

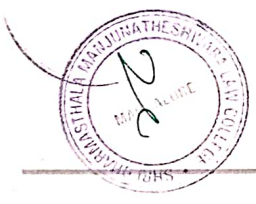
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**STATUTORY SAFEGUARDS AND LOOPHOLES ON MENACE
OF DOWRY****Mr. Karthik Anand**

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INTRODUCTION

Under every religion in India where a man and a woman are united to the bond of marriage there arises equal obligation to both of them . It works as a root for the continuance of the human race. In India quite a lot of women are doomed to harassment the very next to their solemnization of marriage. The Dowry Death cases are rising in this 21st century even after the rapid advancement and development that has taken place. Despite related apt legislations making tremendous efforts to tackle this kind of grave problems yet certain areas are left untouched and the efforts seem to go in vain. At this juncture, one needs to realise what is the need of the hour and how to handle those loopholes in order to render absolute justice in those lacking circumstances. Irrespective of all the promises and marital norms, due to incompatibilities and human interventions dissolution of marriage takes place. Woman has been treated ruthlessly , burnt alive, forced to commit suicide, beaten, harassed, mentally tortured by her husband and his families on frequent demands for Dowry. In a simpler term Dowry means and includes any property, goods, or money given by either party to the marriage or promise to give after the marriage for the betterment of the bride to her future days. Definition of `dowry' means any property or valuable security given or agreed to be given either directly or indirectly: by one party to a marriage to the other party to the marriage; or by the parents 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 any time after the marriage in connection with the marriage of said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies¹.

¹ Section 2 of the Dowry Prohibition Act 1961



Marriage means the state of being united as spouses in a consensual and contractual relationship recognized by law². A promise by one person to marry another is not binding unless and until that other also promises to marry the first person. And therefore there can be no action for breach of promise unless a contract to marry has been made. Hence it is notable that any form of agreement or promise which constitutes a marriage including certain conditions definitely fall under the category of Dowry related cases. It is because acceptance or promise to give any form of gold, gifts, monetary properties in most of the situations create havoc in the matrimonial house. Therefore a marriage ceremony must fulfil the valid requirements and which must be free from all other demands. It is traditionally believed and followed practice that the accepting gifts or any property from bride' family is regarded out of love and affection which assures safeguard for women sadly , in a number of cases it causes misery leading to her barbaric death³. Even though the concept of Dowry is an age old practice still haunts us and is in force in most of the states of our country. Where the demand for Dowry will ultimately lead the life of a woman into dark death. However the purpose of the Dowry system was to ensure that the bride is financially stable after the marriage still this is not a sole object of a healthy marriage.

LEGISLATIVE ENACTMENTS TO CURB THE DOWRY DEATH

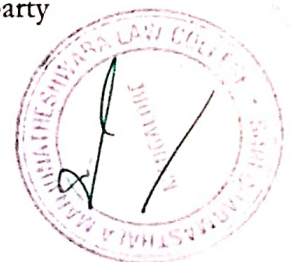
In the later years of independence the need to eradicate Dowry related issues was felt and on May 1,1961 Dowry Prohibition Act was passed which intended to prevent the giving or receiving of a Dowry . The Act applies to persons of all religions in India. As per section 2 of this Act "Dowry" means any 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 parents of either party to a marriage or by a other person, to either party to the marriage or to any other person;

² <https://www.merriam-webster.com/dictionary/marriage> last visited on 01.09.2021

³ <https://www.lawreform.ie/html> last visited on 10.08.2021

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(c) At or before or after the marriage as consideration for 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) applies.

The Act thus prohibits giving or taking Dowry and under section 3 imposes penalty as it declares: if any person, after the commencement of this Act, gives or takes or abets the giving or taking of Dowry, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

The Act further under section 4 , grants penalty for demanding Dowry which states: if any person , after the commencement of this Act , demands, directly or indirectly, from the parents or guardian of a bride or bridegroom, as the case may be, any Dowry he shall be punishable with imprisonment which may extend to six months or, with fine which may extend to five thousand rupees, or with both.

