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Legal Aspects of Dowry in India

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ABSTRACT

In the modern society, the situation that we witness today was once full of rituals tradition and practices, though not all of them seem feasible to establish their existence in the 21st century. Countless tradition custom and practices seem to have lost on the way as they were unable to and get adapted with changing diasporas. One of them is the concept of 'DOWRY', yet it has firm existence in the society these days. It is a well acknowledged fact that when any ritual, practice or tradition gets deep rooted in the society then subsequently it provides a room for dissent. There have been many active measures taken by the government of India to curb this social evil. Several laws, acts, enactments have been introduced but all this has ended up of being of no use. This paper aims to analyse to 'concept of dowry and all the important statutes and provisions relate to it'. A holistic approach is adopted while working on this paper and best efforts are put in to explain the concept in the light of judicial pronouncements and analogical deductions. Also some major statistics are included within this paper to make the readers aware about the actual numbers regarding the victims of various crimes in connection with the demand of dowry. This paper also contains various suggestive and reformatory measures which can leave a positive impact in strengthening the anti-dowry laws in India. The paper has within itself best level of clarity and is written using the 'qualitative method of research' which was best suited to bring out the complete picture out of the entire research paper, Hope that this piece of work turns out to be fruitful to many intellectual minds.

Keywords: Dowry, Culture and tradition, Women, Violence, Social evil.

I. INTRODUCTION

When a woman marries, she enters in a new world altogether and often has so many expectations from her new phase of life. Everyone wants his/her life to be a happy one. A woman plays so many important roles in and during her lifetime as of a wife, a mother, a daughter in law and a number of other roles too. In my opinion every woman deserves a dignified life but unfortunately all this remains a dream for many women after they get married due to the reason that one of the social evils of the society 'The demand for dowry haunts them, primarily in the initial phase of their married life and this is all because of the greed of the

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family of the groom that they relatively get cruel as a result women across the country had to face physical and mental agony due to the social evil of dowry and in many cases deaths are recorded in connection of dowry which are technically called or known as DOWRY DEATH and dowry death is also a punishable offence under section 304 B of the Indian Penal Code 1860.

In India, the pre-existing norm or it can be called a tradition or a practice rather, which is dowry, puts both a social burden of being judged by the society and also the financial burden over the family of the bride in order to match the expectations of the family of the groom.

Dowry is often treated as gift from the side of the bride to the groom as a token of respect for the status of the groom and his family, which is not at all true and justified. Dowry in real sense means the amount of money or an asset or any property which the family of the bride gives to the family of the groom.

II. CONCEPT OF DOWRY DEATH

Now, when it comes to the concept of dowry death, then in general terms dowry deaths can be said to be the “death of the bride due to the violence inflicted upon her by the family of the groom in connection with the demand of the dowry.”

In the previous decade or so, or one could say in the recent time for that matter, though the perception of people has changed over the long prevalent custom of dowry but the atrocities on woman over the same period of time has remained the same.

Dowry death is a serious social evil in the society and therefore a matter of significant concern for the centre and state legislatures respectively. There arose a need to bring in specific law in this regard in order to safeguard the life and dignity of newly married women and to protect her from any direct or indirect harm in relation with the demand and even quantity of dowry received in some cases.

The government in term has enacted a no of laws in this regard among which The Dowry Prohibition Act, 1961 is the most specific one for that matter.

However, it was seen that making a separate act all together was not merely enough on the ground level and there arose a number of questions on the effectiveness and the applicability of the provision of the act on ground level.

In order to counter this issue, the law commission can into picture and therefore in order to consolidate the provisions regarding dowry and all similar related issues as of domestic violence in relation to dowry, presumption of dowry death etc. on the recommendation of the

21st law commission some sections were inserted in the Indian Penal Code and make it a crime. Dowry related crimes are not confined to limited spheres but has a variety of crimes within its ambit ranging from the female gender getting physical blows and are tortured to get money from their houses even if their families are not in a condition to bear the same. It is a very common human nature that every human has certain saturation point and as a result of being the victim of such inhuman treatment for a prolonged period of time many brides decide to end up their life in order to get rid of all the pain that she suffers from because of her cruel in-laws.

