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# Unveiling the Socio-Legal Aspects of Section 304-B of IPC

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## ABSTRACT

*Marriage is necessarily the basis of social organisation and foundation of important legal rights and obligations. Originally the guardian of a girl before or during the marriage gives dowry in the form of properties, cash, gems or any other form of wealth to help the couple in establishing a new household. With the passage of time and British rule in India the status and position of a woman degraded the status and position of women as the laws imposed by them prohibits the women from owning any property at all and this leads to the peril of the dowry system in India. This ritual gets deep rooted in the society in the form of social evil. Protecting women from these kinds of evils had always been the concern of reformers and the state. Even in the 21st century divorced women are considered a stigma on family and society. They are often forced by their family members to continue in the toxic relationship due to social pressure or to protect their prestige in society. In the analysis of a number of cases it has been found that parents send back their daughter to her matrimonial home even after knowing that she was tortured, humiliated and coerced for dowry and do not make any attempt to file a complaint against the offender. This behaviour strengthens these social evils. From a sociological point of view in case of arranged marriage, parents select the mates for their son or daughter to showcase their status symbol even if the person is imperfect on psychological or biological grounds this often leads to the misuse of provision in acting as a safeguard for women. Statistics of dowry death shows that this is the high time to control dowry related crimes and ensure dignified life for women.*

**Keywords:** Dowry death, dowry related offence, section 304-B of IPC.

## I. INTRODUCTION

Study of the spirit of Indian civilization is incomplete without analysing the annals of women's status and their position. AS Aletkar wrote that "position which women occupied in Hindu society at the dawn of civilization during Vedic age is much better than what we ordinarily expect it to have been".<sup>2</sup> After independence, the Constitution of India envisages to establish a society with a high sense of justice without any discrimination based on gender. Despite this there was a need for specific legislation for providing justice to the victims of unnatural demise

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<sup>2</sup> AS Aletkar, Position of Women in Hindu Civilisation 337(2nd ed. 1959).

in their matrimonial home for the want of dowry. This article deals with the concept of dowry death in the light of section 304B of IPC with landmark judicial pronouncements.

## II. EMERGENCE OF DOWRY DEATH

In India marriage is regarded as Sanskara, obligatory for every Hindu. With efflux of time the sacramental character of marriage has been transformed into the commercial transaction. A bold price tag of monetary consideration has been attached to every groom. Bride's family pays the desired amount for the marriage of her daughter as they feel that there is more pitfall in the path of unmarried women. A woman is subjected to muscular strength and bodily vigour of her husband and even slaughtered if the prodigious amount of dowry is not satisfied. Thousands of women are compelled to a brutal end as they are no longer able to tolerate the violence inflicted upon them by their spouse and his family. Because of the alarming rise in the dowry related passings and disabilities of dowry prohibition enactments led to the significant changes in Indian Penal Code (IPC) and two new section 304B<sup>3</sup> and section 498A<sup>4</sup> are added to combat the offences of dowry death and cruelty by husband and relative.

## III. PROPOSAL FOR SECTION 304B IN INDIAN PENAL CODE

The Law commission in its 91st report on its own took up the question of dowry death and law reforms. Previously when the facts of dowry related death incidents prove the essential ingredient of an offence already existing in law beyond the reasonable doubt then offenders were booked in that provisions. The deterrence in this issue was that facts might not completely fit into any offence and there were difficulties in having the direct evidence of fact stated in dowry related cases. This led to the amendment in substantive as well as procedural law.<sup>5</sup> Offence of Dowry Death was inserted in the IPC under section 304 B with effect from 19 November 1986.

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."*<sup>6</sup>

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<sup>3</sup> Indian Penal Code 1860, §304-B, No.45, Act of Parliament, 1860.

<sup>4</sup> Indian Penal Code 1860, §498-A, No.45, Act of Parliament, 1860.

<sup>5</sup> Law Commission, *91st Report on Dowry Death and Law Reform: Amending the Hindu Marriage Act, 1955, the Indian Penal Code, 1860 and the Indian Evidence Act, 1872* ( Aug 24, 2023, 11: 30 AM).

<sup>6</sup> Indian Penal Code 1860, §304-B, No.45, Act of Parliament, 1860.