The expressions 'or any time after marriage' and 'in connection with the marriage of the said parties ' were introduced with amending Act in the year 1984 and in 1986 respectively. These amendments appear to have been made with the intention to cover all the demands at the time, before and even after the marriage so far they were in connection with the marriage of the said parties.

In the case of State of Andhra Pradesh v. Raj Gopal Asawa⁴ the court held that the definition of 'Dowry' is not restricted to agreement or demand for payment of Dowry before and at the time of marriage but even includes subsequent demands. Apart from the amendments which took place in 1984 and 1986 this Act had no much effectiveness and there was no decrease to the Dowry Death rate in india.⁵

Provisions Under Indian Penal Code

⁴ 1998 CriL384

⁵ <https://www.cyberabadpolice.gov.in> last visited on 08.08.2021



The section 498A has been introduced in the code by the Criminal Law (Amendment) Act, 1983 mainly to combat the violence against women of Dowry Deaths. The section states that 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.

This section explained the word 'cruelty' as

- (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: or
- (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 is on account of failure by her or any person related to her to meet such demand.

However this section became a boon for women to protect themselves from dowry harassment on the other hand it opened the way for them to misuse and take revenge from their marital household members.

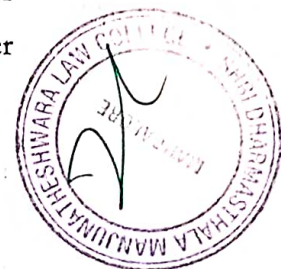
In the case of P.B Biksdhapathi v. State of A.P⁶ it was held that drinking and late coming habits of the husband coupled with beating and demanding dowry have been taken to amount to cruelty within the meaning of this section.

In the case of Chandrabhushan .v. State of Maharashtra⁷, conviction of husband for leading wife to suicide by mental torture for Dowry, but others not convicted because the couple was living separately.

It was the Dowry Prohibition Act (Amendment Act, 1986) added a new offence known as Dowry Death in Indian Penal Code as section 304B which states where a 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

⁶ CrI. Appeal No. 918 of 1986 before the Andhra Pradesh High Court

⁷ 1996 (1) BomCR 55, 1995 CriLJ 101



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. In the case of Rajayyan .v. State of Kerala⁸ , the court held that there was cruelty and harassment proof of persistent and continuous demands for Dowry by the accused - husband which were not met by her parents. He had even disowned his wife . All this showed that she was subjected to mental cruelty before death.

In the case of Anand Kumar .v. state of M.P⁹, the victim, a married woman, was not allowed to meet or to talk to her family members, it amounted to cruelty. She was the victim of maltreatment and lust for money from the start of marriage. She was tortured and assaulted . death was due to consumption of poisonous insecticides. There was no suggestion that the consumption was accidental. The accused was held guilty.

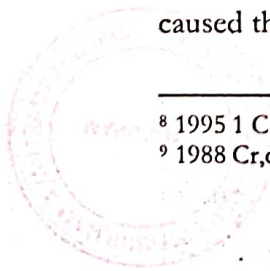
The Code Of Criminal Procedure, 1973

Section 198A of the code states that no court shall take cognizance of an offence punishable section 498A of the Indian penal code except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, sister or by her father’s or mother’s brother or sister or, with the leave of the court , by any other person related to her by blood , marriage or adoption.

Provision Under Indian Evidence Act

Section 113B has been brought forth by the amendment of 1986 which deals with presumption as to Dowry death. It states that 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 to 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.

