

Dowry Demands and Dowry Deaths

** George K. Jose*

Introduction

Dowry is a deep-rooted evil in society. In the olden days, it was customary to give presents to the bridegroom and his family at the time of the marriage. This used to be a provision for the couple to fall back upon in case of need. This system started at a time when girls were generally not educated or employed and had less opportunities to supplement family income. There was also another reason for giving such customary gifts. As girls were not entitled to the share in the family property, the father, out of affection and other considerations, used to give some cash or kind to the daughter at the time of marriage. Unfortunately, slowly a new practice of demanding such gifts by the boy or his family evolved as a matter of right. The Dowry Prohibition Act, 1961, was an effort by the government to curb this custom, but the evil has increased to alarming proportions. After the dismal performance of the Dowry Act, the Government made certain amendments in the Indian Penal Code and Indian Evidence Act to bring the guilty to the book. This unit will be looking at the important provisions of the Dowry Prohibition Act, the relevant sections of the Penal Code and the Evidence Act, giving you the exact provisions as given in the statute books as well as examples on how the courts have dealt with dowry related cruelty and suicides/deaths.

** George K. Jose, Advocate, Supreme Court, New Delhi*

Dowry Prohibition Act, 1961

The object of this Act is to prohibit the evil practice of giving and taking dowry. Since the problem is basically a social one, the government has tried to tackle it by conferring improved property rights on the women by Hindu Succession Act, 1956. However, need for a law was felt to make the practice punishable and, at the same time, ensure that if any dowry is given, then its benefit goes to the women. This Act also aimed at educating the public and eradicating the evil.

What is Dowry?

Section 2 of the Dowry Prohibition Act (Act for short) defines dowry to mean any property or valuable security given or agreed to be given either directly or indirectly by one party to the marriage to the other party to the marriage or by the parents of either party 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 parties. But this does not include dower or mahr in case of Muslims.

Therefore, dowry means any property or valuable security given or agreed to be given either directly or indirectly by one party to the marriage to the other party 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 and in connection with the marriage of the parties. It does not include dower or mahr of Muslims.

It is either cash or jewelry or valuables, given at the time or before or after the marriage to one of the parties to the marriage, generally to the bride, by the parents or relations of the bride, in connection with the marriage.

Penalty for giving or taking dowry

- 1) 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 for a term, which shall not be less than five years, and with fine, which shall not be less than 15,000/- or the amount of the value of such dowry, whichever is more.

- 2) However, nothing shall apply to, or in relation to:
 - a) Presents, which are given at the time of a marriage to the bride, provided that such presents are entered in a list maintained in accordance with the rules made under the Act.
 - b) Presents, which are given at the time of a marriage to the bridegroom, provided that such presents are entered in a list maintained in accordance with the rules made under this Act.

Dowry and Central Government Staff

The Central Government staff has been barred from giving or accepting dowry. The following rule prohibiting the taking or giving of dowry was incorporated in February, 1976, in the Central Civil Services (Conduct Rules, 1964, w.e.f 13.2.1976).

No government servant shall give or take, or abet the giving or taking of dowry or demand, directly or indirectly, from parents or guardians of a bride, any dowry.

Any violation of the provisions of this rule will be good and sufficient cause for taking disciplinary action against government servants.

Penalty for Demanding Dowry

If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride, 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 extend to two years and with fine, which may extend to ten thousand rupees.

Ban on Advertisement

If any person offers, through any advertisement in any newspaper, periodical, journal or through any other media, any share in his property or of any money or both or a share in any business or other interest as consideration for the marriage of his son or daughter or any other relative, he shall be punishable with imprisonment for a term, which shall not be less than six months, but which may extend to five years, or with fine, which may extend to fifteen thousand rupees.

Section 5 of the DPA declares any agreement for the giving or taking of dowry to be void.

The Beneficiaries of the Dowry

Section 6 states that dowry is given for the benefit of the wife or her heirs: Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman:

- a) if the dowry was received before the marriage, within three months after the date of the marriage; or
- b) if the dowry was received at the time of or after the marriage, within three months after the date of its receipt; or
- c) if the dowry was received when the woman was a minor, it must be given to her within three months after she becomes eighteen years old, and pending such transfer, shall hold it in trust for the benefit of the woman.

Punishment

- 1) If any person fails to transfer any property as required by sub-section (1) within the time limit specified therefore or as required by sub-section

(3), he shall be punished with imprisonment for a term, which shall not be less than six months, but which may extend to two years or with fine, which shall not be less than five thousand rupees, but which may extent to ten thousand rupees or with both.

In case of death

When the woman is entitled to Dowry property under sub-section

- 1) When she dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being.

Provided that where such woman dies within seven years of her marriage, such property shall—

- a) if she has no children, be transferred to her parents, or
- b) if she has children, be transferred to such children and pending such transfer, be held in trust for such children.

