

A STUDY ON PRESUMPTION OF DOWRY IN INDIAN EVIDENCE LAW

¹Keerthan M . Murali ,²Arya.R

¹ Student, BA. LLB (HONS) 3rd year, Saveetha School Of Law, Saveetha institute of medical & technical sciences, Saveetha University, Chennai 77, Tamilnadu, India

² Assistant Professor, Saveetha School Of Law, Saveetha institute of medical & technical sciences, Saveetha University, Chennai 77, Tamilnadu, India

¹murali@panhorus.com, ²adv.aryar@gmail.com

Abstract

Practice of dowry poses heavy threat to the life of females. Dowry is an age old practice in Indian society referring to property or valuable security given by one party to another as a consideration for marriage. The origin of dowry primarily was the contribution of wife's family or by herself with the intention to help the husband. This custom of dowry was started in the medieval period. Women were gifted with wealth and jewel from their parents during her marriage and this served as a tool of financial independence for the bride even after marriage. This menace is the root cause of almost all violence against a married woman. In most cases after marriage the problem of dowry will arise. If the wife is not able to provide all, which her husband and in laws demand, her life in the groom's house become miserable. She will be treated cruelly and in some cases she may lose her life.

This paper deals with dowry and the presumption of the judiciary in cases of death if the wife within a duration of 6 months. In these circumstances the guilt immediately falls on the husband and his family.

KEYWORDS: Dowry, Presumption, Violence , Women , Independence

INTRODUCTION

The problem which Indian society still suffers is cruelty against women is based on dowry; domestic violence against women in India has its root at the demand of dowry. Dowry may happen in any families there is no difference between rich, middle class, poor, educated or uneducated. when a marriage is fixed no one is worry as to how clever, intellectual, and homely the girl is, but all that matters is, how much money and luxuries will she get to

husband's home. With the passage of time dowry became a customary part in Indian society and became demanding dowry as their right in order to marry a woman, and gradually the dowry became violence to women when the groom's family didn't get enough dowry, resulting in harassment or cruelty of brides and also dowry deaths, especially in certain parts of India¹. Dowry demands affect the lives of females socially, economically and culturally. According to the definition of dowry under section 2 of the Dowry Prohibition Act 1961 it is clear that dowry is a property which woman brings to her husband at marriage and includes the land, all sorts of properties, valuable securities given or agreed to be given directly or indirectly at the time of marriage. The term dowry does not include repayment of marriage expenses. The term dowry does not include Mahr.

Dowry or Kanyadanam is an important part of Hindu marital rites. Kanya means daughter and danna means gift. The custom of Kanyadaan (giving daughter in marriage) followed by Varadakshina (gift to the bridegroom at the time of marriage) may have given increase to dowry. It is in the Rig Vedas that one comes across the concept of kanyadaan. It was a custom in ancient times to give dakshina (obligatory gifts) after any kind of daan (voluntary gifts), hence the tradition of varadakshina following kanyadaan. It is said that Rishi Karva gave a number of gifts to his daughter, Shakuntala, when she married king Dushyant. It can be guessed that, since child marriages was the norm in ancient India, the parents may have given numerous gifts to the girl as she left her maternal home. Nevertheless dowry as it now exists, includes the extraction of cash and material goods from the bride's parents by the groom and his family²

OBJECTIVES

1. To analyse the laws relating to dowry
2. To compare the Indian evidence act before and after 2005
3. To study about the dowry system in india
4. To study all the preventive measures available for dowry cases

¹<http://www.advocatehoj.com/library/bareacts/indianevidence/113b.php?Title=Indian%20Evidence%20Act,%201872&Title=Presumption%20as%20to%20dowry%20death>

² <http://www.shareyouessays.com/knowledge/presumption-as-to-dowry-deaths-under-section-113-b-of-indian-evidence-act/119152>

HYPOTHESIS

HO: Presumption of dowry does not violate equality

HA: Presumption of dowry violates equality

METHODOLOGY:

The researcher has used descriptive and analytical methodology making the study doctrinal in nature and also the data is collected through mainly secondary sources such as books, articles, books, e- sources.and case laws

