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Legal Reform in Dowry Laws

D.N. Sandanshiv and Jolly Mathew

Introduction

Prior to 1983, every form of violence committed within the family, either in the natal or the spousal home, was not considered an offence. Indian law lacked specificity which could bring such an offender to public trial, largely because domestic violence was considered a private affair not open to public scrutiny and state action. The doctrine of 'space' was used to argue that domestic affairs should be confined to the private space of the family. This doctrine stated that there should be a dividing line between both private and public affairs, and all matters within the family should be kept out of the interference of law.

Implicit in a number of judgments is the notion of cultural relativism which suggests that Indian women are accustomed to a certain amount of violence, and therefore, violence against them is not considered a serious infringement on women's rights. Section 498-A of the Indian Penal Code was constructed to rectify this notion by criminalizing both physical and mental "cruelty". Despite S. 498-A's cruelty definition, the interpretation of the law is so broad that procuring physical evidence of such subtle forms of cruelty is an almost impossible task. Firstly, it is important to take into account the immediate facts and circumstances leading to such cruelty in order to determine the culpability of the accused. Secondly, this provision covers cruelty in relation to the demand of dowry, which was empirically discovered to be uncommonly high. Nevertheless, with the employment of S. 498- A, Indian women subjected to spousal violence can find some form of relief.

The Consumerism Debate

In an era where India is witnessing unprecedented economic reform, there has also been a commensurate increase in the rate of dowry deaths and bride burning. In 1987, there were 1912 reported cases of dowry death. The number increased to 5157 in 1991. Thus there was a 169.7% increase in the span of four years in the cases of dowry death. The Indian Statistics Institute announced that there has been a 40% increase in reported cases of domestic violence.

Historically, dowry was given to provide economic security for the daughter who was not entitled to any inheritance. Dowry has now become an insidious practice whereby the in-laws family augment their material possessions by pressurizing the newly-wed bride to feed their lust for consumer goods. The economic boom and the overall impact of the consumer-driven society has reconstructed the ancient practice of dowry into a lever for extorting money and goods from the bride's family. Failure to comply would mean torture that often led to murder. Compliance with a dowry demand is done in the hope that the amount demanded is not too high a price to pay for a daughter's life.

Origins of the term "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 organisations began calling them "dowry deaths".

Three years later, Parliament introduced the matador criminal provision, S.304-B which penalizes perpetrators of dowry deaths.

It has become increasingly apparent that social change cannot depend on law alone. Both law and society must develop a comprehensive and concurrent approach to eradicating the role of dowry in marriage, and more importantly, the role of violence in dowry. The purpose of this article is to demonstrate the development in substantive and procedural criminal law and the judicial sensitivity reflected upon the social reality of dowry deaths. Additionally, it will evaluate society's role in assisting law and the legal infrastructure in permanently eradicating the dowry system.

Laws Pertaining to Dowry

The Dowry Prohibition (Amendment) Act, 1986 introduced S.304-B in the Indian Penal Code, (IPC) which defines dowry death. It states that "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 a death shall be called "dowry death", and such husband or relative shall be deemed to have caused such death."

The main ingredients of S.304-B are:

- the occurrence of an unnatural death,
- death within a period of seven years from the date of marriage,
- cruelty "soon" before death and
- death "for" or "in connection" with any demand of dowry.

If all of the above conditions are present, then there is a presumption that the accused has committed the crime of dowry death. This presumption is created by Section 113-B of the Evidence Act inserted by Act 43 of 1986. The operative part of this section says: "the court shall presume that such person had caused the dowry death." Its explanation runs: "For the purpose of this section 'dowry death' shall have the same meaning as in Section 304-B of the Indian Penal Code. For the purpose of Section 304-B dowry shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. Section 2 has defined 'dowry' as any property or valuable security given or agreed to be given either directly or indirectly: (a) by any party to a marriage to the other party to the marriage, or (b) by the parents of either party to a marriage or by other person to either party to the marriage, or to any other person at or before or any time [1] after the marriage in connection with [2] the marriage of the said parties but it does not include dower or mehr in the case of persons to whom the Muslim personal law (Shariat) applies."

The third and fourth ingredients of S.304-B require further explanation. The word "soon" is used in the Penal Code only twice. It was earlier used in S 114 Illustration (a) of the Evidence Act, where in cases of theft there is a presumption that a man is guilty of the offence of theft if the stolen article is recovered from his possession "soon after" the offence of theft. The Supreme Court had in this case, where a person was convicted of theft based on the evidence that the stolen articles were recovered from his residence around eight months after the theft, concluded that a term of 8-9 months may be included within the term "soon". This was later applied in the case of "dowry death" where the term "soon" was used again. This was in response to the defence argument, that cruelty should have occurred right before death to attract the offence under Section 304-B.

