

A Study of the National Framework for the Protection of Women from Dowry Harassment as Domestic Violence

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Abstract:

This paper analyzes the legislative enactments and provisions that are created to provide a shield for protecting women from the dowry related violence in their matrimonial house. Dowry system is one of the many reasons behind the domestic violence against women of Indian society that is still practiced in various communities of India under the pretext of custom or rituals. Originally, dowry was voluntarily given in the form of gifts (stree dhan) by the parents to the bride at the time of her marriage but eventually it has been converted into mandatory payment to the family of groom. This practice is not only responsible for making women's life a hell but also threat to their life for just material needs. Since independence the concern for women's empowerment and protection have been taken into consideration by the legislature due to increase in numbers of crimes committed against women in the country and dowry related cruelty, harassment, suicides and murders are some of them. These crimes in disguise of the customs easily creep into the modern society and are becoming a perilous curse for the women who have dreamt of a happy married life. The legal framework in the form of Anti- dowry law and other related provisions and periodic amendments in them have been introduced in order to combat and eradicate this silent crime from the Indian families. However, it has been observed that there is no distinctive or visible change in the growing numbers of cases registered against dowry harassments as the Act is complete failure due to the lacunas in the provisions. These analyses have been made by reviewing latest data from government and news reports.

Keywords: Dowry, dowry harassment, domestic violence, crime against women, legal framework.

I. INTRODUCTION:

As a vulnerable section of the society, women are always victims of violence, and domestic violence is one among them. Within the four walls of her so-called home, she witnesses abuse of various kinds from those who promised her respect and safety, it not only affects her physically but also impacts psychologically disturbs them emotionally. Recently National Crime Report Bureau's report revealed the brutal truth that year 2020 recorded total 371,503 cases of crime against women under The Protection of Women from Domestic Violence Act, 2005.¹

Dowry system is not new to the Indian society, here the parents have to spend huge amount on the marriage of daughter instead of her education and well upbringing. Whether rich or poor, educated or illiterate, urban or rural, dowry system has been followed irrespective of nature of family. Although it has become a deep-rooted custom of Indian families, it is having adverse effect on overall development and life of Indian women. The researcher's aim is to highlight national safeguards available for women who are victim of domestic violence just because they have failed to fulfill someone's greed, the greed against no life is important.

1.1 Background:

*If all men are born free, how is it that all women are born slaves?"*²

Every girl dreams of her life partner and the fairy tale life ever after, but as she enters her matrimonial home with high expectation of being loved and appreciated. But, then the reality bites, her dreams become nightmares, when she faces dowry violence by her husband and her

¹ Crime Against Women- Press Information Bureau , available at, <https://pib.gov.in/PressReleasePage.aspx?PRID=1797704>, (last visited on 31st July, 2022)

² Violence Against Women: Where are the Solution?, Available at, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4462781/>, (last visited on 1st Aug, 2022)

in-laws. Dowry violence is ruining Indian Society since ages. Law enforcement agencies are tackling this problem by enacting laws and amendments periodically since 1961 but no fruitful results have been visible since last 7 decades. Numbers of dowry related crimes are increasing by the day and the situation of current pandemic has worsen the situation further for all the women who were locked with their perpetrators.

India witnessed 40% to 50% dowry deaths of newly married women just because dowry harassment since 1999-2018.³ The data shows that how Indian society is insensitive about a living being over material things.

1.2 Literature Review:

As per Muduli Deepa (2018)⁴ dowry violence is spreading like a cancer in Indian society and it required curbing from the society. This practice has become a way to of betterment for those who wants easy money and to become successful and rich overnight. In spite of the various legislation i.e. The Special marriage Act, 1954, Immoral Traffic (Prevention) Act, 1956, The Medical Termination of Pregnancy Act, 1971, Commission of Sati (Prevention) Act, 1987 etc. the cases of violence against women is increasing day by day in India.

According to Dr. Dube Deepa and Dr. Yadav Mukesh,(2015) dowry death is the most barbaric forms of cruelty due to which many newly brides are vanishing from the Indian society. To hold guilty liable for the act committed, an effective measures have to be adopted to tackle the cases of dowry deaths and in it Medical evidence plays an important role to punish the offender for the crime he/she committed. Forensic Medical Evidence is playing crucial role in proving the unnatural death of the deceased in the court of law.