Right of Court

Section 7 of the DP Act provides as to who shall take cognizance of the offences

- 1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973:
 - a) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First class shall try any offence under this Act;
 - b) no court shall take cognizance of an offence under this Act except upon—
 - i) it's own knowledge or a police report of the facts, which constitute such offence, or

- ii) a complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any recognized welfare institution or organization.
- c) it shall be for a Metropolitan Magistrate or a Judicial Magistrate of the First class to pass any sentence authorized by this Act on any person convicted for any offence under this Act.

The Act also provides for the appointment of Dowry Prohibition officers, lays down their jurisdiction and their duties and the power of the Central Government to make rules for the purpose of carrying out this Act.

Most of the States have made their own amendments to this Central Act to effectively face the local situation. All of them have made the provisions more stringent. However, the incidents of harassment, torture, abetted suicide and dowry deaths continue unabated. Lack of education and economic dependence of women have encouraged the greedy perpetrators of the dowry crime.

The Dowry Prohibition Act of 1961 has been amended from time to time, but this piece of social legislation does not appear to have served much of the purpose, as dowry seekers are hardly brought to book and the convictions are rather few.

Legislative Efforts To Curtail Dowry

The subject failure of the Dowry Prohibition Act to eradicate or even to curtail the evil prompted our legislature to enact The Criminal Law (Second Amendment) Act, 1983. In order to deal effectively not only with cases of dowry death, but also with cases of cruelty to married women by their in-laws, amendments were made in the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act.

Section 498-A IPC

Put in a simple language Section 498-A of IPC means:

Cruelty to a woman by her husband or any relative of the husband is punishable (a) with imprisonment for a term, which may be extended to three years and also (b) with fine.

Cruelty means:

- 1) willful conduct of such nature by the husband or any relative of the husband that is likely to drive the woman to commit suicide, or cause serious physical or mental, moral injury to her, and
- 2) harassment of a woman by her husband or any relative of her husband, with view to coercing her or any of her relatives to meet any unlawful demand for property.

The offence is cognizable if information relating to the commission of the offence is given:

- a) to the officer in charge of a police station
- b) by the victim of the offence
- c) or a relative of the victim of the offence
- d) or in the absence of any such relative, any public servant authorized in this behalf by the state government.

A Court shall take cognizance of the offence upon—

- a) a police report or
- b) a complaint made by the victim of the offence,
- c) or her relatives or any person related to her with the leave of the court.

Section 113-A of the Evidence Act (Presumption As to Abetment of Suicide by a Married Woman)

According to section 113 – A of the Evidence Act:

- 1) if a woman commits suicide within a period of seven years from the date of her marriage, and
- 2) it is shown that her husband or any relative of her husband had subjected her to cruelty. In this case, the court may presume that such suicide had been abetted by her husband, or such relative of her husband.

Dowry Deaths

In Indian society, woman has always been viewed as an ideal. She is the ultimate force in the family and also the protector of culture, heritage and religion. But in reality, this image has been shattered due to the unfortunate and disturbing phenomenon of incidents of bride burning that are on the increase at an alarming rate.

In most of the cases, the harassment and killing of the bride can be traced to the abominable practice of demanding and extracting dowry and the failure on the part of the bride's parents to adequately satisfy the greed of the husband's people. Nothing can be more barbarous and more heinous than this kind of murder.

Dowry killing is also a crime of its own kind. It becomes an immediate necessity for the husband and his family members to make the groom available in the marriage market. Thus, inconvenient brides have to be eliminated if they cannot feed the greed and avarice of their in-laws.

In a murder, there may be a motive or not. But in dowry deaths, it is inherent. The courts only have to examine as to who translated it into action.

In a Delhi case (Laxman Kumar Vs State (Delhi Admn)), the hon'ble High Court pointed out that "once economic independence comes to women, the evil of dowry will

die a natural death. Without education, the economic independence cannot be achieved. And therefore, education at all levels of the society is a must. We hear of no wife burning cases in western countries, obviously because women are economically independent”.

Bride burning is a shame on our society. Unfortunately, the price rise and ever-increasing cost of living, coupled with enormous growth of consumer goods effecting the difference between luxury and essential goods, lure the new generation to easy money i.e. the dowry. The brides are unintended victims of the glorious march of consumerism. The husband and his family members look towards the wife and her family to meet the market needs.

Nature of Death

A death can either be natural, accidental, suicidal or homicidal. It is for the court to conclude whether the death was homicidal on the basis of the facts on record.

Framing of Charges against Accused

It is the duty of the judge to consider judicially, whether on consideration of the materials on record, it can be said that the accused has been reasonably connected with the offence alleged to have been committed, and on the basis of the said materials, there is a reasonable probability or chance of the accused being found guilty of the offence alleged. If the answer is in the affirmative, the judge will be at liberty to presume that the accused has committed the offence.

The court is entitled to consider the evidence on record as to whether or not a prima facie case against the accused has been made out. The court is not expected to frame the charge mechanically, but has to exercise its judicial mind to the given facts of the case.