*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.*<sup>7</sup>

**(A) Essential Ingredients of This Section Are :**

1. Death of a woman must be caused by burns or bodily injury otherwise than under normal circumstances.
2. Death must occur within 7 years of marriage.
3. It must be shown that 'soon before death' the woman was subjected to cruelty or harassment by her husband or any relative of her husband.
4. Cruelty should be for or in connection with demand for dowry.
5. Dowry shall have the same meaning as in section 2 of Dowry Prohibition Act, 1961<sup>8</sup>.

**Meaning of Dowry Demand:** - Case: - Bachni Devi v State of Haryana, Through Secretary, Home Department,<sup>9</sup> The Supreme Court held that demand for any property or valuable security having nexus with marriage constitutes dowry demand. Cause of such demand is immaterial. In this case accused no. 2 and Bachni Devi were married on 12- 5 -1990. In less than 3 months of marriage the demand for a motorcycle was made by the husband for doing business which constitutes dowry demand. After the refusal by her father, she was harassed by her husband. Therefore, she committed suicide and accused was held liable to be convicted under section 304-B, IPC for dowry death.

**Meaning of Cruelty.** - "Section 304-B does not contain the meaning of cruelty but the meaning of cruelty or harassment as given in explanation of section 498-A applies to section 304 B as well".<sup>10</sup>

**Meaning of Husband.** - Case: -Reema Agarwal v Anupam And Ors,<sup>11</sup> This case deals with the legality of demand of dowry in respect of invalid marriage. It was held that absence of definition of "husband" to specifically include such persons who contract marriages ostensibly and cohabit with such woman in the purported exercise of his role and status as "husband" is no ground to exclude them from the purview of section 304- B or 498-A of IPC viewed in the context of the very object and aim of the legislation introducing those provisions.

**Meaning of "soon before death".** - Case: - Mustafa Shahbodal Shaikh v State of

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<sup>7</sup> Ibid.

<sup>8</sup> Dowry Prohibition Act 1961, §2, No.28, Act of Parliament, 1961.

<sup>9</sup> Bachni Devi v State of Haryana, Through Secretary, Home Department, (2011) 4 SCC 427(SC).

<sup>10</sup> Kaliyaperumal And Anr v State of Tamil Nadu, 2003 AIR 3828.

<sup>11</sup> Reema Agarwal v Anupam and Ors, (CrI )Appl No. 25 of 2004.

Maharashtra,<sup>12</sup> Within 7 months of marriage the deceased died in her matrimonial home. It was alleged that the accused husband and his parents were alone in the house at the time of the incident. There was clear evidence that five days prior to death she narrated the torture meted out to her on account of dowry demand to her grandfather and parents. It was explained in this case that soon before death means the interval between cruelty and death should not be much. Therefore, the condition of "soon before death" is satisfied as death was just 7 months after marriage.

In another case of Hiralal And Ors v State (Government of N.C.T.), Delhi <sup>13</sup> Court again interpreted soon before her death held that no definite period has been indicated and the expression soon before is not defined. It would imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be a proximate and live link between the effect of cruelty based on dowry demand and the concerned death if the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

### **Suicide as Dowry Death**

In Public Prosecutor, High Court of Andhra Pradesh v Tota Basava Punniiah and Ors<sup>14</sup>, on the medical examination of the deceased it was found that the death was caused due to asphyxia. It was held that since the death was caused within 3 years of marriage due to hanging it occurred otherwise than under normal circumstances. There is ample evidence of harassment for dowry prior to death. Therefore, even if she had committed suicide by hanging still death comes within the scope of 304 B as she was subjected to cruelty by her husband and other relatives in connection with the demand for dowry.

## **IV. DOWRY DEATH AND CRUELTY: MUTUALLY EXCLUSIVE**

In Kaliyaperumal And Anr v State of Tamil Nadu,<sup>15</sup> it was held that cruelty is a common essential in offences under both the section 304-B and 498-A of the IPC, both the sections are not mutually inclusive but both are distinct offences and a person acquitted under section 304-B for the dowry death can be converted for an offence under section 498-A of IPC. Under section 498-A of IPC cruelty by itself amounts to an offence while under section 304-B the offence is that of dowry death and the death must have occurred within 7 years of marriage but

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<sup>12</sup> Mustafa Shahbodol Shaikh v State of Maharashtra (Crl) Appl No. 1406 of 2002.

