

Misuse of anti dowry law

Law



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Misuse of anti dowry laws in India- the other side of the coin. Synopsis: I] Introduction II] Justification of study. III] Scope of study. IV] Methodology adopted. V] Chapterisation. a) Meaning of dowry & its historical background in Indian society b) Consequences of dowry on society. c) Legal provisions about dowry. d) Misuse of anti dowry laws. e) Public opinion about anti-dowry laws VI] Conclusion. -: Introduction:-

Normally Dowry is considered as the poison of the marital life, life taking thing in the name of traditional practice. Mostly media and newspaper daily colour the events of dowry deaths and cruelty against wife for obtaining maximum TRP for their channels and newspaper and as the press and media are the fourth pillar of democracy engrave the negative impact about the male members of the society. Every death after marriage is unfortunately to be considered by the society as the dowry death and cruelty by the families of the husband.

No doubt there are many laws are there in various Acts made by the legislature for the protection of the women against dowry and cruelty from the husband and his family members. But, does the legal machinery analyse if the anti dowry laws made by the Indian parliament are being misused by the wives to extort money from the families of their husband or not? Hence one must also have to look at the other side of the coin also. II]-: Justification of study:- Every Law enacted by the parliament is the sword of both edged.

It can help the society for eradicating the evils of the society also to remove the inhuman traditions prevailing in the society but it can be misused by the society to a greater extent. Hence the main reason for choosing this topic for

research by the researcher is to study the social impact of anti dowry laws in Indian society and to trace are the anti dowry laws are being used in a positive way by the society in order to eradicate the evils or is being misused just only to extort money from the husband and his relatives & to harass them mentally. III] Scope :—

The scope of this research will be limited to study the present impact of anti dowry laws enacted by the parliament on the society and to find out how far the anti dowry laws are used to eradicate the evils in the society or is being misused only to extort money from the husband and his relative and to put this issue before the NGO's and all types of legal and non legal authorities for the purpose of prevention of anti dowry laws from its being misused. -:

Methodology adopted:- There are two main kinds of methodologies which are used in research they are as follows: I.

Doctrinal or traditional or non-empirical legal research. & II. Non doctrinal or empirical legal research. Doctrinal or traditional or non-empirical legal research:- A doctrinal research means a research that has been carried out on a legal proposition or propositions by the way of analyzing the existing statutory provision and cases by applying the reasoning power. According to S. N. Jain doctrinal research involves analysis of case law, arranging ordering and systematizing a legal prepositions and study of legal institutions through legal reasoning or rational deductions.

Ascertaining a legal rule for the purpose of solving problem is one of the purposes of traditional legal research. This has been achieved by the original sources of law the acts of parliament and the acts passed by legislatures fall

under this category of precedents. The secondary sources like text books on law, commentaries do not possess as much authority as the original sources possess. Hence, quality of doctrinal research depends upon the source material on which the researcher depends upon his study. The doctrinal research attempts to verify the hypothesis by a firsthand study of authoritative sources.

A doctrinal researcher should know how to use a law library for the major portion of his research methodology concern with the identification of authoritative sources and use of techniques to find them out. Doctrinal research looks at the following issues:- 1)The aim of preferred values, 2)The problems posed by the gap between the policy goal and the present state of achievement, 3)Availability of alternative choice for the implementation of goals 4)The predictions and consequences that were made. Following are the characteristics of doctrinal research:- 1) The study is mainly based on propositions,) The sources of data for a doctrinal, Researchers are the reports of appellate Courts and conventional legal theory. 3) It is concern with what the particular doctrine of law says and not as what made the authority to say so or what has been that impact of that say . II. Non doctrinal legal research or empirical legal research:- Conducting empirical research in law is of recent origin. Empiric means relying solely on observation and experiment not on theory. The empirical research is carried out by collecting gathering data or information relating to universe by a firsthand study.

The empirical research technique is also called as fact research. Explaining the scope of this technique, Arthur Nussbaum observed, by fact research in <https://assignbuster.com/misuse-of-anti-dowry-law/>

law we mean the systematic search into the social, political and the other fact conditions which give rise to individual rules and examination of the social, political and other effects of these rules. Empirical research is an inquiry that attempts to discover and verify general rules allowing us to understand why human beings behave the way they do. The methods like observation, interview, questionnaire, survey and case study are used to discover the human conduct.

All inquiries are not suitable to empirical methods. Any inquiry whose objective is to determine what is good and what is evil cannot be empirically tested. The reason for this is that the researcher cannot discover the admissible physical evidence. Research into the value system and moral questions are not amenable to empirical methods. The empirical research is mainly concerned with the legal decision process, i. e. researcher's attention is on variables that influence the decision and the impact of decisions on the society.