III. LEGISLATIONS RELATED TO DOWRY AND ITS RELATED CRIMES

India has been country of rich cultures and heritage but as we all are very well aware of the fact that there are always two sides of the same coin. The inference that is to be drawn here by the mentioned statement is that India, being so rich in its culture and heritage has many social evils in the society and one such social evil is the social evil of ‘dowry’ that has deepened its roots very deep into the Indian society. In the country and also there are different ways of giving and taking dowry and moreover this long existing tradition of dowry is even ratified by the society. But over the years, due to the increased number of cases related crimes in the Indian society, there have been very active efforts from the side of the government to curb this social evil and there have been an enactment of various other laws apart from the general provisions that are already there in place for the resolution of dowry related matters or one can say potential or evident crimes related to dowry in direct or indirect manner. The general provisions are mentioned further:

(A) DOWRY DEATH UNDER IPC, 1860 (SEC 304 B):

Section 304 B of IPC reads as:

- 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 marriage she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry, such death shall be called “dowry death” and such husband or relative shall be deemed to have caused her death.²
- Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than 7 years but which may extend to imprisonment for life.³

² The Indian Penal code (45 of 1860).

³ Ibid.

1. NATURE AND ESSENTIALS OF SECTION 304 B OF IPC 1860:

The offence of dowry death is Cognizable, Non Compoundable and Non-bailable. There are basically 4 essentials in order to satisfy the offence of dowry death which is as follows:

- The death of the woman must have taken place within 7 years of her marriage.

In the leading case of *State of Punjab v. Iqbal Singh*⁴ the court explained that “A period of seven years as it is considered to be a turbulent one after which the legislature assumed that the couple would have settled down in life.”

- The woman must have been subjected to cruelty or harassment by husband or his relatives.
- Death is caused by burns or bodily injury or otherwise than under normal circumstances.
- Here, dowry shall have the same meaning as assigned to it under Section 2 of the Dowry Prohibition Act 1961.

2. LEADING JUDGEMENT RELATED TO DOWRY DEATHS:

- The Supreme Court of India in *Satbir Singh v. State of Haryana*⁵ held that the prosecution is able to establish the ingredients of Section 304 B of Indian Penal Code, the burden of proof of innocence shifts to defence.
- In *Mustafa Shahadal Sheikh v. State of Maharashtra*⁶ the court clarified its contention on the phrase ‘soon before death’. The court said that no specified period has been mentioned under the Penal law and can be determined by various courts depending upon the facts and circumstances of the case.
- In the same case itself the court clarified that the cruelty caused and the death should not be too remote, if the death is too remote then there arises no cause of action.

(B) SECTION 498A OF IPC 1860:

For ensuring the dignity of the female gender and in order to ensure safety and security to women at the house of their In-laws against any sort of harassment or ill treatment by her husband or the relatives of the husband, it was in the year 1983 that the Indian Penal Code was amended and section 498A which deals with cruelty inflicted on a married women was added under chapter XXA of The Indian Penal Code. The section reads as under:

⁴ 1991 AIR 1532.

⁵ (crI) Appl 7 of 2005.

⁶ (2012) 11 SCC 397.

[498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects 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—

(a) Any wilful 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; or⁷

(b) 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.]⁸

1. ESSENTIALS OF SECTION 498A OF IPC 1860:

Basically there are 3 essentials for section 498A which are as follows:

- The women must be legally married
- She must be made to experience cruelty or harassment.
- Harassment of women where such harassment is with a view to coercing 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 demands.....

