

**DE JURE NEXUS LAW JOURNAL**

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**DOWRY DEATHS AND INDIA: CLOSE SIBLINGS**

**Abstract:**

*The title of this research paper is chosen such that to show the close, long, and ongoing relationship between dowry deaths and India. If we talk about dowry in India, it does not come off as something abrupt, absurd or weird for the reason of it being there for years including the deaths connected to it. I think of them as close siblings because it is a thing mostly prevalent in India or prevalent in most of the India as it is not restricted to just any one part of it, both mean different but work just fine. NCRB (National Crime Record Bureau) in its report has stated that most of the cases of dowry death or bride burning from all over the world were reported in India. Asking for dowry in India is considered to be a tradition during weddings even though the same has been penalised.*

**Keywords:**

*Dowry, dowry death, bride burning, wife, husband.*

**Introduction:**

Dowry system is followed both overtly in rural areas and covertly in urban areas. It is practiced by providing the groom and his family with cash, goods, jewellery and other things on their ask as a consideration for the marriage. It includes several things which are required by a newly

wed couple to lead their life completely. It many a times, leads to a huge financial debt and burden on the girl's family as they are not generally not so well off to provide such support. Since, it puts burden on the bride's family, sometimes the family asks for negotiation as they are unable to fulfil it. In some cases, the negotiation works but in some cases the groom's family is so adamant that they start putting pressure on the bride's family which in turn leads to violence against the bride. They try to harm her whether it is emotionally, mentally or physically. And for the protection of such vulnerable women, the Indian Penal Code, 1860 has come provisions which we will discuss later on in this writing piece.

### **Dowry- IS IT REALLY A MAN'S RIGHT?**

It is often considered in villages and in the less educated and less woke sections of the society that it is a man's inherent right to dowry since he's a guy and doing a favour to the bride's family by marrying their daughter so he is entitled to such consideration that we call dowry. But is it really the case? If we compare the dowry system to the barter system, it involves unilateral transfer of gifts, cash and kind, unlike the barter something where something is given in return of something. The theory and rationale of dowry system has differed from time to time. And the reason why was it there was for the financial and economic security of women as generally the women of the family had no inheritance rights, so they inherited this in the form of dowry for their marriage, so they could lead on their lives peacefully and comfortably. And it was generally not based on her in-laws' demand but more as a sign of love and affection from her own family. A system which was made for the benefit of the bride and not vice versa but has taken some new dimensions over time. Another concept that was similar to this was that of bride pricing which involved the groom's family compensating the bride's family with some cash or kind for the loss of their daughter. This was largely practiced in the southern part. But over time rituals and practices have taken a different turn and the traditional concept of it is no more followed like it has got transformed to groom price and now the amount of dowry is calculated on the basis of how well off the groom is, what is his job among other factors.

### **Dowry and the Related Deaths from the Eyes of the Indian Law:**

- a) **Indian Penal Code, 1860** - in the chapter XVI of the IPC are illustrated the crimes and offences to the human body. One such offence is that of dowry death, enlisted in Section 304B (1) which states that "*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*

*har-assment 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.”*

Section 304B (2) creates a provision for the punishment of the same and states that *“Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”*<sup>1</sup>

- b) Code of Criminal Procedure, 1973** – CPC states that dowry death is a non bailable and cognizable offence. Non bailable offences are those for which bail can not be granted without the permission or order of the court and cognizable offences are those for which it is not a requisite for the police to possess an arrest warrant, i.e., the person can be arrested without questioning the police for an arrest warrant. When arresting someone without a warrant, a police officer is required under Section 41 of the Code of Criminal Procedure, 1973 to be satisfied with the complaint submitted against that individual and to follow all of the processes outlined in Section 41 of the CrPC.<sup>2</sup>
- c) Dowry Prohibition Act, 1961-** The Dowry Prohibition Act of 1961 consolidated anti-dowry legislation enacted by many states. Dowry is defined under the Act as any property or valuable security provided or pledged to be delivered in association with the marriage. The penalty for proposing or accepting dowry does not apply to gifts given at the time of marriage when no demand is made. Those charged bear the duty of proving that a crime was not committed, not the victim or her family.

