



DOWRY DEATH AND CRUELTY -An Overview

KEYWORDS

Dowry Death, Cruelty towards Women, Torture, Abuse, Chastity, Suicide, Divorce, Marriage, Husband, Relatives, Demand, Harassment, Deprivation

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ABSTRACT

The concept of Dowry is an ever-burning topic. So the author tends to inform the public about the concept of dowry and its related issues involved in this topic. The author deals with the conceptual overview and also the related cases. There is substantive interpretation in this paper by the author. Insight into issues such as Dowry death and cruelty towards woman has been given primary importance. In-depth analysis and validity of the provisions in Indian scenario would closely dealt in this paper.

INTRODUCTION

The dowry has a long history in Europe, South Asia, Africa and other parts of the world. The system of dowry is deep rooted in the Indian society since the early days of the history. This system prevailed in ancient Indian society, in ancient period dowry was the part of the ritual of kanyadan which was very different from modern-dowry.

Among the eight types of marriages recognized by smritis, it was only in the Brahma marriage that father gave away his daughter, with such gifts and presents as he could afford, to a man of superior character.

In the medieval period, the dowry, which was earlier regarded as dakshina (gift offered willingly), became an evil, father in order to marry her daughter had to offer money demanded by groom's family.

In medieval times, the dowry system had engulfed the society at alarming rate, though it was practiced in the aristocratic and royal families.

The traditional concept of marriage has greatly changed and Hindu marriage is considered to be of dual nature i.e. of both religious sacrament and contract, where mutual consent and benefit of both the parties are duly aided by different legal provisions and reforms.

But on this great institution a stigma called 'dowry' still exists. Women are ill-treated, harassed, killed, divorced for the simple reason that they didn't brought dowry.

Dowry, in ordinary sense, refers to money, gifts, goods or estate that wife brings to her husband in marriage

Today, Indian society is surrounded with many problems such as unemployment, illiteracy, population growth, terrorism, etc. Among these problems, a problem which is deep rooted in Indian society is the problem of dowry system.

DOWRY DEATH AND CRUELTY

Matrimonial Cruelty in India is a cognizable, non-bailable and non-compoundable offence. It is defined in Chapter XXA of I.P.C. under Sec. 498A as: Husband or relative of husband of a woman subjecting her to cruelty.

Whoever being the husband or the relative of the husband of a woman, subjects her to cruelty shall be punished with imprisonment for a term, which may extend to three years and shall also be liable to a fine.

For safeguarding the interest of woman against the interest of woman against the cruelty they face behind the four walls of their matrimonial home, the Indian Penal Code, 1860 (herein after referred to as I.P.C.) was amended in 1983 and inserted S.498A which deals with 'Matrimonial Cruelty' to a woman.

For the purpose of this section, "cruelty" means:

(a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demands for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

The section was enacted to combat the menace of dowry deaths. It was introduced in the code by the Criminal Law Amendment Act, 1983 (Act 46 of 1983). By the same Act section 113-A has been added to the Indian Evidence Act to raise presumption regarding abetment of suicide by married woman. The main objective of section 498-A of I.P.C is to protect a woman who is being harassed by her husband or relatives of husband.

Meaning of Cruelty:

It was held in 'Kaliyaperumal vs. State of Tamil Nadu', that cruelty is a common essential in offences under both the sections 304B and 498A of IPC. The two sections are not mutually inclusive but both are distinct offences and persons acquitted under section 304B for the offence of dowry death can be convicted for an offence under sec.498A of IPC. The meaning of cruelty is given in explanation to section 498A. Section 304B does not contain its meaning but the meaning of cruelty or harassment as given in section 498-A applies in section 304-B as well. Under section 498-A of IPC cruelty by itself amounts to an offence whereas under section 304-B the offence is of dowry death and the death must have occurred during the course of seven years of marriage. But no such

period is mentioned in section 498-A.

In the case of 'Inder Raj Malik vs. Sunita Malik', it was held that the word 'cruelty' is defined in the explanation which inter alia says that harassment of a woman with a view to coerce her or any related persons to meet any unlawful demand for any property or any valuable security is cruelty.

Kinds of cruelty covered under this section includes following:

- Cruelty by vexatious litigation
- Cruelty by deprivation and wasteful habits
- Cruelty by persistent demand
- Cruelty by extra-marital relations
- Harassment for non-dowry demand
- Cruelty by non-acceptance of baby girl
- Cruelty by false attacks on chastity
- Taking away children

The presumption of cruelty within the meaning of section 113-A, Evidence Act, 1872 also arose making the husband guilty of abetment of suicide within the meaning of section 306 where the husband had illicit relationship with another woman and used to beat his wife making it a persistent cruelty within the meaning of Explanation (a) of section 498-A.