Kapur Radhika, (2020), explains the meaning of dowry harassment, the reasons behind the increasing cases of dowry harassments and the adverse effect of this system on the women's development and society.

1.3 Research Objectives:

- To study national safeguards provided especially for women who suffer domestic violence just because non-fulfillment of dowry demands.
- To analyze how the cases of dowry related violence and deaths are not yet controlled even after the stringent steps have been taken by the Government.
- To suggest preventive measures to lessen the growing numbers of dowry cases.

1.4 Hypothesis

H0: The legislative measures have failed to provide safeguards for protecting women from dowry harassment.

H1: The legislative measures have succeeded to provide safeguards for protecting women from dowry harassment.

1.5 Research Methodology:

Due to time limitation the researcher adopted secondary data as it was not possible for the researcher to conduct field work and conduct interviews within the stipulated time. For this the researcher has referred books, journals, articles, news reports and official government data websites available on internet. The analysis has been made by these relevant sources.

II. DOWRY HARASSMENT AS DOMESTIC VIOLENCE:

Dowry harassment is a common form of domestic violence in India. There are various kinds of domestic violence like physical abuse, mental or emotional, economic or financial etc. Non-fulfillment or insufficient payment of dowry mostly results in cruelty, harassment, torture, exploitation and even in death of in many cases. As per the NCRB report of 2020, 10,366 cases registered under the Dowry Prohibition Act, 1961, and 6,966 cases of dowry

³ Dowry Death: Supreme Court Widen Scope of Section 304-B, available, <https://www.thehindu.com/news/national/dowry-deaths-supreme-court-widens-scope-of-section-304-b/article34670458.ece>, (last visited on 1st Aug. 2022).

⁴ Muduli Deepa, Women As Dowry Victims: A Legal Study, available at, https://www.worldwidejournals.com/global-journal-for-research-analysis-GJRA/recent_issues_pdf/2018/March/March_2018_1521007479_55.pdf, (last visited on 1st Aug.2022).

deaths have been registered same year.⁵ This is the brutal truth of Indian families where no one cares about a life of innocent woman in front of material wants. The girl, who comes with a dream of living a happy married life, is eventually tortured mentally and physically by using abusive language, beating, starvation and threats, intimidation just for few pieces of paper or for some metal (jewelry).

In simple words, dowry can be define as , gift & other articles of means given to the bride by her parents with love and affection at the time of marriage to the groom & his family, most importantly voluntarily. It has been existence since time immemorable; however, its nature has changed as the time passed. It is now been demanded by the groom's family, and given by bride's side even if they have no means to provide the dowry, thus it has been converted into an evil practice and has become a burden on the parents of girls, these demands have no limitations.

Delay in payment or non-fulfillment of dowry demands eventually results in violence of many kinds. Geetanjali of Chattisgarh was shot dead even after the giving Rs. 51 lakh, 101 gold coin, household items, Skoda Laura car and plot to her judge husband.⁶

Recently, in March 2019, a 27 years old woman in Kerla was starved to death by her husband and mother-in law for just 2 lakhs cash, she was just 20 kg, like a 'bag of skeleton' when she was admitted to the hospital.⁷ The incident of Jaipur, Rajasthan shook the Indian society on the news of mass suicide committed by three sisters (amongst two were pregnant) with two kids for the reason of unbearable torture of in-laws for dowry.⁸ These are just few examples to show the heinous side of dowry system.

III. NATIONAL FRAMEWORK AGAINST DOMESTIC VIOLENCE AND DOWRY:

3.1 The Protection of Women from Domestic Violence Act, 2005:

Domestic violence is a type of abuse that can be experienced by anyone but mainly married women witness the same in their matrimonial home frequently. No human being is entitled to suffer from such type of abuse or violence and it is the duty of legislature to frame a piece of legislation to provide remedy. Previously there was no separate law governing domestic violence as crime hence, the Protection of Woman from Domestic Violence Act, 2005 enacted with the feature to provide women their legal right to reside in their matrimonial home without any violence. This Act contains civil remedies that provide criminal procedure. Under this Act protection has been given to the victim against physical, sexual, verbal, emotional and economic abuses. As per the Act woman has provided with a legal right to reside in shared household and she cannot be evicted from shared household by the respondent.⁹ *In recent case*, SC held that an aggrieved woman has a right to reside in a house although she or her husband may not own the premises jointly or individually, or