Discharge of an Accused

In cases of bride burning, it has become the normal practice to involve every member of the family of the in-laws of the girl even if they are not in any way connected to the offence. However, the court is not expected to be swayed by the sentiments of the complainant family and try to rope in the innocent. It is the duty of the court to sift the evidence justifying the involvement of the real culprits.

Sections 304-B, IPC & 113-B, Evidence Act

Section 304-B was inserted in the IPC by dowry Prohibition (Amendment) Act, 1986 with effect from November 19, 1986. It is a special provision inserted to deal with dowry deaths. Practically, the presumption under Section 113-B of the Evidence Act has been incorporated into Section 304-B IPC also.

Thus, if a woman dies within seven years of her marriage, and it is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, and it is shown that before her death, she was subjected to cruelty or harassment by her husband, or any of his relatives for securing any property or valuable security from her or her relatives, it would come under dowry death, provided it is in connection with any demand for dowry.

Whether such person is directly responsible for the death of the deceased or not by virtue of presumption, he is deemed to have committed the dowry death, if there was such cruelty or harassment, and the unnatural death occurred within seven years of the marriage. If there is proof of the person having intentionally caused her death, then it would attract section 302 IPC, which deals with murder.

Dowry Death & Section 304-B, IPC

Section 304-B of the Indian Penal Code reads as under:

Where the death of a woman is caused by 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 demand for dowry, such death shall be called “dowry death” and such husband or relative shall be deemed to have caused her death.

Evidence of Dowry Death

Since the crimes of dowry deaths are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence is not easy to collect. This is the reason why the Parliament introduced sections 113-A (Presumption as to abetment of suicide by a married woman) and 113-B (Presumption of dowry death) in the Evidence Act to strengthen the prosecution by permitting presumption to be raised if certain basic facts are established and the said death took place within seven years of the marriage.

The words “it is shown” in section 304-B places the initial burden of providing the circumstances envisaged by the section on the prosecution.

The term “soon before her death” does not necessarily mean “immediately before her death”.

The expression ‘deemed to’ has been used in the section with a view to create legal fiction.

The offence under section 304-B is triable by the Court of Session. It is a cognizable and non-bailable offence.

To draw a presumption under 113-B of the Evidence Act, the necessary ingredient is to show that soon before her death, she was subjected to cruelty or harassment in connection with the demand for dowry under the deeming provision of section 304-B, IPC, then the court

shall presume that the husband or any of his relatives had caused the dowry death.

The expression “shall presume” in the section 113-B indicates that it is mandatory and obligatory for the court to draw the inference, and no option is left to the court, but to take for granted and proceed on the supposition that the husband and other relatives have committed the dowry death.

The court is bound to take the fact of dowry death as proved until very strong and positive evidence is given in rebuttal by the accused.

Conclusion

Marriage is a social event for families and friends to come together. However, it is now used to show off the financial capacity of the families concerned. The money for this lavish show has to come from the bride’s family. Huge sums are spent and money changes hands. This may be all right when the parties are well placed and the wealth so exchanged are out of good will. But today, dowry has become a curse and people from every strata suffer from this plague.

The Dowry Prohibition Act was an effort by our legislature to put an end to this social evil, but it did not succeed, as women were seen as economic liabilities. Parents of girls considered them to be burden to be got off from their backs at any cost. The unnecessary expenses on the occasion of marriages are considered as a prestige issue for the bride’s family. The groom’s family insists on a lavish party and the number of persons to be invited keeps increasing. If any gifts are given voluntarily to the bride or the groom, the same are welcome. However, as soon as there is an element of compulsion, it becomes anti-social and illegal. The Dowry Prohibition Act provides various punishments for demanding, giving or taking dowry. It clearly states who the beneficiaries should be in case

there is voluntary dowry given to the bride. This has been an absolute failure as social sanctions did not accompany the provisions of law.

Dowry harassment, mental and physical cruelties, bride burnings and murder of the wife for the simple reason that she is unable to bring more dowry, so that the man can marry again for more dowry, etc. has become a cruel joke of daily lives. Sections 498-A IPC, dealing with cruelty and 304-B dealing with dowry deaths, etc. are efforts by the legislature to bring an end to the curse. However, the growing consumerist needs will only increase the dowry demands, as the groom's family see the bride as a source of income to meet all their material luxuries.

Only education of girls and their economic independence can change this situation. It is also important to see women as human beings worthy of dignity and respect. Our socio-religious attitudes and the media play a big role in this regard. Marriage should be treated as a holy bond or sacrament or an alliance of two persons for life. If one looks at it as a business deal aiming at maximum profits, then the legislature or the police and the courts together cannot save the society from the scourges of dowry curse. The change in social and personal attitudes will be the real answer to the dowry problems, as we witness today.

References

Dayal R. (1995), *Law relating to dowry*, Premier Publishing Company, Allahabad.

Mayne John D., *Mayne's Hindu Law and Usage (Revised by Justice Alladi Kuppaswami, 13 ed 1993)* Bharat Law House, New Delhi.

Purohit Nishi (1998), *The Principles of Mohamadan Law* (2nd ed), Orient Publishing Company, Allahabad.