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# Origin of Dowry System and Section 304-B of Indian Penal Code, 1860

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## ABSTRACT

*Cultural practices such as dowry system have assigned a secondary status to women leading to future ills such as female feticide and infanticide. Separated and divorce women are stigmatized, which is the reason behind women continuing in abusive marriages either under family pressure or of their own accord. There are laws providing equality in all spheres for women whether education, employment, property rights etc. under Constitution of India. But the need was of a specific legislation regarding dowry death. Accordingly the Dowry Prohibition Act, 1961 was enacted. Despite having a law prohibiting the giving or taking of dowry in any form, the practice flourishes among all the sections of the society irrespective of their caste or class. The legislators tried to control the ill-treatment of women by their husband or in-laws by inserting section 498A in the IPC in the year 1983 but statistics revealed an alarming increase in the number of suspicious deaths of women in the matrimonial home, thereby promoting the lawmakers to insert two more provisions, Section 304B in the IPC and Section 113B in the Indian Evidence Act, in the year 1986. This was done to curb the rising incidence of Dowry Deaths by making special provisions for prosecuting those accused of killing women for dowry.*

**Keywords:** dowry death, women, cultural practice, 304B IPC, 498A IPC, Dowry Prohibition Act, 113B Indian Evidence Act.

## I. INTRODUCTION

Women in all societies are the transmitters of history, customs and traditions of their people. From womb to tomb, women are made to pay dearly for their womanhood and unless some steps are taken to make people appreciate. Discrimination against women begins even before her birth. Women are the greatest gift of God to humanity. She possesses the power to create what is good and destroy what is bad. Tulsidas, Kalidas, Sudras are the great Indian poets were also inspired by their better halves in their literary ventures. Women produce children, women are mothers and wives, women do the household works, they take care of everyone in

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the family. But they excluded from high status occupations and from positions of power.

Women of ancient India, especially during the Vedic and Indus Civilization, received a great Devine honor and were worshipped as Goddesses as a part of society she used to perform her independent role, as she was given more prominence in decision-making in the social institution. Even going by great Epics it is found that the position of women was not only on par with that of men, but it was also an authoritative one. Practices like Swayamvara where the women had the freedom to choose her husband from the vast choice on the one hand of a lady in marriage was in practice, she was not only a homemaker, but also a decision maker in the early society. Politically also women stood on the same footing as that of men despite the fact that Manushastra had accorded a very low status to women. Later on gradually her position slipped into the abyssal depths that deprived her of independent social, economic and political and thereby make her dependent on the male member of the family.

Originally, the purpose of a dowry was to provide “seed money” or property for the establishment of a new household, to help a husband feed and protect his family, and to give the wife and children support if he were to die.<sup>2</sup> A husband thus had certain property rights in his wife’s dowry. In addition the wife might bring to the marriage property of her own, which was not included in the dowry and which was, as a result, hers alone. This property was “beyond dowry” and also known as parapheral property or extra-dotal property.

But the move which affected the status of women in the Indian society was the ruled imposed by the British which prohibited the women from owing any property at all. And this was what created the menace of dowry system in India. All the wealth that a woman got from her parents would be owned by her husband instead. And the moment, this system of husband owing the wealth of his wife was created, the traditional dowry system got converted into a menace creating an institution of greed that oppressed, victimized and suppressed women. The greed that kicked in created a system where husband and his family started looking at the incoming bride as a source of property and wealth.

## II. DEFINITION OF DOWRY

According to the *Cambridge Dictionary*, Dowry is property which a woman brings to her husband.

In Sanskrit, dowry means ‘*Dahej*’ which signifies gift or donations i.e., property both movable and immovable that a girl brings with her at the time of her marriage. In Urdu,

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<sup>2</sup> . Aruna Goel, “*Violence and Protective Measures for Women Development and Empowerment*”, New Delhi: Deep and Deep Publications Pvt. Ltd.

dowry is 'Jahez' which means whatever is given by the bride's family to the groom's family.

Among Hindus, gift of the bride, *kanyadana*, is accompanied by subsidiary cash, gift or *dakshina* and *Stridhan* refers to the gifts given to a woman by different relatives from either side. Thus, traditional dowry was equated with gifts including woman's property or *stridhan*. The family of bride gave this voluntarily.