⁵ 19 Women Killed for Dowry Every Day in Year 2020, available at, <https://www.cnbctv18.com/india/rahul-gandhi-initiated-into-lingayat-sect-in-karnataka-14355132.htm>, (last visited on 1st Aug 2022)

⁶ CBI Charge sheet in Geetanjali 'Dowry Death': Judge Got Flat, 2 Cars, Gold Coins, available at, <https://indianexpress.com/article/india/haryana-cbi-civil-judge-wifes-murder-geetanjali-dowry-death-case-4424173/>, (last Visited on 2nd Aug. 2022).

⁷ Kerala woman Starved to Death for Dowry, Weighed Just 20 kg at Death, available at, <https://www.indiatoday.in/crime/story/kerala-kollam-woman-starved-death-dowry-1490366-2019-03-30>, (last visited on 2nd Aug., 2022)

⁸ Rajasthan: Three Sisters and Their Kids Found Dead in Well, Family Alleged Dowry Death, available at, <https://indianexpress.com/article/cities/jaipur/rajasthan-sisters-kids-found-dead-well-family-dowry-death-7941182/>, (last visited on 2nd Aug. 2022).

⁹ Section 17 of the Protection of Women From Domestic Violence Act, 2005.

rented jointly or individually.¹⁰ The Protection officer or service provider is bound to provide immediate relief through protection order, monetary compensation, residency order, custody order, free legal services, medical aid and counseling in the case of eviction aggrieved woman from shared household. In every district the domestic violence Protection Officers have been appointed by the State government and voluntary associations are encouraged to act as a Service Providers.

3.2 The Dowry Prohibition Act, 1961:

The enactment of anti-dowry laws was the need of time when the society was at chaos due to dowry harassment cases and dowry death cases. The enactment was made in 1961 under the name of The Dowry Prohibition Act, 1961 containing only 10 Sections with an object of making giving, taking and abetting dowry in connection with marriage as punishable offence. The Act has been amended to give extra teeth for the battle against dowry, for purpose of making person liable under the Act the term ‘dowry’ defined in Sec.2 has been amended by the Amendment Act 63 of 1984 and Amendment Act of 43 of 1986 and interpreted by the court of law so that the culprit cannot be escaped just for mentioned lines of the provision.

In the recent Judgment SC made the demand of money for constructing a house, within the ambit of definition of dowry.¹¹

The person who gives or take or the person who abets to give or take dowry is liable for the punishment of 5 years imprisonment or fine or both.¹² Not only giving and taking but the person who demands directly or indirectly the same will be held guilty under the provision of the Act.¹³

Even the Act restricted to make an agreement for giving and taking dowry and the advertisement by publication for the same.¹⁴ It also mentioned the legal heirs to whom the dowry property is to be transfer, in case of the death of the bride, if that property is received by the person other than that bride.¹⁵

Sec. 8 of the Act made the offence cognizable for certain purpose, non-bailable and non-compoundable. By making the offence cognizable for certain purpose, the court can initiate proceedings upon its own knowledge or on the basis of police report in the absence of complaint also.¹⁶ The burden of proof is on the accused to prove he has not committed any crime under the Act.¹⁷

The Act required the State Government to appoint Dowry Prohibition Officer to see whether the provisions are properly implemented or not.¹⁸

Sec. 9 provides Central Government, power to make rules and using this power Dowry Prohibition (Maintenance of The List of Presents to the Bride and Bridegroom) Rules, 1985 has been introduced according to which the bride and bridegroom have to maintain the list of gifts in writing.

¹⁰ Explained: A Woman's Right to Residence Under the Domestic Violence Act as SC Overrules Old Judgment, available at, <https://www.news18.com/news/india/explained-a-womans-right-to-residence-under-the-domestic-violence-act-as-sc-overrules-old-judgment-2977229.html>, (visited on 1st Aug. 2022).