The empirical decision may be defined as research into relationship of law and other behavioral sciences. Here, more importance is given to people, social values and social institutions and not to the legal aspects or doctrines. Usually a researcher undertakes some aspects of legal decisions and his more numerical and needed data won't be available in the library, hence field work has to be done. In American universities, legal researchers have originally employed the empirical research methods in their pre-legislative inquiry. Following are the characteristics of non-doctrinal research:-) It tries to find out the impact of non-legal events upon the legal decision process. 2) It seeks to identify and appraise the degree of variables which influence the

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outcome and legal decision-making. 3) It tries to find out the effect the effect of each decision on people and society as such. The field of empirical research is wider and the availability sources are very less which involve several new techniques which are known to research. For the purpose of research on this topic the researcher is using here Doctrinal or traditional or non-empirical legal research. : Chapterisation:- a) Meaning of dowry & its historical background in Indian society The beginning of 19th century plays an important role in degrading Indian women till its depth. The fear of insecurity not only envisaged in unmarried young women but also married women. In India, “ family” has always been prime importance. Marriage being an important social institution since Vedic period was biased against women. It was regarded as the social alliance between two families instead of two persons. The bride was expected to serve her husband and his family and ensure their happiness and well being.

There was no question of her happiness, expectation or content. There were three main objectives of Hindu marriage: dharma or religious duties to be performed by the couple, proja or procreation, and rati or conjugal love. 1 The exploitation of woman began with the child marriage. A girl too young to take life seriously, a girl too young to understand the meaning of ‘ life’ and ‘ marriage’, had to step into the world of thorns. She was subjugated by her mother-in-law and other members of her husband’s family, most of the time including even her husband.

She was expected to observe ‘ purdah’, not to speak to elders, speak in low voice to younger members of family, not to speak or meet her husband except midnight and bear all harsh words and sufferings for even minor fault

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and above all never to express her sorrows or utter a word of distress to anyone. A woman had no freedom, neither personal nor economic. Traditionally, the Hindu woman had distinct economic right called 'stridhan'.² In order to partially set off the disability suffered under the notion of joint ownership by male members, the smritikars assigned a special category of property to women termed as 'stridhana'. The first mention of this term is found in Gautama Dharma sutra. He provided not only for the women's separate property but also distinct and separate rules for its succession. But the definition of 'stridhana' changed over from time to time, granting all the rights and power to husbands. Consent of the girl was not considered to be relevant and hence, she was left with no choice, except to accept all pains and marry. The traditional concept of marriage has greatly changed and Hindu marriage is considered to be of dual nature i. e. f both religious sacrament and contract, where mutual consent and benefit of both the parties are duly aided by different legal provisions and reforms. Attempts to bring about changes in the status of women either through legislation or judicial activism can achieve little success without a simultaneous movement to transform the social and economic structures and the culture (values, ideologies and attitudes) of society.⁴ One of those attempts to bring changes in status of women and relieve her from her sufferings, pains and gloomy environment is given under chapter XX-A of Indian Penal Code, 1860.)

Consequences of dowry on society. c) Legal provisions about dowry.

Following are some legal provisions about dowry- Chapter XX-A of Indian Penal Code, 1860, refers to 'cruelty by husband or relatives of husband' and includes section 498-A. Section 498-A states, that whoever being the husband or relative of the husband of woman, subjects such woman to

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cruelty shall be punished with the imprisonment for a term which may extend to three years and also be liable to fine.

Explanation- For the purpose of this section, “cruelty” means- (a) Any wilful conduct which is of such 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 view to coercing her or any person related to her meet any unlawful demand for any person related to her to meet such demand.

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. Section 113-A of Indian Evidence Act, reads as follows: Sec. 13-A, 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 has 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 purpose of this section ‘dowry death’ shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860).

The object for which section 498A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting Criminal Law (Second Amendment) Act No. 46 of 1983. As clearly stated therein the increase in number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some of cases, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, which constitute only a small fraction involving such cruelty.

Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 (in short ' the Cr. P. C') and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in-law's and relatives. The avowed object is to combat the menace of dowry death and cruelty. 5 The act of harassment would amount to cruelty for the purpose of this section.

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, but this section has been held not to include a husband who merely drinks as a matter of routine and comes home late. 6 In a case before Supreme Court it was observed that this section has given a new dimension to the concept of cruelty for the purposes of matrimonial remedies and that the type of conduct described here would be relevant for proving cruelty. d) Misuse of anti dowry laws. e) Public opinion about anti dowry laws