The fourth ingredient provides for both a direct and an indirect form of demand. The term "for or in connection with" signifies a direct demand and "in connection with" takes care of all indirect demands. A manifestation of an indirect demand would imply harassment towards the non-fulfilment of a specified demand. Examples of direct demand would be a car, television etc.

Section 174(3) of the Criminal Procedure Code, 1973 as amended in 1983 makes a "postmortem" mandatory in a number of cases of suicide when:

- a. the case involves the suicide by a woman within seven years of her marriage-, or
- b. the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person has committed an offence in relation to such woman; or
- c. the case relates to the death of a woman within seven years of her marriage and any relation of the woman has requested for it; or
- d. there is a doubt regarding the cause of death; or
- e. the police officer for any other reason considers it expedient to do so.

Section 176 of the Cr. P.C. as amended in 1983 makes inquiry by a Magistrate mandatory if the cause of death falls under (a) or (b) of Sub-section 3 of Section 174 of the Code.

The Evidentiary Aspect

The 1983 Amendment Act also inserted Section 113-A in the Indian Evidence Act which raises presumption as to abetment of suicide by a married woman. It lays down that when the question is whether commission of suicide by a woman had been abetted by her husband or any relative of her husband, and it is shown that she had committed suicide within a period of seven years of marriage from the date of her marriage, that her husband or such, relative of her husband had subjected her to cruelty, the court may presume, having regard to all other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Further, Section 113-B was inserted into the Indian Evidence Act, which makes the presumption of dowry death mandatory once it is shown that the accused had subjected the deceased woman to cruelty or harassment for or in connection with any demand for dowry. This Section is perhaps the most important aspect of S. 304-B of the IPC because it concludes murder if and when the conditions of cruelty against the woman have been sufficiently proved. Another corresponding amendment in the Cr. P.C. in the first Schedule made the offence under Section 304-B cognizable and non-bailable.

The Judicial Response

The attitude of the judiciary at the apex level has -been in favour of women, the crux of which can be condensed to Justice Mohan's judgment in Panniben vs. State of Maharashtra: [3] "Every time a case relating to dowry death comes up it causes ripples in the pool of conscience of this court. Nothing can be more barbarous, nothing could be more heinous than this sort of a crime"

Differentiating S. 304-B and S. 498A

The Supreme Court in Shanti v. State of Haryana [4] points out the differences between sections 304-B and 498-A of the I.P.C. and that though they may contain offences that have cruelty as the root-cause, they are essentially separate and distinct, and charges have to be filed under both. In this case, the deceased was alleged to have committed suicide though the conduct of the in-laws after the death of the daughter-in-law was extremely suspicious. They hastily cremated her even without informing her parents, and in the absence of material which could indicate a case of natural death, the High Court convicted the accused under section 304-B and dismissed the charge of Section 498-A. The accused came to the Supreme Court to contend that the very fact that the High Court acquitted them under Sec. 498-A, meant that there was no proof of cruelty.

The Supreme Court held that "cruelty" is a common condition in both the sections and it had to be proved. In Section 498-A cruelty is explained but no such explanation is given in Section 304-B. Given the common background of these offences, the meaning of cruelty and harassment under S.304-B falls under the same interpretation as S.498-A, under which cruelty, by itself, is punishable. The difference between the two Sections, the Supreme Court said was that in Section 304-B, the incidence of death is punishable when it occurs within seven years of marriage. No such period is mentioned in Section 498-A and the husband and the in- laws are liable any time after the marriage. This meant that the person charged and acquitted under Section 304-B can be convicted under Section 498-A. To avoid procedural defects, it is necessary in such cases to frame charges under both Section 498-A in view of the substantive sentence imposed, and under Section 304-B.

Suicide is also Dowry Death

The Supreme Court has effectively laid to rest the many doubts that were raised continuously about the nature of death for which S.304-B would be applied. A landmark decision was given in Public Prosecutor, Andhra Pradesh High Court v. T. Punniah, [5] where suicide, though committed by the victim herself, was considered to fall under "dowry death" as envisaged under Section 304-B.