Broadly, two points are discernible in the provision of *stridhan*. First, while *stridhan* may have included the daughter's portion of inheritance, her control over it was far from complete. Second, *stridhan* cannot be equated with dowry. In dowry, the transaction of gift was from bride's father or guardian to grooms father or guardian and not to the daughter alone. Women's limited right and control respectively over inheritance and *stridhan*, however confirm that the transmission of property to daughter as a gift was the common practice.

According to Section 2 of Dowry Prohibition Act, 1961, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

- (a) by one party to a marriage to the other party to the marriage or
- (b) by the persons of either party to the marriage or by any other person, to either party to marriage or to any other person;

At or before [or any time after the marriage] [in connection with the marriage of said parties but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

### **III. HISTORICAL DEVELOPMENT OF DOWRY SYSTEM IN INDIA**

#### **Vedic Period**

We have the ancient scriptures which talk about women with such high respect. The most powerful God in Hinduism is the female Goddess. Saraswati is the Goddess of knowledge, not Brahma. Lakshmi is the Goddess of Wealth, not Vishnu. Parvathi is the Goddess of Power and Energy, not Shiva.

We only hear about Swayamvar in the ancient Hindu marriage traditions where it was the bride who decided whom to marry. There was no Swayamvadhu, the groom could not hold beauty contests to decide which bride to marry. Instead it was the girl who in a Swayamvar, would put all the competing potential bridegrooms to different contests and then select the bridegroom whom she liked. In the Swayamvar of Sita in Ramayana, Rama had to lift the Shiva's bow to prove that he was eligible to marry Sita.

On the other hand, the oldest Hindu texts, Vedas make mention of dowry in Hindu marriages. During vedic period the brides are given to the grooms known as 'kanyadan' along with some gifts. 'kanya' means the girl and 'dana' means the gift. According to Rig Veda it was believed that without presenting 'Dakshina' to the bride the custom of 'Kanyadan' is incomplete. Hence 'Kanyadana' and 'Varadakshina' became intimately associated. *Rigveda* Mandal 1, Suktas 125 and 126 talk of dowry King Swanaya paid to kakshivat on the marriage of his daughter with him. Other Hindu texts contained detailed accounts of dowry. For example, Mahabharata Adi Parv Section 197/ Shlokas 15-18 details of the dowry presented by King Drupad on the marriage of his daughter Draupadi with the five Pandavas. The Mahabharata also informs us of dowry given during the marriage of Abhimanyu, son of Arjuna with Uttara, daughter of king Viraat in Section 72, Shlokas 36-37.

### Later Vedic Period

The code of Manu sanctioned dowry in ancient India, but dowry was the more prestigious form and associated with the Brahmin caste. Dowry was restricted to the lower castes, who were not allowed to give dowry. However, it is more likely that marriage involved both reciprocal gifts between the two families, so that insofar as the groom's family gives the bride wealth, it tends to be given back as the culturally validated dowry to the bride as part of her conjugal estate.<sup>3</sup> At that time the women in India had property inheritance rights either by appointment or when they had no brothers. Daughter had a legal right to inherit from her father, but only a fourth part of her brother. The daughter took this inheritance amount with her when she married, and she had no rights to income from her parents after her marriage or to any additional inheritance after her father's death. If her father died before her marriage, her guardian would first pay off her father's debt, then allocate a fourth of the remaining wealth to her upkeep till she is ready to marry, and then give the rest to her to take with her into her married life.<sup>4</sup>

The advent of Buddhism in India, with Ashoka the compassionate began a period of the influence of Buddhist law on large part of India. Under Buddhist law, women had rights and could own property, therefore dowries serve no purpose. But still dowry existed in India in that period, but not in the format that is prevalent in the society today. In that period, dowry was an institution managed by women, for women, to enable them to establish their status and have recourse in an emergency. In this ancient system of dowry, the parents of the bride,

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<sup>3</sup>. Tambiah, Stanley; Goody Jack, "*Bridewealth and Dowry*", Cambridge UK: Cambridge University Press, 1973, P.71.

<sup>4</sup>. Edward Sachau (translator), Muhammad ibn Ahmad, Alberuni's India (vol.2) chapter LXIX: 154.

even her kith and kin, all gave wealth to her in the form of valuable gifts etc. It was just like how parents used to give a part of wealth to their sons, so did they give it to their daughters too during the daughter's marriage. The valuables or the wealth was given bride, not to the groom or his family. This gave the required financial independence to women who would even manage the income from the agricultural land.