2. LEADING CASE LAWS RELATED TO SECTION 498A:

- One of the leading cases over the authority of section 498A of the Indian Penal Code is *Niraj Trivedi v. State of Bihar and Ors.*⁹, in this case the Delhi High Court held that ‘the matters related to section 498A of IPC can be investigated only where there has been a commission of any crime.’ In this particular case the fundamental requirement for the investigation in matters related to section 498A was made clear.
- Further in the case of *Onkar Nath v. State (NCT of Delhi)*¹⁰, it was held that the provision should not be used as a device to achieve oblique motives. This judgement can be treated in a way as an advice of the court relating to the misuse of this provision.

(C) 113A OF EVIDENCE ACT 1872:

Section 113A of the Indian Evidence Act 1872 reads as under:

⁷ The Indian Penal Code (45 of 1860).

⁸ Ibid.

⁹ W.P (Cr.)no.415 of 2004.

¹⁰ (2008) 2 SCC 561.

113A. Presumption as to abetment of suicide by a married woman.—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband." Explanation.—For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).¹¹

An important thing to note here under this section is that as per the language of the section it can be inferred that according to the presumption, the burden of proof initially is upon the male accused to prove his innocence as according to Section 113A it shall be presumed that the husband or his relatives have abetted the suicide of the wife while here the onus of proof lies on the opposite party.

(D) SPECIAL AND EXCLUSIVE LAW TO CURB DOWRY AND ASSOCIATED CRIMES:

The exclusive Law which has been in force since the early 1960's is the:

1. DOWRY PROHIBITION ACT, 1961:

This makes the 'giving and accepting of dowry, punishable in India with up to 5 years of imprisonment and fine extending up to Rs.15,000 or the value of dowry, whichever is more. The Dowry Prohibition Act 1961 has seen a couple of amendment in the form of the Dowry Prohibition (Amendment) Act 1984....and 1986 respectively. After the first amendment in 1984, many of the women representatives argued that the amendments thus made were still not enough to tackle the situation of Dowry related matters in the society and thus the act was subsequently further amended in the year 1986 to make the situation better.

2. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005:

This act was enacted with an objective to provide protection to women against the atrocities faced by the women inside the 4 walls of her matrimonial house. It is self-evident that mainly in the initial years of marriage, the domestic violence can take place in relation to demand of dowry and also the fact cannot be denied that as women can be subjected to violence anytime and after any duration, This Act provides to a woman protection from all major types of abuses namely physical, mental or emotional and also against any conduct which harms the dignity of any women so this Act is a step towards the safeguarding of women in a dual way.

¹¹ Indian Evidence Act (1 of 1872)

IV. STATISTICS OVER THE ISSUE OF DOWRY RELATED CRIMES IN INDIA:

According to the data of 2017 by the National Crime Records Bureau of it can be very strongly contented that dowry related crimes are a big issue for India there have been a number of false cases in order to defame the man, this contention can be supported from the straight facts that police has charge sheeted accused in around 93.7% but only 34.7% have been convicted in the cases.¹² Also the numbers of dowry deaths in the country have kept on increasing year after year. In the year 1995 there were 4668 dowry deaths in the country, the figures hiked on to 6787 in the year 2005 and subsequently hiked even more to 7634 in 2015. At present, it is a heart paining statistics that every day as many as 21 woman die because of this social evil. According to recent data 3, 72,706 pending cases, 3,17,000 are likely to result in an acquittal.¹³

V. MISUSE OF DOWRY RELATED LAWS:

Various provisions and statutes relating to dowry were made with the view of protecting women against the social evil of dowry in the society but on the other hand it can be noticed and seen that there have been numerous and countless instances of women misusing the laws in order to or with an intent to falsely get their male counterpart and his family members convicted for an offence which was never done by them. Even there are instances when women falsely accuse man in order to defame him and his family. The following are some of the case laws dealing with the point of the misuse of section 498A of Indian Penal Code:

In the case of *Savitri Devi v. Ramesh Chandra & Ors.*¹⁴, the Honourable Court held very evidently that ‘There has been a serious misuse of the provisions to such a limit that it was striking the foundation of marriage itself and the same was held to be ‘Not Good’ for the society at large.’

