

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 4

2021

© 2021 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of any suggestion or complaint, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Dowry Prohibition

ROHIT PASRICHA¹

ABSTRACT

This article focuses on the prohibition of Dowry in India. Dowry is the things or money in Cash or in kind which is given by bride by her family before, at or after marriage. We know the number of the offences relating to Dowry increasing day by day by demand of Dowry. Dowry prohibition means to prohibit the provisions of dowry and make it punishable by enactment of Dowry prohibition act, 1961 which can be defined dowry and helps to prohibit dowry system and also gives relaxation from then offences committed related to dowry like sec304B of IPC and sec498A of IPC etc. Over 200 million women suffer from offences relating to Dowry and almost 10 million women are engaged with the dowry death also.

Marriage is considered as a very true relationship in the society but from time to time it converted into the business and to make only. There are some provisions which are given on the prohibition of Dowry under Dowry Prohibition Act, 1961 as sec.2, 3, 4, 6, 8, 8B, 9. The primary causes of demand of Dowry are poverty, illiteracy and family tradition etc. Education is important for each and every individual.

Keywords: *Dowry, Dowry prohibition, Healthy environment, other related safeguards like IPC, Code of criminal provisions, etc.*

I. INTRODUCTION

Dowry is a concept of ancient times which practice and prevailing in our country. So many women become victims of this cruel and illogical customs. To stop these crucial acts against women, the Parliament of India enacted Dowry Prohibition Act, 1961 which specifies all the provisions related to dowry like its definition, punishment, reliefs etc. The dowry system in India refers to the goods, cash, any property like movable as well as immovable property that the bride's family gives to the bridegroom, his parents or to his relatives. In others words dowry system in India refers to the goods or money for essential payment for any kind of gift given by bride's parents to the groom's family anything like gold, car, money in cash or kind, any kind of vehicle etc. at the time of marriage or before or after marriage is consider as dowry. The dowry system results in great financial burden on the bride's family and also leads to crime against women like emotionally abuse, physical torture or any kind of injury include physical,

¹ Author is a student at Law College Dehradun, Uttarakhand University, India.

mental or emotional injury and so on sometime dowry takes place as dowry death which is an offense punishable under Section 304-B of Indian penal code and Section 498-A. Dowry Prohibition act, 1961 define dowry as any kind of property given or agree to be given either directly or indirectly by one party in marriage to another party or parents of either party to another party at or before or after marriage but does not include dower or Mahr in case of person belongs to Muslim community under Muslim personal law. Dowry prohibition act, 1961 also includes penalty for the offence related to dowry in form of punishment as well as fine too.

Meaning of “Dowry” in India

Dowry generally means a transfer of property, gifts, money in cash or in kind at, before or after the time of marriage by parents to the husband or relatives of the bride.

In legal sense the definition of dowry is given under section.2 of the dowry provision act, 1961 as:-

Dowry means any kind of property valuable security given or agreed to be given either directly or indirectly

1. by one party to a marriage to another party to a marriage.
2. by the parents of either party or by any other person to a marriage at or before or any time after the marriage but does not include Dower or Mahr in case of person to whom the Muslim personal law applies.

Objectives of Prohibition of Dowry

There are some objectives for the enactment of dowry prohibition act, 1961. The main aim of dowry prohibition act is to:-

1. Prohibit the practice of Dowry.
2. Penalize the offences related to demand of Dowry.
3. To safeguard the children welfare and integrity of family.
4. To safeguard the interest of people and their respect in the society.
5. To promote deterrents against false complaints and arrest without investigation.
6. To create awareness about cruelty, harassment related laws.
7. To promote marital and family harmony.