CHAPTER 1

The first national legislation to deal with the problem of dowry is the dowry prohibition Act 1961 with the main motive to prohibit the heavy demand in dowry; government introduced the Dowry Prohibition Act on 1st July 1961. Unfortunately, the dowry system is still widespread in India despite the provision in the Dowry Prohibition Act 1961. According to section 3 of the dowry prohibition Act 1961, the Act prohibits the demand, payment or acceptance of a dowry, as consideration for the marriage, where dowry defined as a gift demanded or given as a precondition for a marriage. So asking or giving of dowry is punishable by an imprisonment of up to six months, a fine of up to fifteen thousand rupees or the amount of dowry, whichever is more, or imprisonment up to five year. It replaced several parts of anti-dowry legislation which had been enacted by various Indian states.

However in accordance with section 3 of this Act, both the giver and receiver are pursued to rom potential harassment by the husband and his relatives. The first national legislation to deal with the problem of dowry is the dowry prohibition Act 1961 with the main motive to prohibit the heavy demand in dowry; government introduced the Dowry Prohibition Act on 1st July 1961 . Unfortunately, the dowry system is still widespread in India despite the provision in the Dowry Prohibition Act 1961.

A) Dowry Death and Suicide

. Where the death of a woman is caused by any burns or bodily injury or happens 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 by her husband or any relative of her husband for or in connection with the demand for dowry, such death shall be called ‘dowry death’, and such husband or relative shall be deemed to have caused her death. The Dowry Prohibition Act goes to the utmost limit of creating criminal offence to prescribe the

giving or taking of dowry as a consideration for marriage or demanding or abetting the same. The statute intended to eradicate the kind of corruption and commercialization of the concept of dowry. So the definition under the Act was, therefore, moulded to the peculiar object of nipping the extortionate evil in the bud . mention in the oldest of Hindu scriptures and is continued today with a greater zeal. In the case of Kunju Moideen v. Sayed Mohamme, amount paid by Mohammedan in connection with daughter's marriage, to future bridegroom for buying of property in joint names of daughter and would be son-in-law is not 'dowry' within the meaning of section 2. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a relation between the giving and taking of property or valuable security with the marriage of the parties is essential.³

Definition of dowry can be understood with the other sections of the Dowry Prohibition Act such as section 3 which, mentions to giving or taking dowry and section 4 which, deals with a penalty for demanding dowry. This makes it clear that even demand of dowry on other ingredient being satisfied is punishable.

In Prem Kumar v. State of Rajasthan, the Supreme Court says that it is not always essential that there be any agreement for dowry because section 3 prohibits the demand, acceptance or payment of a dowry, as consideration for the marriage, where dowry defined as a gift demanded or given as a precondition for a marriage. Taking or giving of dowry is punishable by an imprisonment up to six months, a fine of up to fifteen thousand rupees or the amount of dowry, whichever is more, or imprisonment up to five year. However in accordance with section 3 of the Act, both the giver and receiver are pursued to be punished. Demanding of dowry also is punishable under section 4 of this Act⁴.

In S. Gopal Reddy v. state Andhra pradesh, the Supreme Court stated that the demand, though it was made prior to the marriage has to be considered as offence under section 4 of the Dowry Prohibition Act. In this case the court stated that, mere demand of dowry is enough to bring home the offence to an accused and that any demand of property or money made from the bride or her relatives by the bridegroom or his parents or vice versa would fall in the troubles of dowry under section 4 of DV Act. The considerable point stated by the Supreme Court is that marriage in this situation would contain a future marriage also

³ <http://indianexpress.com/article/india/india-news-india/presumption-in-dowry-death-to-be-backed-by-cruelty-proof-supreme-court-4385428/>

⁴ <http://www.tribuneindia.com/news/nation/presumption-in-dowry-death-should-be-backed-by-proof-of-cruelty-sc/325870.html>

more special where the non-fulfillment of the demand of dowry leads to the bad result of the marriage not happening at all.

B) Cruelty Relating to Dowry

Traditionally woman is subjected to the whims and caprices of man, particularly when it relates to the relationship of husband and wife it becomes worst. Woman in a family or a relationship with her husband sometimes becomes intolerable and miserable which drags the woman towards suicide. Section 498-A of IPC comes into play on such situation.