The court once again reiterated in the same case that irrespective of the mode of death, if the death occurs within seven years and the death is unnatural-homicidal or suicidal-this Section would apply. The Court rejected the contention of the counsel of the accused who argued that the medical evidence showed that the death was due to asphyxia on account of hanging, and that Section 304-B does not apply to cases of suicide. The court held that Section 304-B applies where the death of a woman is caused by burns or bodily injury or occurs otherwise than under normal circumstances, provided other conditions are satisfied. Since the death of the deceased was on account of hanging, it was still death otherwise than under normal circumstances, and even if she had committed suicide by hanging, the death would still fall under Section 304-B as long as it can be shown that she was subjected to cruelty or harassment by the in-laws in connection with any demand for dowry.

The view that S.304-B can also be applied to suicide was reiterated by the Supreme Court [6]. The court stated "in the result [that] the death was unnatural, either homicidal or suicidal, and even assuming that it was a case of suicide, even then it would be death which had occurred in unnatural circumstances." In such a case, Section 304-B is applied and this position is not disputed.

Importance of Circumstantial Evidence in a Dowry Death

Several observations have been made by the Supreme Court on the appreciation of evidence and the judicial attitude that should be adopted towards dowry death, given the circumstances that surround the commission of the crime. In Prakash v/s State of Punjab, [7] the court noted that it was its duty, in cases of death because of torture and demand for dowry, to examine the circumstances of each case and evidence produced by both parties, for the purpose of investigating how the death took place. While judging the evidence and the circumstances of the case, the court has to be conscious of the fact that a death connected with dowry takes place inside the house where the husband's family are the only witnesses present. Therefore, the finding of guilt on the charge of murder has to be recorded on the basis of circumstances of each case and the evidence produced before the court.

The Supreme Court also observed that the legislative intent behind the incorporation of Section 113-A in the Evidence Act and Section 304-B in the IPC were to strengthen prosecution for a crime in which witnesses are not generally available because the crime is committed within the privacy of the home. Section 113- A raises presumption as to abetment of suicide by a married woman.

Inherent in Section 113-B is a powerful presumption, whereby the court presumes the accused to have committed the offence of dowry death if the prosecution can successfully show the existence of all the conditions required under Section 304-B. Accordingly in Hemchand v/s State of Haryana, 8 the judge observed that a reading of Section 304-B would show that when a question arises whether a person has committed the offence of dowry death what is necessary to be shown is that soon before her unnatural death, which took place within 7 years of marriage the deceased had been subjected to cruelty and/or harassment for or in connection with demand for dowry. At this stage the presumption under Section 113-B is applied. Therefore irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed the dowry death. In the above case, the prosecution proved unnatural death without direct evidence connecting the accused with the actual death. Nevertheless, the court convicted him but decided that the absence of direct evidence was a mitigating factor in his favour and thereby ordered a reduced sentence.

Retrospective Application of Section 113-A

The Supreme Court delivered a landmark decision in Gurbachan Singh v/s Satpal Singh [9] which made the application of Section 113-B retrospective. It surmises that the provisions of this Section do not create an offence and since no new offence is created, it is merely a matter of procedure of evidence and hence it may be made retrospective.

Dying Declaration in Dowry Death Cases

A dying declaration or a statement is made by a person who after making the statement dies. Such a statement is an exception to the general rule that hearsay evidence is not admissible evidence, unless such evidence is tested by cross-examination. Under Section 32 of the Evidence Act, when a statement is made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death, in case wherein the cause of the death of that person comes into question, such a statement, oral or in writing, made by the deceased to the witness is a relevant fact and is admissible in evidence. Such a statement made by the deceased person is called the 'dying declaration', and, falls in that category provided it has been made by the deceased while in a fit mental condition. A dying declaration, made by the person on the verge of death has a special sanctity to it, as at that moment a person is considered most unlikely to make an untrue statement. Therefore, a dying declaration has a sacrosanct status, as it is verbal testimony given by the deceased victim.

Tests to Verify a Dying Declaration

Once the statement of the deceased victim and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the courts, it becomes an important piece of evidence and if the court is satisfied that the dying declaration is true and free from any embellishment, such a dying declaration, by itself can be the basis for recording a conviction even without looking for corroboration. If there are more than one dying declarations then the court must scrutinize all of them to find out if each one of them passes the test of being trustworthy. They must be consistent on the material particulars before the court can accept and rely upon the same.