II. LEGAL PROVISIONS FOR THE PROHIBITION OF DOWRY IN INDIA

(A) Dowry Prohibition Act, 1961

Provisions for demand of under Dowry Prohibition Act enacted by parliament for the prohibition of Dowry as:-

Dowry prohibition act establish in India on 1 may 1961 intended to prevent the giving and receiving of dowry. The act came into force on 1July, 1961. There are some important provisions given under dowry prohibition act 1961discussed as:-

Section.2 Definition of Dowry

Dowry means any kind of property valuable security given or agreed to be given either directly or indirectly

1. by one party to a marriage to another party to a marriage.
2. by the parents of either party or by any other person to a marriage at or before or any time after the marriage but does not include Dower or Mahr in case of person to whom the Muslim personal law applies.

Section.8-A Burden of proof in certain cases:-

When any person taking and abetting of dowry under sec.3 and giving or abetting of demanding of dowry under sec.4, the burden of proving shall lie on that person whose liability is to prove that he had not committed any offence.

Section.8-B. Dowry Prohibition officer:-

- (1) The state government may appoint as many dowry prohibition officers as may think fit and also specify the areas in which they may exercise their power and jurisdiction.
- (2) Every dowry prohibition officers shall exercise and perform the powers and functions for:-
 - a. To see the provisions of acts.
 - b. To prevent from the taking or abetting of taking and demanding if dowry.
 - c. To collect necessary evidences for prosecution of person committing offence.
 - d. To perform such additional functions as may assigned to him by state government.
- (3) State government may by notifications in the official gazette confer such power to the police officers.
- (4) State government may for the purpose of advising and existing the dowry prohibition officers under this act appoint and advisory board existing of not more than five social welfare worker for the area in which such officers can exercise their power.

(B) Prohibition Officers

It is trusted that the best purpose behind the disappointment of the Dowry Prohibition act was

the non attendance of any legitimate or successful machinery for its implementation. The board of trustees proposed that there ought to be hardware that could meddle at whatever point essential and furthermore help in deflecting down the catastrophes by helping the Dowry unfortunate casualties. It recommended "Endowment Prohibition Officers" in each state who might make proper strides for the implementation and to a repudiation of the arrangements of the Act. They could likewise gather proof if there should arise an occurrence of any repudiation for powerful indictment. They additionally render counsel and can likewise connect with a non-official warning collection of five social laborers of the zone. Share is a profound established social malice and enactment alone can't destroy it. Enactment alone can just assistance the social development for the annihilation of Dowry. Tragically the greater part of our social enactment is close to pitiful endeavors. Social enactment ought not simply bark, however ought to have the option to chomp. It doesn't give the idea that the Dowry Prohibition law is a gnawing law.

(C) Indian Penal Code (IPC)

1. IPC SECTION 304 B-This Section was embedded by the 1986 alteration. It accommodates the discipline of Dowry Death. It gives that where the demise of a lady is brought about by consumes or substantial damage or happens generally than under ordinary conditions inside seven years of her marriage and it is demonstrated that soon before her passing she was exposed to savagery or badgering by her significant other or any relative of her better half for or regarding any interest for Dowry, such passing will be classified "Settlement Death" and such spouse or relative will be esteemed to have caused her passing. The topic of mercilessness here will be resolved according to the standards of Evidence gave in 'Area 113-B' of the Evidence Act.

2. IPC SECTION 498 A- Provides for the discipline for exposing a lady to "pitilessness" by the spouse or his relatives. This Section is considerably more inclined to abuse by the ladies than the remainder of the Sections. As portrayed in the '91st Law Commission Report', for each situation of Dowry Death just a lady is the person in question, isn't even a solitary case a man is observed to be the person in question. In this manner, the presumption in favor of the women can shift the pedestrian toward their side making it a provision which is easily misused.

3. DOMESTIC VIOLENCE ACT- This provides for the Protection of women against Domestic Violence Act 2005-2006. This Act provides the power to the lower courts for issuing "Protection Orders" against the grievance of a woman against her male relatives. The court ordered "restraining orders" on the husband and others, "Monetary compensation" and

"Residence orders". Although the given is a civil remedy, but if someone violates the "Protection order" may result in criminal penalties including imprisonment.