### **Medieval Period**

In the medieval social historical records, one can trace the social practices like child marriage and dowry system among the Hindus and Muslims in India. The dowry system was very popular among the Rajputs. They consider dowry as custom that should be necessarily followed during marriage. The Rajput Kings used to give a huge amount of money, jewelry, horses, servants etc. with their daughters as a dowry.

After Mughal invasion, condition of women deteriorated. They consider women inferior to men. The Mughal rulers started to make matrimonial alliances with the daughters of Hindu rulers, especially the Rajput chief went a long way in strengthening the roots of the Mughal Empire in India. The Mughal administration got efficient officials and generals. Moreover, the dowry that these Rajput princesses brought with them, enriched the royal treasuries.

It means the practice of dowry system also stepped into the Muslim community also. During the medieval period the dowry system assumed alarming proportions particularly among royal aristocratic families. As a matter of fact, during the medieval period India was in chaos socially, economically and politically. The situation forced the parents to give huge dowry to get rid of the responsibility of taking care of their daughter. The system mainly started to affect the royal families. They took and used it as protector of individuals, dynasty and status. In this way dowry got institutionalized in India.

### **British Period**

The dowry system goes wrong during the British rule in India. It all started with Permanent Settlement of Bengal in 1793 by the British under Lord Cornwallis. This enabled private ownership of land which was unknown in India till then. Private ownership of land was never practiced in India in the past. The land always belonged to the government and people only settled in the government's land. If there was a flood in one place, people used to move on to another place in the kingdom. By introducing the permanent settlement, the British enabled the private ownership of the land in India. All modern day deal estate related violence in the country could hence be traced back to this act by the British. People there after started fighting over land.

It was this system which also created the system of Zamindars or landlords in India. Very few realize that the Zamindari system of landlords who ill treated peasants was created by the British rule. Till then, the zamindar were not landlords, but only tax collectors, collectors of land revenue who used to collect it from the framers and hand it over to the local government. The zamindar or landlord now owned the land and it was hereditary i.e the children of the landlords became the inheritors of the land.

But the move which affected the status of women in the Indian society was the ruled imposed by the British which prohibited the women from owning any property at all. And this was what created the menace of dowry system in India. All the wealth that a woman got from her parents would be owned by her husband instead. And the moment, this system of husband owning the wealth of his wife was created, the traditional dowry system got converted into a menace creating an institution of greed that oppressed, victimized and suppressed women. The greed that kicked in created a system where husband and his family started looking at the incoming bride as a source of property and wealth, the male dominating society become greedy, husband and in-laws started demanding more dowry from the bride and her parents. The social harmony and the bonding created by the institution of marriage were gone. Marriage became just another business deal, where making wealth was much easy. Male child became an additional source of income, and female child became a financial burden on the family. This led to the creation of the social problem like dowry death, female foeticide and an imbalance in male-female ratio in the society, which further led to more crimes on women.

### **After Independence**

After the British prohibited women the right to own or inherited property, until 1956 the women in India did not have the right to inherit property from their parents. It was only in 1956 that the Hindu Personal laws were amended giving the right to women to inherit ancestral property. But again those rights were not equal to those of men and women. Sons had an independence share in the ancestral property while the daughters' shares were based on the share received by their father. Hence, a father could effectively disinherit a daughter by renouncing his share of the ancestral property, but the son will continue to have a share in his own right. Additionally, married daughters, even those facing marital harassment, had no residential right in ancestral home. Successive governments in independent India have retained most of the laws we inherited from British without much amendments.

The Indian constitution was adopted on November 26, 1949; two years after India become

sovereign nation. Article 14 of the Indian constitution states that the state shall not deny to any person equality before the law or the equal protection of laws within the territory of India. Article 15 prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. In the 42<sup>nd</sup> amendment 1976, the Article 39A was added to the constitution which provides that the state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. But these provisions are not sufficient to provide safeguard to the women from the offences like dowry death. Special legislature in regard had become indispensable.