¹¹ Any ‘Material’ Demands by In-laws Should Be Considered Dowry: Supreme Court, available on <https://timesofindia.indiatimes.com/india/any-material-demand-by-in-laws-should-be-considered-dowry-supreme-court/articleshow/88841904.cms>, (last visited on 3rd Aug.2022)

¹² Sec.3 of The Dowry Prohibition Act, 1961

¹³ Sec.4 of The Dowry Prohibition Act, 1961

¹⁴ Sec.5 and Sec.4-A The Dowry Prohibition Act, 1961.

¹⁵ Sec.6 of The Dowry Prohibition Act, 1961

¹⁶ Sec. 8 of the Dowry Prohibition Act, 1961

¹⁷ Inserted by Act no 43 of 1986.

¹⁸ Inserted by Act no 43 of 1986.

3.3 Constitutional Provisions:

The Constitution of India is the basic and supreme document that contains rights and structure by which the citizens are governed. The Preamble is the soul of the Constitution, lays down the important words like Justice and Equality, so that every citizen of India including women without any discrimination are entitled to treat equally. Article 14 articulate the general principle of equality. This Article prohibits the State from denying any person, “equality before the law or the equal protection of the laws”. Both the expressions, taken together, aim at establishing “the equality of status”.¹⁹ Hence on the basis of underlying principle of Article 14 women have the equal status in the society. Article 15 strengthen this principle, to effectuate equality between men and women. Article 15 of the constitution of India prohibits the State to make any kinds of discrimination specifically on the basis of sex. Further, the provision of Article 15(3) i.e. the State can make any special provision for women, appears to be protectionary in nature, by taking into consideration the marital struggle and physical well-being of women. On the basis of this provision, the Central legislatures have enacted the Domestic Violence Act, Dowry Prohibition Act and also made amendments into the Criminal Laws.

Article 21 confers, The Right to Life and Personal Liberty, but the question is that, in reality can women enjoy this basic right? The right to life has been held to be include among it the Right To Free From Violence, in **Francis Coralie Mullin v. Union Territory Delhi**, Supreme Court held that harms or impairs or interferes with the use if any limb or faculty of an individual stated, either permanently or temporarily, shall be within the scope of Article 21, this right is incorporated into the Domestic Violence Act by the definition of physical abuse which constitutes domestic violence.²⁰ In another case of **Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan**, the Supreme Court stress that the right to life included in its scope the Right to Live with Human Dignity.²¹ However the act of humiliation is against the dignity of women so it should be protected.

Even though, part IV of the Constitution directs the State to take certain remedial measures for the welfare of the women. When women faced the domestic violence due to dowry demands they are in need of legal assistance, to know their rights and legal provisions and to fight for justice. Article 39 (A) of the Constitution deals with the provision of equal justice and free legal aid, it ensures justice for all on the basis of equal opportunity and under this provision women can get free legal aid and assistance in domestic violence cases.

Apart from above enumerated fundamental rights in respect of women there are some duties imposed on the every citizens of India under part IV- A, Article 51 (A) of the Constitution of India in respect of women. Article 51 (A) (e) States that, it shall be the duty of every citizen f India, to renounce practices derogatory to the dignity of women.

However despite the guarantee of rights by the Constitution and formulation of guidelines by the Supreme Court which granting protection against domestic violence and dowry harassment, this type of abuses continues to exist even today as it is deep rooted in the traditions of Indian society.

3.4 Provisions under Indian Penal Code:

The Indian Penal Code is enacted in 1860 for providing procedure and punishment for the offence committed and has been amended as per changing society. In 1980 the Code has been amended in order to prohibit the dowry system and violence related to it. The growing number of dowry related crimes and constant failure of dowry legislation in India required the

¹⁹ Domestic violence against Women in India A socio legal study Available at- <https://shodhganga.inflibnet.ac.in/handle/10603/129444>

²⁰ The Constitutional Perspective of the Domestic violence Act, 2005 Available at- <https://blog.ipleaders.in/constitutional-perspective-domestic-violence-act-2005/>

²¹ The Constitutional Perspective of the Domestic violence Act, 2005 Available at- <https://blog.ipleaders.in/constitutional-perspective-domestic-violence-act-2005/>

need to insert new Section in the Code. Hence Section 304-B and 498-A were added through amendment in the year 1983 and 1986 respectively.²²