Any agreement for giving and taking of dowry shall be void.

(D) Police Circulars

The ministry of home issues and the rest of the state government, have issued warnings, notifications and booklets which restricts the subjective captures by police amid the examination of the Dowry related offenses. This is another strategy to control the ruin with respect to the Dowry offenses by the legislature.

(E) Indian Evidence Act, 1872

Section 113-B of the act states that if a question arises that if a person has committed Dowry's death and it is shown that she was subjected to cruelty and harassment in connection with Dowry's demand, the presumption would be taken soon before her death. he has caused her death. In case *Kans Raj v State of Punjab & Ors*"- In this case, Sunita Kumari married at Batala hotel in Punjab on 9.7.1985 and was found dead on 23.10.1988. Death was found to have been the result of asphyxia, not under ordinary circumstances. The prosecution is obliged to prove that in order to seek a conviction against a person for Dowry's death offense:

- Woman died due to the burns or physical injury or occurred other than in the natural circumstances.
- The death must have been within the seven years of her marriage;
- Cruelty and harassment has been subjected the deceased against the husband or any other relative of her husband.
- Such cruelty or harassment should be for or in connection with the demand and such cruelty or harassment; As and when the above-mentioned circumstances are established

Dowry death shall be drawn against the accused under Section 113-B of the Evidence Act. The presumption under Section 113-B is a presumption of law. In case *Kamlesh Panjiyar v State of Bihar* - the court held that Section 113-B of the Evidence Act and Section 304-B. I.P.C, demonstrates that there must be material to demonstrate that "soon before her demise" the unfortunate casualty was exposed to pitilessness or badgering for regarding the interest of Dowry. The petitioner needs to preclude the likelihood of natural or accidental death, in order to bring it inside the domain of death, happening generally than in typical conditions, the articulation "soon before her passing" is extremely applicable where Section 113-B of the Evidence Act and Section 304-B IPC, are squeezed into administration. The petitioner is

obliged to demonstrate that soon before the event he was silent or provoked and just all things considered assumption works. Proof in such manner must be driven by arraignment "Soon previously" is a relative term and it would rely on the conditions and conditions can be considered by the Court, for example, kicking the bucket affirmation of the lady, assuming any, additional legal admission by the blamed, rationale, place, time, request, if any of endowment, physical or mental remorselessness appeared towards spouse, direct of the husband as likewise the relatives of the husband.

(F) Evidence of Demand of Dowry Soon Before the Death

To prove offense of dowry death, on behalf of the husband and his family members, there must be concrete and specific demand for dowry and the lady must be harassed or harassed by them because of the demand for dowry. If there is no demand for dowry and there are vague allegations, the bride's death will occur if because of any other reason that would not be termed as dowry death. *Gurcharan Kaur & Another v. State of Rajasthan*, in this case talking while discussing about the facts of the case, it was noted that the bride committed suicide because she was unable to obtain the comfort and freedom she enjoyed in her parental home. There has been no evidence of harassment for dowry demand. Therefore, conviction was set aside. The Supreme Court also acquitted the husband, who had not even lodged an appeal, and held that the accused who had not even lodged an appeal or whose special leave petition had been dismissed was also entitled to acquittal if his case was on the same basis.

III. LOOPHOLES OF THE LEGAL PROVISIONS

There are some loopholes of such provisions relating to prohibition of dowry which results in some problems for the society as well as women discussed as:

The demand of dowry largely effect the society as well as life of the bridge and her family. This phenomenon is more in tradition in rural areas. Moreover, studies have shown that the offices like police, security officials as well as society not interfere into the dowry related matters of people.

There are some effects of demand of Dowry discussed as:

1. Dowry related wife abuse and harassment

There are offences like harassment, cruelty, abuse etc takes place because of demand of dowry because of non-existence of as much punishment as expected for legal violations of concerning dowry and because men in the not face any such kind of problem and negative economically and socially problem of dissolution of marriage. So due the demand for dowry bride suffers

from harassment, cruelty as well as abuse which may be used sometimes as a means of including a wife living a marriage for the husband to do another marriage for the sack of dowry without the legal risk.