⁸ 1995 1 Cr LJ 989
⁹ 1988 Cr.c.no:859



In the case of *Kailash .v. State of M.P*¹⁰, the court ruled that there must be proximate and live-link between the effect of cruelty based on dowry demand and the death in question. In the case of *State of Rajasthan .v. Jaggu Ram*, wife died due to head injuries within one and half years of marriage , dowry harassment proved , no explanation of head injuries, cremation without informing police or parents, held, husband guilty. Hence section 304B and 113B has the same meaning. Which aims at providing protection to the women against the dowry demand. The burden basically falls on the prosecution to establish the requirements for application of the presumption.

Domestic Violence Act, 2005

Domestic violence involves the use of brute force to establish power relationships in the family. Through this relationship, women are taught and conditionally accept their subordinate status. Domestic violence is telling women that it is best for them to learn to obey men's mercy. These are men with low self-esteem. They destroy a woman's sense of self-worth because they feel unable to deal with a woman who thinks and acts like a free man and has her own thoughts. Like rape, the target of wife abuse is the general situation of women in all countries, castes, classes, religions and regions. Despite constitutional provisions the law failed to cater the violence against women and the dire need to safeguard women against such cruelty and harassment was recognised in India which passed the Protection of Women from Domestic Violence Act in 2005. It is a very comprehensive and promising legislation that combines civil remedies with criminal procedures to ensure effective protection and immediate relief to victims of violence of any kind occurring within the family. This Act also granted the right to reside in the matrimonial home/ shared household was seen as a major breakthrough in women's rights in India.

Causes Of Dowry System

¹⁰ AIR 2007 SC 107



Even after a lot being said and done against the prohibition of the dowry system it is still prevalent to this day. The outcome of this evil system many at times remains behind the four walls and a few raise their voice against this brutal act. One can trace an ample of reasons and causes that involve the growth and spread of such a custom. Here are some of the causes mentioned they are,

I. Social Factor:

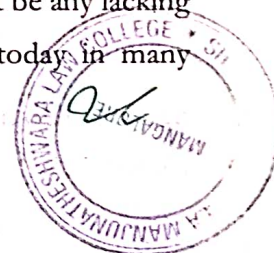
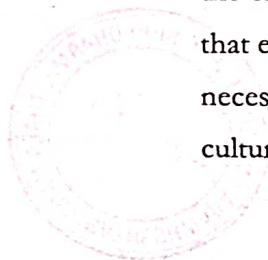
It is obvious that the society where one lives plays a vital role in shaping one's life. It is natural that people go along with the norms and status of the society in order to fit themselves in that environment. They have no such option to go against the rituals and customs of their society. Mainly due to the fear and separation of keeping them aside they pledge themselves entirely to such traditions. This social factor may influence their marriage ceremonies too.

II. Family Status:

In most of the cases the concept of family status matters a lot. It is a well accepted fact that in a marriage ceremony either of the parties want to prove their status. Therefore the concept of give and take takes place very commonly. Even though the parties face financial inabilities yet they manage to cover up that issue and willingly accept the marriage proposals. This gives them an added reason to show cast their family status.

III. For The Future Sustenance Of Bride:

The very purpose behind this practiced tradition is that the bride's family has the concern regarding her future days. Along with the token of love and affection the safety and contentment of the bride has been much thought. They believe that even after marriage she should be happy and there should not be any lacking necessities. Therefore such custom has been followed even today in many cultures.



IV. Lack Of Strong Implementation Of Legislations:

It is obvious that in order to prevent this social evil the efforts from the legislatures and judiciary is of not much weight. There is still a necessity for strong laws and its implementation . Apart from the existing laws the dowry deaths have not decreased . Therefore loopholes in the statutes must be tackled according to the need of the hour. Keeping in mind the existing crisis, laws must be amended which may confer justice to the aggrieved party.

V. Illiteracy:

The lack of spread of education in many parts of India play a major role in the continuous creation of social evils. The more literate one becomes, the less chance exists to practice the ancient customs and traditions. India is not completely freed from the clutch of illiteracy hence it is difficult to prevent the existing practices . It may be prevalent in rural areas but problems in urban areas may differ. Therefore the awareness regarding the same must reach every nook and corner of our country.