Sec. 304-B deals particularly with ‘Dowry Death’ and as per the Section if the death of married woman caused within 7 years of marriage and soon before the death if that woman is subjected to cruelty for dowry demand by her husband and his relatives is punishable with 7 year imprisonment and life imprisonment.²³ There is no specific definition of dowry is given in IPC, but for this Section the term dowry is having same meaning as defined under Sec.2(1) of Dowry prohibition Act, 1961. This Section particularly covers the death under unnatural circumstances hence as per the section the below ingredients should be fulfilled to make person liable under this section:

- Death caused by either burn or bodily injury or under unnatural circumstances.
- The death must be occurred within 7 years of marriage and
- Harassment or cruelty or both has been done soon before the death in connection of dowry demand.

Here, the phrase, ‘soon before the death’ has given wider interpretation by Indian Judiciary. In **Devendra Singh and Others V. State of Uttarakhand** the SC three bench Judges observed that soon before the death should not mean ‘immediately prior to her death’.²⁴

Sec. 306 provides punishment for offender who creates condition that forced the women to commit suicide within 7 years of marriage for want of dowry under the name of abetment of suicide, the offence under section is cognizable, non bailable and non-compoundable.²⁵

Cruelty by husband or his relatives made punishable under Section 498-A of IPC.²⁶ This Section provides protection to every woman who suffered various kinds of cruelty committed by her husband or his relatives for dowry demand; here mental as well as physical cruelty is covered.

Sec. 406²⁷ of the code covered the offence of Criminal Breach of Trust when there is default by husband or his relative in transferring the property of dowry to the legal heir in case the woman has died.

3.5 Provisions under Criminal Procedure Code:

Dowry offences are very much serious offences from women’s point of view so having criminal nature the proceeding and inquiry of such offences by police and magistrate is governed under Sec. 174 and Sec. 176 of the Code. Hence the investigation process is very much important when the death is not natural. Sec. 174(3) requires by the police officer, in charge, to forward the body of deceased women for post-mortem if the death is under unnatural circumstance and within 7 years of marriage. It is envisaged in Sec.176 (1), that the Magistrate has power to investigate on its own if found that the death of the women is under unnatural circumstance.

3.6 Provisions Under Indian Evidence Act, 1872:

As we mention earlier dowry violence is a part and parcel of domestic violence, it is mostly committed within four walls. Therefore, it has become impossible or difficult to get evidences of the crime committed against woman. Hence Sec. 113-A and Sec.113-B have

²² Dowry in India- Rules and Regulation, available at, <https://www.indiafilings.com/learn/dowry-in-india/>,

²³ Sect. 304-B of IPC

²⁴ Dowry Death: The Phrase ‘Soon Before Her Death’ In Section 304B IPC Does Not Mean ‘Immediately Prior To Her Death’, Reiterates Supreme Court, available on <https://theleaflet.in/dowry-death-the-phrase-soon-before-her-death-in-section-304b-ipc-does-not-mean-immediately-prior-to-her-death-reiterates-supreme-court/>, (last visited on 2nd Aug.2022)

²⁵ Sec.306 of IPC

²⁶ Criminal Law Amendment Act, 1983.

²⁷ Section 406 of IPC

been added to presume dowry death. These Sections were inserted by Criminal Law (2nd) Amendment Act, 1983 and 1986 respectively. Presumption mentioned under Sec.113-A provides that if within 7 years of marriage the married woman commits suicide then the court may presume that her husband and in-laws had abetted her to commit suicide. Sec.113-B provides that if soon before the death if that woman was subjected to cruelty or harassment for dowry demand by her husband or his relatives then the court may presume dowry death. The burden of proof lies on the person who committed the crime under this Section.

In the cases of dowry death every little thing does matters and dying declaration of the deceased women victim of dowry death is one of them. Sec. 32 of Indian Evidence Act, 1872 deals with the provision of Dying Declaration, it is the statement given by the person who is about to death and in the cases of dowry death, especially in burning cases. It is said that ‘a dying person never lie’, so this principal proved its sanctity as a piece of evidence. It plays an important role when the deaths are in unnatural circumstance it is on the court to accept this statement in judicious mind for its reliability and dependability.

