



DOWRY: A SOCIAL CURSE AND ITS LEGAL REMEDIES

Dr. Laxmikanta Das

Assistant Professor, Lajpat Rai Law College, Sambalpur, Odisha

Cite This Article: Dr. Laxmikanta Das, "Dowry: A Social Curse and Its Legal Remedies", International Journal of Current Research and Modern Education, Volume 3, Issue 1, Page Number 510-513, 2018.

Copy Right: © IJCRME, 2018 (All Rights Reserved). This is an Open Access Article distributed under the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Abstract:

Dowry is a social evil nobody can say from which date that social evil prevail in our society. In ancient time there was eight forms of marriage prevail in our society out of these eight forms of marriage four forms of marriage were approved forms and other four were unapproved forms. In approved forms of marriage gift is given as a symbol of love and affection, with the time the position of gift went on changing adversely and consequently evil dowry spread his branches in the society. To abolish this dowry evil practice on the society from 1961 the Dowry Prohibition Act is in force and later on the amendment takes place in 1986. According to section 3 of D.P. Act any person who takes or gives or abets the giving of dowry is liable to be punished. Accordingly to section 4 of the Act discourages the very demand consideration for a marriage between the parties. The India penal code 1860 contains two specific provisions in the form of section 304 B and section 498 A to deal with two distinct offences namely causing of dowry death and subjecting a woman to cruelty for dowry respectively. Section 113 A of the Indian Evidence Act says that when married women commit suicide within a period of seven years from the date her marriage the court may presume that such suicide is abetted by the husband or his relation.

Key Words: Customs of Dowry, Penalty for giving or taking dowry, Cruelty by her husband and relative, Dowry death Presumption.

Introduction:

The dowry was generally unknown in ancient society. Marriage was considered as sacred union of two soul and gifts were voluntarily presented by the bride's parents as a symbol of love and affection. With time the position of women went of changing adversely and consequently various evil customs like child marriage Sati pratha, polygamy deteriorate the condition of women. At present marriage become more and more commercial affair when the father of the bride was forced to give dowry as demanded by the groom's parents, otherwise the marriage was to be cancelled. To abolish this evil practice in the society from 1961 the Dowry Prohibition Act is in force, the reason for the passing of the Act. (a) to stop the evil practice from the society (b) To punish the persons who demands the dowry. (c) To make the society dowry free society. Presently, due to the impact of modern civilization the Indian forget about their culture history and past glory. Gradually the Indian Society become self centered. Though the society is developed but one of the evil i.e. dowry evil spread his branches in our society. In order to abolish this evil practice the Parliament enacted the Dowry Prohibition Act. 1961.

Marriage and the Custom of Dowry:

An approved marriage among Hindu has always been considered a Kanyadan, be it a marriage in any form. In ancient time there was eight forms of marriage prevailed in our society. Out of these eight forms of marriage four form of marriage are approved forms of marriage and other forms of marriage are un approved. In approved forms of marriage i.e. Braham, Arsha, Daiva and Prajapataya dowry is given on lieu of love affection at that time of marriage. In the patrilineal rights in the property of her agnates apart from maintenance and the marriage expenses including the dowry which according to some author of shashtra amounted to ¼ of the share of the son . The daughter would normally go to her husband's house and become for all purposes member of her husband's patrilineal family and gotra. The duty to provide for the dowry was binding not only on the parents, but also on the brothers, the liability to marry a daughter is not a personal obligation of the father. But her right to maintenance and marriage expenses from the joint family property is only a historical remnant of the daughter's original right to a share in the coparcenary property created by birth. Unfortunately, the spread of education has not helped in curbing the social evil of dowry, rather the educated youth has become more demanding as the along with his parents went to recover every paise spent on the education of young man. The Dowry Prohibition Act, 1961 has been amended twice in 1984 and 1986 to provide more teeth to the provisions of the Act. Many basic changes were introduced in 1984 including the definition of dowry in order to give it a more deterrent effect and provide teeth to the provisions.