VI. Gender Inequality

The concept of gender inequality has been creating great harm to society from the beginning. With a lot of development and changes that have been taking place day by day, still at some point in our system we do face a kind of disrespect and a low notion towards women. In many places still the birth of a girl child is considered a burden and ill treatment that the woman faces throughout her life is unfathomable. Thus this also became a cause of the prevailing dowry system.



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Due to the above mentioned causes and many other unmentioned, the dowry system is still in force. This social evil has created a great inconvenience and damage to the woman and the society has been facing a grave problems. Some of the effects has been noted down below they are:

I. Financial Burden On Bride's Family :

It is one of the main effects of the dowry system which lays a financial burden on the bride's family. Due to which the family undergoes a lot of crisis. Most of the time out of fear and family status the members try to fulfil the demands and if not met then that turns out to be very pathetic. Due to the frequent demands the bride's family are put under obligation and which make their life uncomfortable.

II. Leads to Cruelty And Domestic Violence:

The moment the greed for dowry increases the threats for women also rises. Most of the time when the woman fails to accomplish the demanded properties she is treated very cruelly by her husband and husband's family. She is beaten, burnt alive, forced to commit suicide, harassed, mentally weakened and ultimately led into death. Sometimes some other kinds of domestic violence has been charged on her.

III. Creates A Wrong Notion About Marriage:

Due to the continuous violence against women in the society and the prevalence of the dowry system a kind of negative impression regarding the marriage exist. Quite a number of women fear marriage and this marks a wrongful notion about the sacredness of marriage ceremonies. Women do fear about their safety and acceptance in their marital homes. This leaves them



to think pessimistically and forms anxiety over taking decisions about their marriage¹¹.

IV. Dowry Causes Child Marriage:

Dowry system is also a leading factor for the emerging of child marriage. Still in many parts of our country where the economically backwards families in order to escape from the burden of dowry engage their children into child marriage before they could reach their age of puberty. Which in fact leads to a number of side effects. Even after the advancement the practice of child marriage has been not fully eradicated in India.

V. Degrades The Status Of Woman :

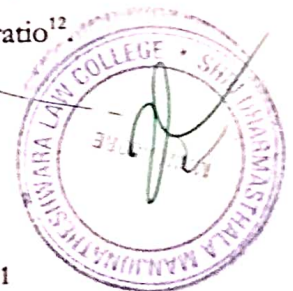
The existence of the evil dowry system automatically lowers the status and dignity of womanhood. This gives way to gender inequality. The birth of the girl child becomes a huge economic burden to some of the families. Therefore the ill treatment and non acceptance of a girl child lowers her right to life and liberty she has been deprived of living as a dignified woman in the society. This separation does not bring her status equal with men.

VI. Causes Decrease In Girl Child Ratio:

The menace of the dowry system also plays a great role in decrease in the ratio of girl child in many of the states. The families consider the birth of a girl child as a curse and in order to escape from all kinds of responsibilities they find means and ways to kill the newborn infant. Which is not only unlawful but also immoral. This gradually creates a huge imbalance in the ratio¹².

¹¹ <https://nmk.world/dowry-system-causes-effects-solution-5285/> last visited on 25-08-2021

¹² <https://www.globalcitizen.org/en/> last visited 26.08.2021

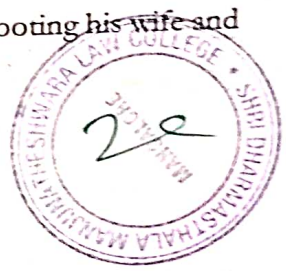


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Dowry Deaths In Rural V. Urban Areas

Earlier it was believed that a number of dowry deaths related issues exist in rural areas but now with the advancement of technological and digitalization and development in the field of education the dowry death reports from the urban areas come into light and the cases in the rural areas many at times go unreported. Some times this also happens that in order to escape from the direct punishment of the outcome the husband and his family members do not directly burn and kill the woman rather torture her physically and mentally and then force her to end her life. In the past year when a 27 year old woman was starved to death by her in-laws because their demand of two lakhs in dowry was not met.