IV ANALYSIS OF THE STUDY:

H0: The legislative measures have failed to provide safeguards for protecting women from dowry harassment.

- Loopholes in the Anti-dowry law are one of the reasons for increasing cases of dowry related violence and death:

It is true that The Dowry Prohibition Act, 1961 enacted to provide safeguard against the violence faced by the woman for non-payment or insufficient payment dowry, in their matrimonial home. However due to its vague language, the provisions are proved ineffective to fulfill the object of the legislation. Similarly, the gifts given to the bride and groom shall also be included in the definition of the term dowry as the culprit escaped the punishment under the name of gifts. Most importantly the giver of dowry is also punishable under the Act therefore no one come forward to file complaint if there is subsequent demand for dowry as the parents of the bride frightened about being punished.

- No stringent punishment making the enactment weak: The punishments given under the Act are very less therefore while taking the compliant police itself suggests the victim to file the cases under Sec.498-A of IPC instead of Act. So it has been found that most of the time cases are not filed under Dowry Prohibition Act or even if it filed, the charges are made along with either Sec.304-B and Sec.498-A. No specific charges have been filed so far under this particular enactment due to loopholes in the definition and no deterrent provisions

- Constitutional Rights are only ‘Documentary’ from Women’s Point of View:

‘Equality’ term enshrined in our Constitution but is it truly applicable for women?. Discrimination of all kind and in all field faced by women since fetus in mother’s womb. Majority prefer boy over girl child and female foeticide and infanticide incidences occurs frequently, in many families education, meal, clothing, freedom denied to girl child if she has brother and considered as burden for marriage expenses. Dowry related violence is mainly depriving women’s ‘Right to Live Life Peacefully and With Dignity’. Right to life has given wider meaning and that also includes Right to Education, Right to Food, Right to Shelter, Right to Decent Environment, Right to Medical Care etc. however theses women’s rights are ignored by the society by starving them for dowry demand, throwing them out of house or leaving them to parent’s house to get dowry, torturing them by abusing and taunting, beating them and not even provide medical care.

- Lack of awareness among the people about the provisions of the Act:

Dowry problem is a social problem; in every family marriage is taken place after generation to generation and as a ritual, custom, or usage gifts are exchanged between the families but in the beginning demands are accepted for daughter’s happiness or for prestigious issue. It has been observed that not only illiterate but educated people are unaware about this important piece of legislation. Most of the time parents of girl child are unaware about giving dowry is offence under law.

- Procedural hurdles and pendency of cases failed to provide justice:

Indian Courts are full of pending cases and Indian judiciary is under tremendous pressure due to bulk of work. Pending cases of dowry deaths are resulting in miscarriage of justice. Delay in investigation and making charge sheet, ignorance of public prosecutors, political pressure etc. is various reasons due to which the victim's parents lose hope of getting justice.

H1: The legislative measures have succeeded to provide safeguards for protecting women from dowry harassment.

In order to provide extra teeth to the safety measures, the Dowry Prohibition Act 1961, Indian Evidence Act 1872, The Criminal Procedure Code, 1974 and Indian Penal Code 1860 have been amended as per the requirements and still recommendations are being made by the National Commission of Women for the amendment in the provisions of the Dowry Prohibition Act.

V. SUGGESTIONS:

- Education is the most important weapon to fight against dowry custom so the parents shall spend on girl's education rather than her marriage and make her independent so that she can understand what's right and what is wrong.
- Changing the mindset of the people through the awareness of ill-effect of this custom on the society will have some positive result.
- There is need to provide stringent punishment under Anti-dowry Law so that no one dare to kill an innocent for material things.
- The need is to make awareness of this enactment through Television, Radio, and through social media.

VI. CONCLUSION:

Dowry system is being practiced since ancient times and has spread its roots so deep, that expecting a total extinction is a farfetched dream. Efforts are being made at all level whether judiciary, legislature, police, and organizations. Moreover, Indian Judiciary is putting their efforts for interpreting the terms given in the enactment and giving wider scope for the provisions to avoid miscarriage of justice. Still there is long way to go, the law, awareness and education is the Trishul (Trident) that will help to eliminate this evil from the Indian society, then only women of Indian society can spend their life with joy and dignity.