Section 498-A of IPC can only be invoked by a married woman against the husband or his relatives for cruelty. This section was added with the intention to protect women from dowry harassment, domestic violence and to end the offences of cruelty by husband or in-laws of wife and providing punishment to the husband or relative of the husband of a woman subjecting to cruelty. section 498-A, manifests with four types of cruelty: Any conduct that is likely to drive a woman to commit suicide; any conduct which is likely to cause serious injury to the life, limb or health of the woman; harassment with the aim of forcing the woman or her relatives to give some property; or harassment because the woman or her relatives are either incapable to yield to the demand for more money or do not give some share of the property⁵.

The Supreme Court , stated that, Consequences of cruelty which are likely to drive a woman to suicide or to cause grave injury or danger to life, limb, or health, whether mental or physical of the woman is necessary to be established in order to bring home the application of section 498-A of IPC. Section 498-A, IPC, manifests that whoever being the husband or relative of the husband of a woman subject 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. Clause (b) of the Explanation to that section shows that the 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 property or valuable security or is 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, IPC.

⁵ <http://www.livelaw.in/dowry-death-ingredients-shall-proved-prosecution-beyond-reasonable-doubt-invoke-presumption-sc/>

To invoke section 498-A, IPC one has to be a “relative” of the husband by blood, marriage or adoption. So by no stretch of imagination would a girlfriend or even a concubine in an etymological sense be a relative⁶. In

Vijeta Gajra v. State of NCT of Delhi it was held that the word relative in section 498-A IPC, would be limited only to the blood relations and relations by marriage. The term cruelty of section 498-A, IPC, has been explained in the explanation to section 498-A which consist of two clauses namely Clause (a) and (b). Cruelty or harassment to wife was to force her to cause grave bodily injury to herself or to commit suicide, or the harassment was to compel her to fulfill illegal demand for dowry. Every type of harassment or cruelty that would not attract section 498-A,⁷

IPC.Cruelty can either be mental or physical. It is difficult to straitjacket the term cruelty by means of a definition, because cruelty is a relative term. What constitutes cruelty for one may not constitute cruelty for another person. Cruelty, Clause (b) to section 498-A IPC, contemplates harassment of the woman to coerce her or any relation of her to meet any unlawful demand for any property or valuable security. A complainant if wants to come under the ambit of Clause (b)of Explanation of section 498-A, she can succeed if it can be proved that there was an” unlawful demand” by the husband or any of her relations in respect of money or some valuable security.

Section 304-B and section 498-A are not mutually exclusive. these provisions deal with two distinct offences. It is true that ‘cruelty’ is a common essential to both the sections and that has to be proved⁸.

In the case of *Atmaram v. State of Maharashtra*, woman was subjected to harassment by her husband and his relatives, purposely. The Supreme Court held that, Clause (a) of section 498-A, deals with aggravated forms of cruelty which cause grave injury, and convicted her husband for cruelty. In *Shobha Rani v. Madhukar Reddi*, the court defined concept of cruelty and a new dimension has been given, cruelty while granting a divorce to the woman on the context of demand for dowry. Explanation to section 498-A provides that any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide would constitute

⁶ <https://smhttp-ssl-70271.nexcesscdn.net/wp-content/uploads/2018/02/Presumption-as-to-Dowry-Death-By-Divyansh-Hanu.pdf>

⁷

http://14.139.60.114:8080/jspui/bitstream/123456789/17595/1/032_Dowery%20Deaths_Burden%20of%20Pr oof%20%28519-530%29.pdf

⁸ <https://indiankanoon.org/search/?formInput=presumption%20of%20dowry%20death&pagenum=3>

cruelty. Such willful conduct which is likely to cause grave injury or danger to life, limb or health (whether mental or physical of the woman) would also amount to cruelty. 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 would also constitute cruelty⁹

CHAPTER 2

Presumption as to Dowry Death

The term "dowry death" and "dowry murder" first began to be used around 1977-78 when investigations revealed that deaths of married women, which for years had been camouflaged by the police as accidents or suicides, were actually murders or abetted suicides, preceded by prolonged physical and mental torture by the husband and in-laws in connection with dowry demand. Instead of describing them as "wife murders" or "abetted suicides" the women's organizations began calling them "dowry deaths".¹⁰