Sometimes the cruelty of dowry harassment goes to the extent of burning the woman. In the year 2020 in Bangalore within a few weeks of the marriage a husband demanded a cash amount despite providing 1 kg gold in dowry according to his wish. When this was denied he burnt his wife. This shows that the dowry harassment cases are not only the story of the rural areas. Even the most educated cities in India like Bengaluru and Delhi also are not spared from this. Bengaluru reported in the year 2020, 17 cases of abuse and death of women for dowry as mentioned in The New Indian Express¹³. Even lately in the state of Kerala the educated medical student woman who was of 24 year old was led into death due to the frequent dowry demands. The another woman from the state of Kerala was also set on fire with the bottle of diesel by her husband on dowry demands. In the month of June 2021 the Delhi Police reported that a 29 year old man barely two months after the wedding, consumed alcohol and killed his wife by strangling her to death after fights over dowry. Similarly in another case in Delhi in a suspected case of dowry death a 21 year old man and his two associates were arrested for allegedly shooting his wife and later dumping her body¹⁴.



¹³ <https://www-shethepeople-tv.cdn.ampproject.org/v/s> last visited on 26.08,2021
¹⁴ <https://www-india-times-com.cdn.ampproject.org> last visited on 26.08,2021

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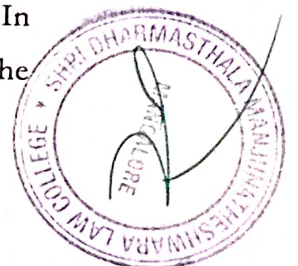
Apart from the above mentioned instances of dowry deaths a number of cases do not come into the public and the loss is borne by the families of the bride alone. Therefore it is clear that the rural and urban areas do not make any great difference between literacy and illiteracy. It also has not made much difference. The social evil is in man's mind and he alone has the power to handle it¹⁵.

Loopholes In the Statutes

The efforts from the legislative to curb the dowry system was initiated by the dowry prohibition Act, 1961 which even though intended to prohibit the evil system of dowry and to protect the women from such evil practice made no such effect. Mainly because the definition of dowry was exhaustive in nature. Dowry giving and taking it—is unlawful underneath the Dowry Prohibition Act of 1961. If found guilty, the punishment is five years imprisonment and a fine of Rs.15,000 or the value of the dowry given, whichever is more. The punishment for dowry death includes imprisonment between seven years to imprisonment for existence. It's stringent, however activists say the law has a few flaws. As per the Dowry Prohibition Act, dowry is forbidden but 'gifts' are allowed. The anti-dowry law cannot be invoked against the giving of presents at the time of marriage to the bride without any demand having been made 'provided that such presents are entered in a list maintained in accordance with the rules' as defined under the Act. "Be that as it may, who chooses what is an 'intentional gift' and what is given under tension of an interest?" asks Madhu Kishwar, the author leader of Manushi Sangathan, a discussion for research-based support for advancement of social equity and common liberties. "What's more, how would you choose what is 'unreasonable' comparable to pay via gifts when in India close to a few percent of individuals pronounce their earnings and those also are terribly under-detailed? When giving endowment is a wrongdoing, for what reason would a man of the hour or a lady's family put their mark on the rundown of gifts being given?"¹⁶ In the wake of pronouncing that giving or taking of settlement is unlawful, the

¹⁵ <https://www.ndtv.com/topic/delhi-dowry-death> last visited on 26.08,2021

¹⁶ <https://www.femina.in/campaigns/the-great-dowry-loophole-734.html> last visited on 01.02.2021