2. Women death

Many of times it results in the death of women because of demand of dowry. The incidents and violation of murders of wives for the sack of dowry started from early 1980's included women burn to death, beaten, murdered by different ways etc. for which amendment also done in the Indian Penal Code and added section.304B i.e. Dowry death and punishment for the dowry death. By 1994, the Home Ministry's crime Bureau clocked a dowry death cases increasing at rate of every 102 minutes a dowry death takes place.

3. Suicide

Because of the demand of dowry many women can do suicide every year as her husband beating her and do harassment, cruelty and other offences related to dowry etc. and suicide related to dowry also considered as dowry death and punishment under secc.304B of IPC.

4. Female Infanticide

Because of the demand of dowry and lack of legal enforcement that results in offence like harassment, murder etc the female infanticide takes place because people think the girl as finally burden.

5. Owner killing

Sometimes due to the fear of the demand of dowry parents kill their female child at her born stage of later.

IV. PENALTIES/PUNISHMENTS FOR THE DEMAND OF DOWRY

The Punishment for the demand of dowry is given in different section of dowry prohibition act 1961.

Section.3 Penalty for giving or taking dowry:-

If any person taking or giving of dowry he shall be punishable with imprisonment for a term which shall not be less than five years and fine which shall not be less than fifteen thousand rupees or the amount of value of dowry whichever is more.

Provided that for any special reason to be recorded court may impose punishment for less than five years.

Section.4 Penalty for demanding dowry:-

If any person demands directly from the parents or any other relatives of the bride or bridegroom any dowry, he shall be punished with imprisonment for a term which shall not be less than six month which may extend to two years and with fine which may extend to ten thousand rupees.

Provided that the court if thinks fit with specific reason to be mentioned in the judgement, impose a punishment for a term less than six months.

Section.6 dowry to be for the wife or heirs:-

If any person fails to transfer the property for the benefit of wife he shall be punishable for imprisonment for term which shall not be less than six months but which may extend to two years or with fine shall not be less than five thousand rupees but which may extend to ten thousand rupees or with both.

V. JUDICIAL DECISIONS/INTERPRETATIONS

1. Kamlesh panjiyar v. State of Bihar

In this case, the Appellant demanded Rs. 40,000 as dowry from the Respondent and was paid to him. After the marriage the Appellant demanded more dowry but Respondent fail to fulfill demand of dowry by bride or her family. Due to not fulfill demand the Appellant started torture and caused many inquiry to respondent and due to such torture respondent died. It was held in this case by session judge that Appellant guilty and punishable with 10 years.

2. Reema Aggarwal v. Anupam and others

In this case parties got married in January, 1998 and just after the Marriage the husband and his relatives started harass and torture her for the sack of dowry. The wife lodged an FIR. The defendant took a defense they both were not legally married. It was held in this case that is was second marriage and such marriage is void and acquit all the accused but this judgment.

3. Nisha Sharma's case

This is a case Nisha Sharma was anti-dowry lawsuit in India. She was file a suit against her husband Manish Dalal for demanding dowry. The case was highlighted in National as well as International media. Nisha Sharma was portrayed as a youth icon and a role model for other women. Later it was found that she falsy sue her husband for the sack of wedlock or divorce. In was held guilty of all accused by the court.

VI. CONCLUSION

Dowry is basically a cultural and social problem which cannot be solved by the provisions of

law only. The society will also need to interfere in the problem of society at the grassroots level. But rapid increase in the dowry related offences like dowry death and any other offences. This has forced the government of India to adopt various anti-dowry measures but they are not sufficient to fight this social devil whose roots are deeply set up in country. Hence Dowry prohibition is good unless and until it considered as gift given to the bride by her parents. If the groom's parents are demanding money to get married as a Dowry then that is completely wrong and illegal as well as punishable.
