A three-tier system must be introduced in place of the two tier system for dealing with women's issues. The tier must consist of teachers and professors as watchdogs to ensure effective implementation of character-building, education; the tier must include counsellors, especially, elderly persons and the tier should comprise setting up separate cells in all police stations, "manned" by sensitized persons to deal with women's issues.

(e) There is a need for installing Counselling Centre with well trained/sensitised counsellors in all police stations, so that women could speak out their grievances and seek appropriate intervention from them. This would facilitate delivery of justice to poor women victims. Such centres should be publicised so that public is aware as to where they should go for help.

(f) Before taking action in dowry cases, the woman should be subjected to counselling by some effective NGO, because several problems can be sorted out if the victim gets proper assistance, orientation and counselling. Counselling must be made a pre -requisite before initiation of criminal prosecution in cases registered under dowry prohibition laws, Powers for

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this purpose may be vested in a committee comprising women from Women Welfare Department and trained counsellors.

(g) There should be more support structures with counseling centers and NGO's that can support the women in times of such mental trauma or cruelty but in most cases, women reach out to voluntary associations and NGO's when chances of compromise or patching up are almost absent.

18. Deterrent Punishment for Dowry Deaths:- Amendment should be made in section 304B of the Indian Penal Code for providing deterrent punishment of Death Penalty in dowry death cases.

These are a few suggestions if considered by the law commission and incorporated in the Statue may go a long way in eradicating and preventing the crime of Dowry Deaths in India.

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