Act Not a Complete Code:

The Dowry Prohibition Act, 1961 is not a complete code. Besides this Act, the Indian Penal Code contains, section 304B dealing with Dowry death and section 498A dealing with cruelty, related to dowry. The Indian Evidence Act, 1872 contains a presumption in section 113B as to dowry death.

Definition of Dowry:The Act defines 'dowry' as any property or valuable security given or agreed to be given either directly or indirectly by one party to marriage to the other party or by the parents of either party to the

other party, either at or before or any time after the marriage in connection with the marriage of he said parties. The definition does not include “dower” or “Mahr” given as per the Muslim personal Law/Shariat. The Dowry prohibition Act which applies not merely to Hindus but all people, Muslim, Christians, Parsis and Jews. Amount paid by a Mohammedan in connection with daughter’s marriage, to prospective bride groom for purchase of property is joint name of daughter and would be son-in-law is not “dowry” within the meaning of section. In Pawan Kumar V. State of Haryana 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. 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. In SmtShanti v. State and Prem Singh v. State of Haryana. It was held that demand for T.V. and scooter after solemnization of marriage is “dowry” under section 2 of the Act. In Hari Kumar V. State of Karnataka, the court said that the object of this bill is to Prohibit the evil practice of giving and taking of Dowry. In the present context dowry means any property or valuable security given or agreed to be give 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 the marriage or by any other person to either party to the marriage at or before or after as consideration for the marriage of the said parties conceptually, dowry has been defined as that property which is obtained under coercion or pressure. Before 1986 the definition had a flaw which provided dowry as property given or agreed to be given in consideration of marriage. Therefore anything given after was not dowry unless it was agreed or promised to be given as “consideration as marriage” . The court heed that any demand after marriage was for smooth-sailing or good relation in marriage and not demand of dowry. Therefore, amendment was made and now the key words are “in connection with marriage”.

Legal Remedies:

Section 3 of the Dowry Prohibition Act lays down that any person, who takes or gives or abets the giving or taking of dowry, is liable to be punished with a minimum imprisonment of 5 years and with minimum fine of Rs.15,000/- or the amount of the value of such dowry, whichever is more. However the court is empowered to award a sentence of imprisonment for a term less than 5 years, for adequate and special reasons to be recorded in the judgment. As per the section 3(2) any presents, which are given at the time of marriage to the bride or bridegroom without any demand having been made in that behalf and which are customary in nature do not come under the purview of “giving or taking of dowry”. If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extended to two years and with fine which may extend to ten thousand rupees.

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 first class.

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

India Penal Code and Dowry Related Offences:

The Indian Penal code, 1860 contains two specific provisions in the form of section 304B and Section 498 A, 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 (43 of 1986) with effect from November 19, 1986. The provisions under section 304B I.P.C. is more stringent then that provided under section 498A of the penal code. The offence is cognizable, non-bailable and triable by court of session.

[304-B-Dowry death) 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 or her husband for, or in connection with any demand for dowry, such death should be called “dowry death” and such husband or relative shall be deemed to have caused her death.

Explanation:

For the purpose of this sub-section, “dowry” shall have the same meaning as in section-2, of the Dowry Prohibition Act, 1961 (28 of 1961). (2) 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. There are four situations where a married woman is subjected to cruelty and harassment leading to the commission of an offence, viz. First, cruelty of woman by husband or relatives – 498A. Secondly, Dowry Death – 304B, I.P.C. Thirdly, Intentional Death of woman 302 I.P.C. Fourthly, Abetment of succeed of woman – 306 I.P.C.

Dowry Death: Ingredients of offence, in order to seek a conviction against a person for the offence of dowry death, the prosecution is obliged to prove that

- ✓ The death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances,
- ✓ Such death should have occurred within 7 years of her marriage,
- ✓ The deceased was subjected to cruelty or harassment by her husband or by any relative of her husband.
- ✓ Such cruelty or harassment should be for or in connection with the demand of dowry and
- ✓ To such cruelty or harassment the deceased should have been subjected soon before her death.

The commission of dowry death is now punishable under section 304 B, I.P.C. and certain presumptions are prescribed under sub-section (1) of that section. Section 304 B is as special provision. It applies where death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, if the other conditions are satisfied. So the learned judges were therefore of the view that even if she had committed suicide by hanging still the death comes within the scope of S 304-B, I.P.C. if it is shown that she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand for dowry .