<sup>13</sup> Hiralal and Ors v State (Government of N.C.T.), Delhi (Crl) Appl No. 825 of 2002.

<sup>14</sup> Public Prosecutor, High Court of Andhra Pradesh v Tota Basava Punniiah and Ors (Crl) Appl No. 1358 of 2002.

<sup>15</sup> Kaliyaperumal, *supra* note 10.

no such period is mentioned in section 498-A.

### **(A) Indian Evidence Act, 1872**

#### **Section 113-A provides that**

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)*<sup>16</sup>

#### **Section 113 -B provides that**

Presumption as to dowry death. - *When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to 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 purposes of this section, dowry death shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860).*<sup>17</sup>

**Case:- In Kamlesh Panjiyar v. State of Bihar,**<sup>18</sup> A conjoint reading of section 113-B of Evidence act and section 304 -B shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the death occurring otherwise than in normal circumstances. In this case there was nothing to show that the death was natural hence the conviction of the husband for the offence under section 304-B was justified.

**In Harjit Singh v. State of Punjab,**<sup>19</sup> The deceased died due to the poisoning within 7 years of marriage. There was no evidence to show that the deceased was subjected to cruelty or harassment by appellant or any of his relatives for or in connection with any demand of dowry within the meaning of section 498-A, appellant cannot be convicted either under section 304-B

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<sup>16</sup> Indian Evidence Act, 1872, §113 A, No. 1, Act of Parliament, 1872.

<sup>17</sup> Indian Evidence Act, 1872, §113 A, No. 1, Act of Parliament, 1872.

<sup>18</sup> Kamlesh Panjiyar v State of Bihar, (Crl) Appl No. 205 of 2005.

<sup>19</sup> Harjit Singh v. State of Punjab, (2002) 6 SCC 739.

or section 306. It was further pointed out that presumption arising either under section 304-B IPC or section 113- B of Evidence Act could not be invoked against appellant.

### **(B) Glimpse of Other Dowry Related Provisions**

- 1) **Dowry Prohibition Act,1961**<sup>20</sup> :- This act came into force on July 1, 1961 which aims to prohibit the practice of giving and taking of dowry. Section 2 of this act defines dowry. It does not include dower or mahr in case of a person to whom Muslim personal law applies. This act penalises the giving or taking of dowry, demanding dowry, bans advertisement offering share in property or other things in consideration for the marriage of his son or a daughter or any other relative.
- 2) **Protection of Women from Domestic Violence Act,2005**<sup>21</sup> :- This act came into force on 26th October 2006 which extends to the whole of India. Section 3 of this act defines domestic violence. The objective of this act lays down 'an act to provide for more effective protection of the rights of women guaranteed under the constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto'.
- 3) **National Commission for Women Act,1990**<sup>22</sup> :- This act came into force on 31st January 1992 and extends to the whole of India except Jammu and Kashmir. Section 3 provides for the constitution of the National commission for Women. It provides for the protection of women against atrocities and also arranges counselling for women to solve their problem. It extends active support scheme like Beti bachao, beti padhao, anti dowry program protection of women etc.

## **V. CONCLUSION**

Customs plays an important role in regulation of human conduct. Numerous customs, traditions, have been followed in India since time immemorial but many of customs lost their importance as they were unreasonable or inconsistent with the prevailing laws and time but dowry seems to be an exception. It is not recognised by the state and in spite of many anti dowry laws, the act of giving and taking is openly practised in the name of gifts. Monetary considerations have outweighed the sacramental character of the marriage ceremony. There is dire need for reconceptualizing the trend of dowry which was originally started for supporting the newly wedded couple in establishing their household now becoming an instrument for humiliating,

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<sup>20</sup> Dowry Prohibition Act 1961, No.28, Act of Parliament, 1961.

<sup>21</sup> Protection of Women from Domestic Violence Act, 2005, No.43, Act of Parliament, 2005.

<sup>22</sup> National Commission for Women Act, 1990, No.20, Act of Parliament, 1990.

insulting and outraging the modesty of a woman and her family.

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