### **Judicial Pronouncements:**

The apex court of India is known for taking cognizance on delicate and important matters. On hearing upon a case of dowry death, to clear the abuse related to it, it was asserted that *“The cruelty has to be proved during the close proximity of time of death. It should be continuous. Such continuous harassment, physical or mental, by the accused should make life of the deceased miserable which may force her to commit suicide.”* It in its exacting terms, means that there should be a causal relationship between the assault and the death hence committed. It should not be like that the woman was harassed a year ago and has now died due to any reason which should not of course be related to that assault or cruelty to prove that no dowry murder has been committed. It was also stated by the court that *“In other words, there must be*

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<sup>1</sup> Indian Penal Code, 1860, Acts of Parliament

<sup>2</sup> Dowry death: understanding the basics – **iPleaders**, [https://blog.ipleaders.in/dowry-death-understanding-basics/#Perceiving\\_dowry\\_death\\_as\\_the\\_law\\_speaks](https://blog.ipleaders.in/dowry-death-understanding-basics/#Perceiving_dowry_death_as_the_law_speaks) (last visited Feb 21, 2022)

*an existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the women concerned, it would be of no consequence.”<sup>3</sup>*

**1) Satbir Singh vs. The State of Haryana (2021)**

The Supreme Court ruled in *Satbir Singh vs. The State of Haryana* (2021) that if the prosecution can demonstrate the elements of Section 304-B of the IPC, the burden of evidence of innocence falls entirely to the defence. Furthermore, Section 304B of the Indian Penal Code is significantly stricter than Section 498A of the Indian Penal Code in that offences under it are cognizable, non-bailable, and can be tried in Session Court.

**2) Kans Raj v/s State of Punjab<sup>4</sup>**

It was asserted that in all cases, the actions of the husband, in-laws, or other relatives should not be held to be implicated in the demand for dowry. Whenever an accusation is made, the blatant behaviour attributed to anybody other than the spouse must be substantiated beyond a reasonable doubt. Based on conjectures and implications, such ties cannot be charged with dowry death. However, a pattern has evolved in dowry death cases of bringing all relatives of the deceased women's in-laws, which, if not prevented, is likely to have an influence on the prosecution's case even against the genuine offenders. It is generally the zeal to convict as many people as possible, that the parents of the deceased have been caught seeking to include other relatives, which eventually weakens the prosecution's case even against the real accused, as appears to have transpired in the current case.<sup>5</sup>

**Misuse of the provisions making it a draconian law (Section 498 A):**

It has been many a times noted by the courts that the groom and his family are pried upon as the victim of the false accusation made by the wife. Fake cases are filed in order to make the groom and/or his family suffer. The reason of the provision being misused is that the offence is non bailable and cognizable. Since it is cognizable, no scum arrest warrant is required for the arrest which gives the women power to get the family behind the bars for her malice intent.

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<sup>3</sup> Supreme Court clarifies on abuse linked to dowry deaths, **The Hindu**, <https://www.thehindu.com/news/national/supreme-court-clarifies-on-abuse-linked-to-dowry-deaths/article38050604.ece> (last visited Feb 21, 2022)

<sup>4</sup> *Kans Raj v/s State of Punjab*, AIR 2000 SC 2324

<sup>5</sup> *Dowry And Dowry Death*, Legalserviceindia.com, <https://www.legalserviceindia.com/legal/article-1245-dowry-and-dowry-death.html> (last visited Feb 21, 2022)

One such case was of Arnesh Kumar v/s State of Bihar<sup>6</sup> where it was propounded by the court that marriage issues have increased dramatically in recent years. Marriage is seen as a very sacred institution in our country, India. Section 498-A of the Indian Penal Code was put into force with the claimed objective of preventing a woman from being harassed by her husband and his relatives. Because section 498-A of the IPC being a non-bailable but cognizable offence, it has clearly developed a questionable reputation as a legislation used by unhappy women as a sword rather than a shield. The most basic method of harassing the husband and his relatives is to have them jailed under these laws. In a few cases, the husband's sick grandfathers and grandmothers, as well as their sisters who have been abroad for decades, have been contacted.

### **Conclusion:**

The crimes related to dowry have existed since the inception on the institution of marriage. Its meaning though has had several and different meanings from time to time. In some circumstances, it was meant for good whereas now over the time, it can be evidently seen that the positive meaning has been long lost. Persecution of women has become widespread whether it may be in any form. Certain laws and provisions have been created to prevent the same. But there are always loopholes to everything as nothing can be perfect. Certain loopholes have been found such as fake complaints which need to be catered to. But just because there are loopholes, the law cannot be termed draconian and be made constitutional. It is the duty of the judicial officers and executives to look into the intricacies of the matter in hand while propounding a case for a just and fair judgement. It is true that the laws overpower the women, but it is the need of the hour because without it they'll be left with no power and very much vulnerable.

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<sup>6</sup> Arnesh Kumar v/s State of Bihar, 2014 (8) SCC 273

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