Validity of section 498-A

In 'Inder Raj Malik and others vs. Mrs. Sumita Malik', it was contended that this section is ultra vires Article 14 and Article 20 (2) of the Constitution. There is the Dowry Prohibition Act which also deals with similar types of cases; therefore, both statutes together create a situation commonly known as double jeopardy.

But Delhi High Court negatives this contention and held that this section does not create situation for double jeopardy. Section 498-A is distinguishable from section 4 of the Dowry Prohibition Act because in the latter mere demand of dowry is punishable and existence of element of cruelty is not necessary, whereas section 498-A deals with aggravated form of the offence. It punishes such demands of property or valuable security from the wife or her relatives as are coupled with cruelty to her.

Hence a person can be prosecuted in respect of both the offences punishable under section 4 of the Dowry Prohibition Act and this section.

This section gives wide discretion to the courts in the matters of interpretation of the words occurring in the laws and also in matters of awarding punishment. This provision is not ultra vires. It does not confer arbitrary powers on courts.

Indian Courts had been using this provision to safeguard the women from facing the cruelty faced by them at their matrimonial home.

9 out of 10 of the cases are always related to dowry, wherein the woman is continuously threatened for want of more money and property which if remains unfulfilled, the married woman is tortured, threatened, abused- both physically and verbally and harassed.

In the case of Ram Kishan Jain & Ors v State of Madhya Pradesh due to insufficiency of dowry demands the woman was administered calmpose tablets and thereafter she even cut the arteries of both her hands.

Sometimes, dowry may not be the cause but the woman for several reasons like her complexion or family status is tortured to death.

In the case of Surajmal Banthia & Anr. v. State of West Bengal, the deceased was ill-treated and tortured for several days and even not given food several times. Her father- in-law also misbehaved with her quite often. This is the treatment that several young brides face when they move out of their parents' home and into the house of her in-laws'. It is the duty of the court to prevent any of these abusers from escaping. The increasing rate of bride burning for want of more dowry and brutal torture of young wives, together with a clear escape of the abuser is a clear indication that the court has not taken any strong measures for the implementation of S. 498A IPC properly.

Many women rights' groups justify the abuse of this section as being a common feature with all other laws and that also the ratio of false cases to that of true ones as being very low. But this still does not change the truth that there is slowly a rise in the abuse of S.498A IPC.

In many judgments, the court has not considered mental cruelty caused to the woman but has concentrated only on any sign of physical cruelty. If evidence does not show that the woman was physically harassed, then the court does not look into the case. What the court does is call the woman hyper- sensitive or of low tolerance level and having an unstable mind.

Also S.498A IPC does not only deal with dowry deaths but also any willful conduct on part of the husband which causes harm to the wife's ' life, limb or health (whether mental or physical).'

To prove that cruelty was caused under Explanation (a) of Section.498A IPC it is not important to show or put forth that the woman was beaten up- abusing her verbally, denying her conjugal rights or even not speaking to her properly would fall into the ambit of mental cruelty.

In 1990 Punjab and Haryana High court observed in Jasbir Kaur vs. State of Haryana, case as:

"It is known that an estranged wife will go to any extent to rope in as many relatives of the husband as possible in a desperate effort to salvage whatever remains of an estranged marriage."

In Kanaraj vs. State of Punjab, the apex court observed as:

"for the fault of the husband the in-laws or other relatives cannot in all cases be held to be involved. The acts attributed to such persons have to be proved beyond reasonable doubt and they cannot be held responsible by mere conjectures and implications. The tendency to rope in relatives of the husband as accused has to be curbed"

Karnataka High Court, in the case of State Vs. Srikanth, observed as:

"Roping in of the whole of the family including brothers and sisters-in-law has to be depreciated unless there is a specific material against these persons, it is down right on the part of the police to include the whole of the family as accused"

CONCLUSION

Attempts to bring about changes in the status of women either through legislation or judicial activism can achieve little success without a simultaneous movement to transform the social and economic structures and the culture (values, ideologies and attitudes) of society

One of those attempts to bring changes in status of women and relieve her from her sufferings, pains and gloomy environment is

given under chapter XX-A of Indian Penal Code, 1860. Marriage is the voluntary union for life of one man and one woman to the exclusion of all others.'

It is a social institution where husband has the responsibility to take care and maintain his wife. He cannot neglect his duties.

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