Section 113B Penal Code has been added by the Dowry Prohibition (Amendment) Act No.43 of 1986 which was with effect from 19th November 1986. This was done in order to solve the increasing problem of dowry death. The word dowry death has been defined in 304B Indian Penal Code and the term dowry has been defined in Section 2 of the Dowry Prohibition Act 1961.¹¹

The Section 113B Indian Evidence Act,1872 deals with the dowry death. Section 113B states that: "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". meaning as in Section 304-B, Indian Penal Code,1860¹²

Section 304 B of the Indian Penal Code states that "Dowry death - (1) 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 of her husband for,

⁹ <https://www.incometaxindia.gov.in/Acts/Indian%20Evidence%20Act,%201872/10212000000028750.htm>

¹⁰ <http://www.lawyersclubindia.com/forum/Presumption-of-dowry-death-between-6-and-7-years-of-marriage-117657.asp>

¹¹ <https://indiankanoon.org/search/?formInput=dowry%20death>

¹² <http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=9a6063d0-e59f-42f7-a8e8-7aa6baef35bb&txtsearch=Subject:%20Women%20And%20Child%20Rights>

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.¹³

Nature of Presumption

Section 113B uses the word "shall" and not 'may' so it is a presumption of law. On proof of the essentials mentioned above, it becomes obligatory on the court to raise a presumption that the accused caused the "dowry death". The court has no discretion to draw the presumption under this Section if the essential ingredients are proved then they are bound to draw this presumption under Sec¹⁴

113B of the Indian Evidence Act

The legislature has made this presumption a mandatory presumption of law, of course, rebuttable, though this may sound to be a violent departure from the accepted norms of criminal law. The legislature thought that the presumption under Section 113 B should be a mandatory presumption if the evil of dowry deaths is to be eradicated from the roots of our society. If it is proved that soon before her death, the victim was subjected to cruelty or harassment in connection of a dowry demand, then the presumption under s 113B can be raised. If the prosecution has failed to prove the case under Sec304B, IPC, even then, no presumption can be raised under Sec. 113B of the¹⁵ Indian Evidence Act. So 304B is an integral part of Sec 113B of the Indian Evidence Act Cruelty need not be physical. Even mental torture in a given case would be a case of cruelty or harassment under 304B and 498A. In a landmark case , parties were married on 24-5-1962.¹⁶ After staying at the matrimonial home for two months, she returned to her parents' house and told them that her husband wanted a television set and a fridge. Her father gave her a sum of Rs. 6,000 and she left for her matrimonial home. Her husband again demanded a sum of Rs. 25,000 for purchasing a plot.¹⁷ There after the husband took his wife to her parents' home saying that he would not take her back unless a sum of Rs. 25,000 was paid to him. After one year he took her back but he did not give up his demand for Rs. 25,000. Soon thereafter she left for her

¹³ <https://scroll.in/latest/822012/dowry-death-cases-presumption-of-guilt-has-to-be-backed-by-cogent-evidence-says-sc>

¹⁴ <https://sites.google.com/site/keralamedicolegalsociety/the-indian-evidence-act-1872/chapter-vii-ia/presumption-as-to-dowry-death>

¹⁵ <https://sclaw.in/2017/07/12/presumption-dowry-death-distinction-section-113a-act-relates-offences-sections-498-306-code-whereas-section-113b-relates-section-304-b/>

¹⁶ https://www.huffingtonpost.in/2016/11/20/presumption-in-deaths-related-to-dowry-must-be-backed-by-proof-o_a_21610040/

¹⁷ <http://menrightsindia.net/2016/05/presumptions-in-law-in-crimes-against-women-and-matrimonial-law.html>

parents home and came back with a sum of Rs. 15,000 with a promised that the rest of the amount would be would be paid later on. She died of strangulation in her husband's home. The trial court found accused guilty. Supreme Courtheld that accused should be convicted.¹⁸

Conclusion

The legislative intent is clear to curb the menace of dowry deaths, etc. with a firm hand. It must be remembered that since crimes are generally committed in privacy of residential houses and in secrecy, independent and direct evidence is not easy to get. That is why the legislature has by introducing Section 113-B in the Evidence Act tried to strengthen the prosecution hands by permitting a presumption to be raised if certain foundation facts are established and the unfortunate event has taken place within seven years of marriage¹⁹. This period of seven years is considered to be the turbulent one after which the legislature assumes that the couple would have settled down in life. When the question at issue is whether a person is guilty of dowry death of a woman and the evidence discloses that immediately before her death she was subjected by such person to cruelty and/or harassment for, or in connection with, any demand for dowry. Section 113-B, Evidence Act provides that the court shall presume that such person had caused the dowry death.