Reiterating the same view, the court in *Kamia v/s State of Punjab*, [10] pointed out that in the case of differing dying declarations, the irresistible conclusion is that the court cannot pick out any one of the dying declarations and base a conviction on the one the court prefers. The general principle [11] behind basing a conviction for a dowry death is that the court must establish that the dying declaration is reliable and that it does not contain inconsistencies. If there are inconsistencies, the court must re-examine the case history and attempt to identify corroborating evidence that supports the prosecution case to sustain the crime of dowry death. would render the dowry death acceptable.

Non-verbal Dying Declaration

In addition to the admission of dying declarations as a form of corroborative evidence, the Supreme Court went a step further in *Meesia Rama Krishna v/s State of Andhra Pradesh*, [12] where it said that a dowry death recorded on the basis of nods and gestures is not only admissible but also possesses evidentiary value to the extent that the recorder can ensure that the victim can clearly understand the questions.

Oral versus Written Dying Declarations

In *State (Delhi Administration) v/s Laxman Kumar* [13] the court while rejecting the written dying declaration held that it did not attach full credence to the oral dying declarations. There have been instances where conviction has been based solely upon a written dying declaration when it has been found to be totally acceptable. We are not prepared to attach that type of importance to the oral dying declarations in this case. However, the court held that the oral dying declarations would be available for use as corroborative material in this case. The court emphatically pointed out that though it would not have been prepared to base the conviction on the oral dying declarations alone, such dying declarations

were not to be totally rejected and the same can be used as corroborative material.

Stumbling Blocks in the Prosecution Case

In State vs. Raj'rani and others, the deceased Meena Kurnari burnt herself alive to escape the daily torture she endured at the hands of her in-laws, viz. her mother-in-law, sisters-in-law and her husband. Charges under Sections 304-B, and 498-A were framed. The trial court acquitted all the accused even from the charge of Section 498A though there was ample evidence to find a conviction on the basis of the evidence led in at the time of the trial of the sister-in-law. Non application of mind and improper appreciation of evidence led to the acquittal of the accused persons. There was cruelty and the deceased was driven to commit suicide and therefore, there should at least have been a conviction of the sister-in-law under Section 498-A of the I.P.C.

Implementational Break-Downs

The offenders in dowry related cases do not see themselves as guilty people, nor do the public perceive their conduct as criminal like in other offences. Dowry death cases are not treated with the seriousness that is required of the state and its enforcement agencies.

In one of WARLAW cases, which is currently sub judice, the Sessions Court took eight years just to frame a charge against the accused persons. Over three judges were transferred in the course of the hearing thus prolonging the pendency of the case. In the particular case, it was quite evident that the investigating authorities were not impartial in their investigation. The charge has however, been framed against all the three accused, viz. the mother-in-law, father-in-law and husband under Sections 304-B and 498-A of the I.P.C.

The law enforcement agency's callous attitude can be best illustrated in Lichhmadevi v/s State of Rajasthan [14] . The deceased had strained relations with her in-laws on account of unsatisfied dowry demands. The appellant mother-in-law was charged with having poured kerosene on her daughter-in-law and setting her aflame. During investigation she stated that her son, husband of the deceased, might have burnt the daughter-in-law. He was also seen running down the staircase by the neighbours. Yet, the police chose not to prosecute him. The husband of the deceased, who was a passive spectator, did not bother to arrange for blood for his dying wife, was not charge-sheeted for abetment for murder. The trial court acquitted the mother-in-law. The High Court reversed the verdict to one of death penalty. The Supreme Court, while deprecating the indifferent attitude of the investigating agency in not prosecuting the husband

and the brother-in-law of the deceased, reduced the High Court's sentence to that of life imprisonment cautioning that judicial decisions should not be swayed by anger or emotions. Police, judiciary and public responses are not always conducive in delivering justice to the victim.

Role of Bail

Another stumbling block in this whole process is the role of bail. The Sessions Court and the High Courts continually grant bail in cases of domestic violence and dowry deaths despite the Supreme Court's repeated pleas of caution. In *Samundar Singh v/ s State of Rajasthan* [15], the Supreme Court held that the High Court should not have exercised its jurisdiction to release the accused on anticipatory bail in the matter concerning the death of the daughter-in-law in the matrimonial home.

In *Amarnath Gupta v/s State of Madhya Pradesh*, [16] the High Court's order granting bail to the accused was reversed by the Supreme Court. The High Court granted bail on the ground that the victim's diary contained a letter written by her stating that nobody was to be blamed for her suicide; and further, the High Court felt that since the father-in-law was an advocate there was nothing on record to show that they would misuse the liberty granted to them. The Supreme Court, while reversing the High Court's decision, observed that "sentimentalism has no place in the judicial process and yet sensitivity to a social problem and commitment to a constitutional mission is a virtue it has sustained so far."

