

# The problem behind dowry deaths law family essay

Law



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**Yatharth Nath Pathak**

### **Position of women**

The women of India are an epitome of oppression and exploitation in the name of religion practised by the conservative male chauvinists and social

patriarchs: the rulers of the country. Equal rights for women is only electioneering demagoguery. The traditionally ruling Congress party (which produced a dictatorial regime of India's only woman prime minister) caused even more woes for the oppressed. There have been many acts which oppressed the women and their liberty and freedom and exposure to the world of these criminals and their heinous acts would perhaps draw attention of women warriors and their supporters from all over the globe. Maybe, only maybe, a global solidarity of progressive women would help their Indian counterpart challenge the social and political status quo. One of this is Dowry death which is the most brutal and dangerous form of violation against women.

## **The Background[1]**

The root cause of the problem behind dowry deaths is Hindu religious orthodoxy and its degenerate caste system that divides and redivides Hindus into innumerable classes, groups, subgroups and factions and provides manipulative socio-religious power to the "upper" castes to drive the "lower" castes to subservience, humiliation, poverty, and death. Dowry is derived from the ancient Hindu custom of "kanyadan", where the father presents his daughter jewelry and clothes at the time of her marriage, and "vardakshina", where the father of the bride presents the groom cash or kind. Both of these were done voluntarily and out of affection and love. These days, these customs have rendered coercive and brutally dangerous. The Brahmanical-order Hindu caste system has degenerated to such an extent that it has brought about extreme misery and distress not only to the "untouchables", but also to artificially formed "inferior" groups belonging to

the same social stratum or caste. In fact, most dowry deaths have occurred in the upper strata of Hindu communities, i. e., the Brahmins (the caste of priests cum the Kings' policy-makers), Kshatriyas (the caste of warriors now-turned politicians), and Vaishyas (the traders now-transformed sponsors of conservative parties). Most killing of women for non-payment of "promised" dowry have so far occurred in the urban affluent upper-caste Hindu communities. The reasons due to which the problem of dowry death is increasing rapidly can be summarised as under-(1) Retention of the caste system,(2) Undermining of the woman by the religious orthodox and social patriarch making herself and her family vulnerable to socio-economic pressure and extortion,(3) Ever-increasing greed of the bridegroom and his family, (4) an economically strangled hyper populated society non-supportive of unmarried women, and(5) A morally deprived political system which is being run by the pro-status quo conservatives. However, few (including the educated Indian middle-class) talk about stamping out these social evils. The scholarly finds reasons not to get involved. The elite and the bourgeois find even more reasons to overlook the mess.

## **The facts**

The epicenter of the problem of bride burning and other forms of dowry-related violence on women is Delhi (the Indian capital), western and central Uttar Pradesh (cities such as Kanpur, Lucknow and Agra have witnessed the highest number of deaths), and places adjoining Delhi (Haryana, northeastern Rajasthan, northern Madhya Pradesh, and southern Punjab), and the problem has largely been concentrated among the upper caste

above-average Hindu communities and several states of South India like Andhra Pradesh.

## **Dowry- Meaning**

The dictionary meaning of the term dowry is, the money brought by a wife to her husband. As per section 2 of the Dowry Prohibition Act, 1961 dowry is defined as " dowry includes any property or valuable security given or greed 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 the said parties.

## **Origination of Dowry**

During the ancient times dowry was considered as a custom in our country. The custom however became a social evil with the passage of time. This social evil has taken lives of many innocent brides for its non fulfilment. Deaths of young brides through suicide or homicide following disputes over the dowry are increasingly a feature of Indian society.[2]Marriages in India are usually arranged by parents and the wife becomes a member of the husband's family, in most cases moves in with them. Since most marriages are arranged with the assistance of third parties, the family generally do not know each other well. Nevertheless, the newly wedded bride is expected to switch her principal loyalty overnight to her husband's family. The husband's family may make little accommodation to the bride, but expect her to adjust to them. Since they are now supporting her, the husband's family believes

that she must be considerate to their wishes. If they think she is not, they may feel justified in treating her harshly, even violently. In the early stages of a marriage, a new bride who is being mistreated by her husband's family may not seek help from her own parents because they will already have counselled her that a period of adjustment to her new situation may be needed. If she does complain, unless the abuse is repeated or extreme, most parents would probably be reluctant to intercede on her behalf with the in-laws or husband. This reflects the Hindu norm that once a girl is married, her parents have only limited rights to a say in her new family's personal affairs. They might also hope that some mutual adjustment might occur between the bride and her new family so that there would be a reduction in harassment and ill-treatment. If the girl returns to her parents' house because of quarrels with her husband, this brings shame on her parents' family and prevents the marriage of any of her sisters. Moreover, she cannot take part in any religious ceremonies without her spouse. For all these reasons an abused wife may not expect much support from her parents and may only get support in more extreme cases. These marriage arrangements reflect the generally subordinate and powerless position of younger women, and patterns of domestic violence in India are indicative of the dangerous position of custom of taking and giving dowry.