Demonstration adds an equivocal provision, that 'where any endowment is gotten by any individual other than the lady regarding whose marriage it is given, that individual will move the share to the lady inside 90 days after the date of marriage or inside 90 days after the date of receipt'. Inability to move a lady's settlement welcomes detainment for at the very least a half year and a fine of Rs.10,000. For Sanju's situation, this would have implied monetary security and surprisingly a sort of protection against settlement provocation from her parents in law. "The only effect of the anti-dowry law and campaign has been that the giving and taking has become more surreptitious," Earlier, families ensured that proper lists and accounts were prepared and the groom's family was made to sign the list of things they received while the dowry itself was put on display for all the relatives to take note of so there were numerous witnesses to the transaction. Today, no lists are signed and most of the giving and receiving is shrouded in secrecy.

Suggestions To Reduce And Remove The Dowry Death

As we are encountering a number of instances regarding the dowry deaths some serious measures must be implemented to tackle this social evil. First and foremost apart from the legislative and judiciary each individual must take responsibility individually. Wherever there is a lack of education there should be the spread and growth of education. In the marriage ceremonies, taking and accepting of the dowry system must be strongly prohibited rather than acceptance of the bride into her marital home with love and affection should be encouraged. The negative impact of the dowry system must be made to realise not in a careless manner instead those who involve themselves in such activity must be punished and charged heavily. Therefore more relevant laws and amendments in the existing laws must be adhered to according to the change of the society. Awareness programmes regarding the effect of the dowry system should be compulsory to bring into society. The voice of the victims should be brought before the front line of the society and the accused should be punished. Religious cultures and practices should be reviewed according to the changing phase of the society. Girl children must be educated and gender inequality must be prohibited. Social media, even though it thrives to highlight the effects



of the dowry, appears to be a positive sign in the present scenario. consistent punishment and fair investigation should send a message to the people to step back from indulging themselves in dowry actions.

Judicial ideas to force Capital Punishment.

There are a lot of cases, where the legal executive accepted to force the charge of homicide under sec 302 of the Indian Correctional Code to convey the equity. Legal executive accepts that the discipline of capital punishment under sec 302 of IPC ought to be included sec 304-B of IPC, so that, the passing discipline can be forced in the most extraordinary of the uncommon instance of "endowment demise".

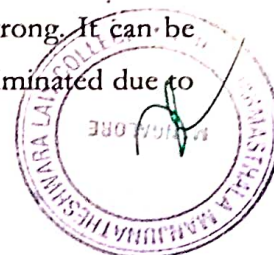
In Satya Narayan Tiwari @Jolly and Anr. Versus The province of U.P¹⁷, the High Court, in the wake of noticing the force of the case said that the said case is completely a case under segment 302 of IPC and capital punishment ought to be forced in the most extraordinary case like this. On account of Rajbir @ Raju and Anr versus The Province Of Haryana¹⁸, the high court, in its judgment coordinated all the preliminary Courts in India to normally add Segment 302 of the Indian Corrective Code to the charge of area 304-B of a similar demonstration, with the goal that capital punishment can be executed in such tremendous and merciless bodies of evidence against ladies.

Conclusion

The practise of dowry under the name of a so-called tradition can be found in any part of India, whether rural or urban. The threat of dowry tradition has spread throughout society. Despite the fact that numerous provisions have been made, the practise of dowry demand continues. No matter how many laws the government enacts, it will never be able to completely eradicate it from society. We can fix the problem if we work together. To completely eradicate it, society's citizens must recognise that it is wrong. It can be managed by adopting rigorous regulations in society, but it cannot be eliminated due to

¹⁷ 2010 (11) SCALE 481

¹⁸ (2010) 12 SCALE 319



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societal ignorance of the laws and lack of family support. Even if the girl complains to her parents about the torture she is subjected to by the husband's family, the girl's parents choose to compromise rather than bring the matter to light. Together, laws and societal support can fix the problem.