Under S. 113-B, when the question is whether a person has committed the dowry death of a woman, and it is shown that, soon before her death she had been subjected by that person to cruelty or harassment in connection with any demand for dowry, the Court shall presume that such a person had caused the dowry death. (The term “dowry death” has the same meaning as in S. 504-B of the Indian Penal Code.)

S. 113-B raises a presumption of guilt against any person who has been proved to have subjected the deceased woman, soon before her death, to cruelty or harassment, in connection with dowry. Needless to state, it is a presumption intended to be raised against the husband and his relatives in the case of dowry deaths, which have become increasingly common in India.

¹⁸ <http://vle.du.ac.in/mod/book/print.php?chapterid=13318&id=9199>

¹⁹ <http://www.insaafindia.in/judgements/304b-306/presumption-cruelty-established-prosecution-supreme-court/>

REFERENCE

1. <http://www.advocatekhaj.com/library/bareacts/indianevidence/113b.php?Title=Indian%20Evidence%20Act,%201872&STitle=Presumption%20as%20to%20dowry%20death>
2. <http://indianexpress.com/article/india/india-news-india/presumption-in-dowry-death-to-be-backed-by-cruelty-proof-supreme-court-4385428/>
3. <http://www.shareyouressays.com/knowledge/presumption-as-to-dowry-deaths-under-section-113-b-of-indian-evidence-act/119152>
4. <http://www.tribuneindia.com/news/nation/presumption-in-dowry-death-should-be-backed-by-proof-of-cruelty-sc/325870.html>
5. <http://www.livelaw.in/dowry-death-ingredients-shall-proved-prosecution-beyond-reasonable-doubt-invoke-presumption-sc/>
6. <https://smhttp-ssl-70271.nexcesscdn.net/wp-content/uploads/2018/02/Presumption-as-to-Dowry-Death-By-Divyansh-Hanu.pdf>
7. <https://indiankanoon.org/search/?formInput=presumption%20of%20dowry%20death&pagenum=3>
8. <https://indiankanoon.org/search/?formInput=dowry%20death>
9. <https://sclaw.in/2017/07/12/presumption-dowry-death-distinction-section-113a-act-relates-offences-sections-498-306-code-whereas-section-113b-relates-section-304-b/>
10. https://www.huffingtonpost.in/2016/11/20/presumption-in-deaths-related-to-dowry-must-be-backed-by-proof-o_a_2161004/
11. <http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=9a6063d0-e59f-42f7-a8e8-7aa6baef35bb&txtsearch=Subject:%20Women%20And%20Child%20Rights>
12. <https://scroll.in/latest/822012/dowry-death-cases-presumption-of-guilt-has-to-be-backed-by-cogent-evidence-says-sc>
13. http://14.139.60.114:8080/jspui/bitstream/123456789/17595/1/032_Dowry%20Deaths_Burden%20of%20Proof%20%28519-530%29.pdf
14. <http://www.lawyersclubindia.com/forum/Presumption-of-dowry-death-between-6-and-7-years-of-marriage-117657.asp>
15. <https://sites.google.com/site/keralamedicolegalsociety/the-indian-evidence-act-1872/chapter-vii-ica/presumption-as-to-dowry-death>

16. <http://menrightsindia.net/2016/05/presumptions-in-law-in-crimes-against-women-and-matrimonial-law.html>
17. <http://www.insaafindia.in/judgements/304b-306/presumption-cruelty-established-prosecution-supreme-court/>
18. Dr.Lakshmi T and Rajeshkumar S “In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 3, P.No 20-25, March 2018.
19. Trishala A , Lakshmi T and Rajeshkumar S,“ Physicochemical profile of Acacia catechu bark extract –An In vitro study”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 4, P.No 26-30, April 2018.