### **Reasons for Anti- dowry law**

The issue of women's rights and family law reform has been increasingly entangled within the polemics of politics and minority rights. It is true that the hardships and sufferings experienced by woman of all communities, minority as well as majority, cannot be overlooked with the help of

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persuasive or effective freedom of religion. The life of an average Hindu woman has always been difficult and pitiable due to existing social customs and the practices of time.[3]

## **Statutory Provision of Dowry Death**

Section 304 B was introduced in the Indian Penal Code in order to strictly deal with and punish the offence of Dowry Death. It was a new offence created with effect from November 19, 1986 by insertion of the provision in the Indian Penal Code providing for a more stringent offence, than provided by Section 498A of the same Act, which deals with punishment for cruelty by husband and his relatives.[4]

### **Section 304B- 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 before that her death she was subjected to cruelty or harassment by her husband or any relative of her 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". Explanation- For the purpose of this sub-section, " dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (Act 28 of 1961)." 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 of life." From the definition or dowry death provided in Section 304 B of " the Indian Penal Code", it is clearly evident that the necessary ingredients of ' dowry death' are as follows-When the

death of woman is caused by any burns or bodily injury, or under unusual circumstances. And the aforesaid two facts spring within seven years of girl's marriage. And soon before her death, she was subjected to cruelty or harassment by her husband or his relative. And this is in connection with demand for dowry. In Section 304B, it is clearly given that, for being a 'dowry- death' the woman must have been subjected to cruelty and the Section dealing with cruelty is Section 498A of the Indian Penal Code. So, in the cases of " dowry- death', the accused are charged under Section 304B along with Section 498A of the Indian Penal Code. This Section defines and punishes Dowry Death. The first sub- section which defines the offence states that where a woman's death is caused by either 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 husband for, or in connection with, any dowry demand, such a death is 'dowry death'. This Section was inserted was the Dowry Prohibition (Amendment) Act, 1986 with a view to deal with the increasing number of dowry deaths taking place in India. This Amendment Act has also amended the Indian Evidence Act, 1872 by inserting Section 113-B therein with respect to raising a presumption of dowry death. Section 498A of the Indian Penal Code provides for the definition of " cruelty" which goes on as-Section 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 purposes of this section, "cruelty" means (a) Any willful 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 or is on account of failure by her or any person related to her to meet such demand. The perusal of clause (a) would show that the prosecution has to establish firstly the wilful conduct of the offender, secondly that the nature of such conduct was likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health (whether physical or mental). On proof of these facts to the satisfaction of the Court under the circumstances of a particular case the husband or the relatives of the husband shall be presumed to have treated the woman with cruelty. Clause (b) of the above mentioned explanation shows that the harassment with a view to coercing her or any person related to her to meet any unlawful demand for property or valuable security or on account of the failure by her or any person related to her to meet such demand would amount to cruelty for the purpose of Section 498 A of IPC.

### **Constitutional validity of Section 498A**

In 'Inder Raj Malik and others vs. Mrs. Sumita Malik', it was contended that this section is ultra vires Article 14 and Article 20 (2) of the Constitution.

There is the Dowry Prohibition Act which also deals with similar types of cases; therefore, both statutes together create a situation commonly known as double jeopardy. But Delhi High Court negates this contention and held

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that this section does not create situation for double jeopardy. Section 498-A is distinguishable from section 4 of the Dowry Prohibition Act because in the latter mere demand of dowry is punishable and existence of element of cruelty is not necessary, whereas section 498-A deals with aggravated form of the offence. It punishes such demands of property or valuable security from the wife or her relatives as are coupled with cruelty to her. Hence a person can be prosecuted in respect of both the offences punishable under section 4 of the Dowry Prohibition Act and this section. This section gives wide discretion to the courts in the matters of interpretation of the words occurring in the laws and also in matters of awarding punishment. This provision is not ultra vires. It does not confer arbitrary powers on courts.[5]In the leading case of ' Wazir Chand vs. State of Haryana ', involving the death by burning of a newly married woman, the circumstances did not establish either murder or an abetted suicide and thus in-laws escaped the jaws of section 300 and 306, but they were caught in the web of this newly enacted section for prevention of harassment for dowry. Not to speak of the things they are persistently demanding from the girl's side, the fact that a large number of articles were taken by her father after her death from her matrimonial abode, showed that there was pressure being exerted on-in laws and continued to be exerted till death for more money and articles.

### **In legal terms, 498A is an offence, which is:**

Cognizable: Offences are divided into cognizable and non-cognizable. By law, the police are duty bound to register and investigate a cognizable offence.

498A is a cognizable offence. Non-Bailable: There are two kinds of offences, bailable and non-bailable. 498A is non bailable. This means that the

magistrate has the power to refuse bail and remand a person to judicial or police custody. Non-Compoundable: A non-compoundable case, e. g. Rape, 498A etc, cannot be withdrawn by the petitioner. The exception is in the state of Andhra Pradesh, where 498A was made compoundable.