113-B of the India Evidence Act 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 or harassment for or in connection with any demand for dowry, the court shall presume that such person had caused the dowry death.

Cruelty by Husband or His Relative for Dowry:

The expression “cruelty” under section 498A means any willful conduct which is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman. Therefore mere demand of dowry by the husband or his relative’s amount cruelty under this section.

In *Vadalavinaj Kumar v. State of A.P.*, it was observed that omnibus allegation that husband was ill-treating deceased by beating, insulting and demanding her to bring money, would not come within the meaning of cruelty as defined under section 498-A I.P.C. petty quarrels between wife and husband cannot be termed as cruelty to attract provisions of section 498-A

The Supreme Court held in the case of *SatayaRaniChaddha vs. State (Delhi Administration)* , where the complainant failed to prove that the accused demanded prior to the marriage, a scooter and the demand for scooter arose subsequent to the marriage which was not in continuation of the first demand the accused was not guilty of demanding dowry.

In *Smt. SujataMukherjee vs. Prashant Kumar Mukharjee*, the Supreme Court held that a woman who is maltreated by her husband and in laws for dowry can file a criminal complaint at all places where such an offence under section 498-A I.P.C. is alleged to have been committed against her.

In *PolavarpuSatyanarayana vs. Soundaravalli* , the husband who was prosecuted under section 498 A I.P.C. for subjecting his wife to 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.

Conclusion:

The dowry started as innocent custom, a symbol of a love from parents to their daughter on the eve of her marriage. Nobody can say from which date that social evil prevail in our society. It is most degradable form of crime committed against women. The constitution of India provided a ladder of justice social, economic and political. Equal status and opportunity still then the condition of woman are much deteriorated. It is the duty of the Government should set up adequate machinery for enforcing the laws. Marriage must be registered the tortured woman must be given free legal aid when any suit of divorce is filed against her – women should be given an economic competence to stand on their own feet “Money comes and goes morality comes and grows” this principle is being ignored by money-mongers of society so dowry evil has an avers effect on the society. In spite of stringent provisions made under the Act of 1961, the Act has failed to have any deterrent effect in curbing the menace of dowry.

References:

1. Manu Smriti, 111.27
2. Vijnaneshwara says that in the presence of brothers the daughter is precluded and her claim in the daya consists of marriage expenses and dowry amounting to a fourth part of the share which is allotted to brother, II, I, 5, 29
3. *RajgopalaIyer v. Venkataram*, (1947) 2 MLJ 37 (PC)
4. *Ram Chandra V. Seenithal*, AIR 1954 Mad 1011
5. Section 2 of the Dowry Prohibition Act.
6. *KunjuMoideen vs. SayedMohd.* AIR 1986 Ker 48 (40)
7. AIR 1998 SC 958
8. Section 3
9. Section 4
10. AIR 1998 SC 26 28

11. (1994) I.D.M.C. 356
12. InderSen v. State, 1981 Cr L J 1116 (Del)
13. Section 8 (1)
14. Section 8 (1) (ii)
15. Section 8 (2)
16. Ibid. They have been made non-bailable to the amending Act of 1986
17. Section 5
18. Kailash V. State of M.P. (2006) 11 SCC 420
19. WazirChand v. State of Haryana 1989 J.I.C. 248 SC.
20. Public Prosecutor, High Court of Andhra Pradesh v. TotaBasavaPunnaiah and others 1989 Cr. L. J. 2330. (Andhra Pradesh)
21. Shankar Prasad V. S State 1991 Cri L. J. 639 Cal.
22. 2006 Cri.L.J. 1710
23. (1994) 2 SCC 40
24. AIR 1997 SC 2465, (1997) 5 SCC 30
25. VungoralaYedukondalu V. State of Andhra Pradesh, 1988 Cr.L.J. 1538 (A.P.) Held Sec 498-A I.P.C applies even where person inflicts such cruelty and harassment as to lead his mistress to commit suicide.