In another leading case of *Jasbir Kaur v. State of Haryana*¹⁵, the Punjab and Haryana High Court observed as follows:

“It is known that an estranged wife will go to any extent to rope in as many relatives of the husband as possible in a desperate effort to salvage whatever remains of an estranged marriage.

VI. OBSTACLES IN THE IMPLEMENTATION OF THE ANTI DOWRY LAW:

The Indian legal system, according to me, has failed to curb the level of or the no. Of the dowry

¹² Chayyanika Nigam, 21 lives lost to dowry everyday across India; conviction rate less than 35 per cent, (April 22, 2017, 03:11 IST) <http://www.indiatoday.in/mail-today/story/dowry-deaths-national-crime-records-bureau-conviction-rate-972874-2017-04-22>.

¹³ VARSHA, 498A USE AND MISUSE, (Nov 4 2019), <http://bnblegal.com/article/498a-use-and-misuse/>.

¹⁴ II (2003) DMC 328

¹⁵ (1990)2 Rec Cri. R 243

death victims the various reasons being the partiality done by the police, the involvement of money and muscle power and the behaviour of favour done by the medico legal staff during the process of investigation.

VII. SUGGESTIVE REFORMS:

- (A) **STRICTLY FOLLOWING THE NINE POINT PLAN**-Suggested by the Supreme Court of India in 2014 which is supposed to be followed by the police before making any arrest.
- (B) **TIME BOUND HEARING**-If matters related to dowry are made time bound then it would be helpful in disposal of cases in a quick and effective manner and would also serve speedy justice.
- (C) **OFFENCE SHOULD BE MADE COMPOUNDABLE**-Dowry related provisions and section 498A in particular should be made compoundable so that a lady has a chance to correct his mistake if she files a false case and can save her family and also can save the people involved in the case from mental unrest.
- (D) **OFFENCE SHOULD BE MADE BAILABLE**- Section 498A is being misused the most due to the reason that it is Non Bailable. Making the offence bailable would save a lot of innocent people from facing humiliation in the society. Also people of the elderly age (Senior Citizens), teen age young people will be safe and not have to face unnecessary custody.
- (E) **CHECK OF SOCIAL STATUS OF THE COUPLE**- If the social status of a couple is examined then it would help the court in determining a case on a better merit and would also be able to fix proportional remedies which would serve the best interest of the families and this move will also help in countering the EXAGGERATED demand in most of the cases, as the lady in majority of the cases demands more than what is fair if in case marriage is dissolved ex-parte due to any circumstance of the case.
- (F) **RIGID SCREENING PROCESS OVER THE MATTERS**- The hearing and proceeding of the matters related to dowry should be done in a more rigid manner under the strict scrutiny of senior administrative officers so that a reasonable apprehension of fear is also present in the mind of the woman.
- (G) **CASES OF MALICIOUS PROSECUTION SHOULD BE INITIATED AGAINST THE WOMAN IF THE ACCUSED IS PROVED INNOCENT**- This measure will help in reducing the amount of false cases which are filed by the women against man as there would be reasonable

apprehension in the minds of the women about the probable consequences regarding the same.

VIII. CONCLUSION:

This research paper dealt in detail about the full concept of Dowry. Dowry is a social evil which should be controlled at the earliest so that no more women are tortured in the society after marriage and are ensured a life which is full of dignity. This research paper also dealt with various laws and statutes regarding the issue if dowry related crimes and the present condition and situation of India over the same. The paper dealt in detail about sections 113A of Indian Evidence Act of 1872 and also sections 304B and section 498A of the Indian Penal Code of 1860 and a fair amount of light was thrown over the Dowry Prohibition Act and Protection of Women from Domestic Violence Act. Towards the end of the paper some suggestive reforms were discussed in short to conclude the research paper. Also there has been a considerable amount of ambiguity on few terms mentioned in the section but the court has clarified the ambiguity at different times and upheld the 'GUARDIAN' nature of the society. At ground level it can be believed that there should be more awareness programs in the same direction and women should be told about their rights so as the females also can raise their voice against wrong in the society and contribute towards the society to make it a better place to live in.