In the recent macabre Naina Sahni murder case that took place in the central part of Delhi on the night of 2nd July, 1995, the accused Sushil Sharma, the husband of the deceased Naina, was granted anticipatory bail in a far away southern state by the Principal Sessions Judge in Madras. The High Court cancelled the anticipatory bail suo moto and severely criticized the callous and casual response of the Principal Sessions Judge in having granted anticipatory bail without application of mind..

Concluding Remarks

An attempt has been made not only to review the entire ambit relating to dowry laws and the judicial attitudes surrounding it, but also to determine the social realities faced in the handling of these cases.

In the final analysis, the most crucial element of a dowry death case is a woman's inability to effectively resist her in-laws' demands and, if necessary, to leave a marriage which causes her humiliation. In Indian society, there is a culture of silence that reinforces an oppressive pressure to keep the marriage going at all

costs. This effectively keeps women in abusive homes. Hence, dowry and the increasing demands related to it, are not the sole exterminators of women in this country. Instead, it is the unjust social pressure placed on women to stay in abusive, unwelcome homes when their lives are clearly in danger.

Another disturbing trend is the urgency with which the husband gets married to another woman, after the unnatural deaths of his first wife. Almost invariably, this happens while the husband is on bail. In the famous Sudha Goel case, [17] the husband, while out on bail, married again and even had two children before he went into jail to complete a term for life. The mother-in-law, when asked whether the second wife had got any dowry with her, said that she was satisfied with the dowry. What is terrifying in this scenario is the calm acceptance by the second family of a man who is charged with the murder of his first wife, and the willingness with which the bride's parents marry her off to him.

Keeping in mind the social realities it is only pragmatic to assume that the dowry system will be with us for quite some time to come; people will continue to give and take dowry regardless of statutes purporting to prohibit such transactions. But by strengthening the provisions prohibiting the demand for dowry, particularly those made after the marriage, and by concentrating on the property that passes at the time of these transactions, it should be possible to ensure that the property goes to the woman and unequivocally remains with her. Increasing the economic independence and the power of women by putting her in control of the property that passes in dowry transactions will improve the bride's bargaining power and status in her matrimonial home.

It is imperative that the right interpretations be given to the provisions of criminal laws relating to violence against women in the context of specific facts and circumstances. Male oriented interpretations which lack feminist insights and perceptions can lead to increase in dowry deaths. A recent Bombay High Court judgment stated that it is not every harassment or every type of cruelty that could attract Section 498-A and that it must be established that the beating or harassment was with a view to force the wife to commit suicide or to fulfil the illegal demands of the husband or the in-laws. In another case, the same High Court held that occasional cruelty and harassment cannot be construed as cruelty under Section 498-A. In this case the deceased was burnt to death when the husband was present in the house. There had been several demands for dowry. When the deceased had given birth to a daughter she was left behind at her parents' house and her in-laws refused to accept the new-born daughter. Despite these facts the Bombay High Court came to the above decision.

Given the limits of criminal law, the future of dowry laws necessarily depends on community action, public legal education and sensitizing all levels of the implementation agencies.

Perhaps the most important aspect of combating violence against women in our society is providing equal education and increasing economic opportunities for them and encouraging, women to expose atrocities against them.

Voluntary organisations have a crucial role to play as they have the experience and strategic capacity to provide victimized women with the support services needed to pursue legal action. Furthermore, meaningful programmes of legal services- to enforce dowry laws should include Dowry Prohibition Officers to serve as agents in organising legal action in collaboration with the women's organisations and in further developing the family courts as a judicial system for gender justice.

Footnotes

1. Substituted by Act 43 of 1986
2. Substituted by Act 63 of 1984 (w.e.f. 2.10.1985)
3. 1992 (2) SCC 474.
4. 1991 (1) SCC 271.
5. 1989 Cr.L.J. 2330.
6. Shanti vs. State of Haryana, 1981 Cr. L.J. 2230.
7. 1992 SCC 212.
8. 1994 (6) SCC 727
9. AIR 1990 S.C. 209
10. 1993(1) SCC pg. 1
11. Shakuntala vs. State of Punjab, 1994 SCC 1781.
12. 1994 (4) SCC 182.
13. AIR 1986 S.C. 250.

14. AIR 1988 S.C. 1785.

15. 1989 CrI. L.J. 705.

16. 1990 CrI. L.J. 2163.

17. *Infra*, See No.13.