## **Cruelty-**

The expression "cruelty" takes within its sweep both mental and physical agony and torture. The concept of "cruelty" varies from place to place and individual and according to the social and economic status of the person involved. To decide the question of cruelty the relevant factors are the matrimonial relationship between the husband and wife, their cultural background and temperament, status in life, status of health, their interaction in their daily life, which dominate the aspect of cruelty.[6] Though the provision covers both physical as well as mental cruelty, each and every harassment is not cruelty. The harassment has to be with the object to coerce the woman or any person related to her to meet any unlawful demand. In order to come into the ambit of cruelty under clause (b) by husband, the harassment must be to extract money unlawfully from the woman by the man. Unless this is proved, no offence under Section 498 A can be alleged to have been committed.[7]

## **Kinds of cruelty**

Kinds of cruelty covered under this section includes following: (a) Cruelty by vexatious litigation (b) Cruelty by deprivation and wasteful habits (c) Cruelty by persistent demand (d) Cruelty by extra-marital relations (e) Harassment for non-dowry demand (f) Cruelty by non-acceptance of baby girl (g) Cruelty by

false attacks on chastity(h) Taking away childrenThe presumption of cruelty within the meaning of section 113-A, Evidence Act, 1872 also arose making the husband guilty of abetment of suicide within the meaning of section 306 where the husband had illicit relationship with another woman and used to beat his wife making it a persistent cruelty within the meaning of Explanation (a) of section 498-A.

## **Purpose of Section 304B and 498A in the Indian Penal Code**

For safeguarding the interest of woman against the interest of woman against the cruelty they face behind the four walls of their matrimonial home, the Indian Penal Code, 1860 was amended in 1983 and inserted S. 498A which deals with ‘ Matrimonial Cruelty’ to a woman. The section was enacted to combat the menace of dowry deaths. It was introduced in the code by the Criminal Law Amendment Act, 1983 (Act 46 of 1983). By the same Act section 113-A has been added to the Indian Evidence Act to raise presumption regarding abetment of suicide by married woman. The main objective of section 498-A of I. P. C is to protect a woman who is being harassed by her husband or relatives of husband.[8]In the same way, Section 304B was inserted in the Indian Penal Code after the passing of the Dowry Prohibition Act, 1961 in order to strengthen the laws against dowry death in the country.

## **The other side of the Coin**

Though section 498A aims at protection and safety of woman from her husband’s and his relatives cruelty and harassment, this shield is used as a weapon by many females for their own purposes. Many women’s are using

this section against their husband's and his relatives without any attempt or cruelty practiced. Indian law has always laid emphasis on protection of the innocent. It has always been emphasised that ten guilty person's can be acquitted rather punishing a single innocent person. But this section is being misused and innocents are punished. To become a victim of Section 498 A of the Indian Penal Code (IPC), you only need to be married to a woman of Indian origin who has no scruples about lying. It can have dire consequences on your life. Being related to a man married to such a woman can also lead you to be victimised. A Sec 498 A case can be filed for any of the following reasons, none of which has anything to do with the original intent of the law:[9]A woman does not get along with her husbandA woman does not get along with her husband's familyA woman marries a man with the sole intention of obtaining a divorce and extorting money (Yes! Women are capable of this)A woman, having been interested in someone, was forced to marry someone elseA man and woman turn out to be incompatible and the man wants to obtain a divorceA woman gets married by concealing some facts about herself and her husband is resentful upon finding out the truthA woman's family is overbearing and it decides to run the married daughter's life but her husband finds it inappropriate and resists. Abuse of section 498-A has always been a matter of discussion in Rajya Sabha. It was observed there that, Section 498-A has become an instrument of oppression in the hands of certain people who are seeking to get minor children; aged in-laws are being arrested on absolutely whimsical allegations. The issue is not only of compounding it, the question is how you ensure a just investigation of such complaints. Low police officers are

investigating it in a manner that is ruining the sanctity of families; minor children and girls are hauled up. This is a scathing indictment of how this law which was intended to sub serve a noble purpose has in fact, been prostituted. It was also stated that, in many cases, there are complaints where the provisions of section 498A are misused or abused or excessively used. And for that, the investigating agency is the only agency which can remedy this. From time to time, these instructions are issued even from the Government of India, and the State Governments are already cognisant of this fact. But, for the investigating officer, the problem arises when a case is registered and the persons have been mentioned in the FIR; it becomes difficult for him. Till such time, he really satisfies himself. During that period, some harassment is certainly made; it is expected from the investigating officers, it is expected from the police officers. They are sensitised on this matter by the State Government, and also by the Central Government, that they should see to it that they are not harassed.[10]

## **Conclusion**

Anyone who has been awake the last two decades knows how section 498-A of IPC has been heavily misused, dragging innocent men and women into police stations, lock-ups and courts, thus depriving may young children of a happy childhood, many youth of productive careers and many senior citizens of mental peace in the last leg of their lives.