During the last few decades the evils of dowry system has taken an acute form in almost all parts of the country and in almost all sections of the society. In a bid to eradicate this evil from the society, the State Government of Bihar and Andhra Pradesh enacted “The Bihar Dowry Restraint Act 1950” and “The Andhra Pradesh Dowry Prohibition Act 1958” for the respective States, but these enactments failed to achieve the objectives for which they were enacted.

On 24<sup>th</sup> April 1959 the Dowry Prohibition Bill, 1959 was introduced in the Lok Sabha. After some discussion, the Bill was referred to a Joint Committee of both the Houses of Parliament. The Dowry Prohibition Bill was finally passed in the Joint Sittings of the both the Houses of Parliament and it became an Act – The Dowry Prohibition Act, 1961 and it received the assent of the President on 20<sup>th</sup> May 1961.<sup>5</sup>

The Dowry Prohibition Act was not fully successful in curbing the menace of dowry death. And hence after passing of Act, the Indian Penal Code, 1860 was amended in 1961 and section 304-B has been inserted with a view of combating increasing rate of dowry death.

In 1983 section 498A was inserted in IPC to provide safeguard to the married women who is subjected to cruelty by her husband or his family member. In most of the cases it seen that cruelty is meted to the bride because of the non-fulfillment of dowry demand. In the same year section 113A was inserted to the Indian Evidence Act 1872. The section provides that if a woman had committed suicide within a period of seven years from the date of her marriage and that her husband or relatives of her husband subjected her to cruelty, the court shall presume that such suicide had been abetted by her husband or such relatives of her husband.

In 1986 the Evidence Act 1872 was amended to insert section 113B which provide that if a

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<sup>5</sup> .The Dowry Prohibition Act 1961, dowryprohibition.doc.

women is subjected to harassment for or in connection with dowry, soon before her death then the court shall presume that the death of the woman is because of the demand of the dowry and thus a dowry death is said to be happened.

In 1990 the National Commission for Women Act was passed. As defined in the Act the National Commission for Women (NCW) was established in January 1992 under the provision of the Indian Constitution. The Commission is a statutory body of the Government of India, generally concerned with advising the government on all policy matters affecting women.

Section 174 and 176 of CrPC, deals with the investigations and inquires into the causes of unnatural deaths, by the police and magistrate respectively. The Amendment Act 1983 makes it mandatory for the police officer to send the body for post-mortem examination if the death of the woman occurred within seven years of marriage as a result of suicide or under other suspicious circumstances.

After independence India become subject to international law. There are also some international instruments for the empowerment of women. The Mexico Plan of Action was the first world conference on the status of women convened in Mexico City in 1975. CEDAW (The Convention on the Elimination of All Forms of Discrimination Against Women) was adopted in 1979 by the UN General Assembly, it is often described as an international bill of rights for women. In 1994, India ratified the Convention. The Nairobi Forward Looking Strategies and Beijing Plan of Action were another two international instrument adopted for welfare of women all over the world.

#### **IV. SECTION 304-B, INDIAN PENAL CODE, 1860**

Before 1983, there were no specific provisions pertaining to violence within the matrimonial home. Husband and in-laws could be convicted under the general provisions under law relating to murder, abatement to suicide, causing hurt and wrongful confinement. At the same time it was extremely difficult for woman to prove violence by husband and in-laws 'beyond reasonable doubt' as was required by criminal jurisprudence. There would be no witness to corroborate their evidence, as the offences are committed behind closed doors and within four walls of the house. Thus, different criteria had to be evolved to measure injury. For example: generally complaints can be registered only after an offence has been committed. But in a domestic situation a woman would need protection even before the crime, when she apprehends danger to her life, as she is living with and is dependent on her assaulter. Thus, special concessions have been made in the law dealing with women.

In 1986, a new offence known as “Dowry Death” was inserted in the Indian Penal Code as section 304B by the Dowry Prohibition (Amendment) Act, 1986 (43 of 1986) with the effect from November 19, 1986. Under this section, if a woman died an unnatural death within 7 years of marriage and it was shown that just before her death she had been subjected to cruelty or harassment by her husband or his relatives for dowry, such a death shall be deemed to have been caused by the husband or his relatives. The punishment for causing this death is imprisonment for a minimum of 7 years and maximum of life imprisonment. The provisions under section 304B, IPC are more stringent than that provided under section 498A of the Penal Code. The offence is cognizable, non-bailable and triable by Court of Session.

Essentials of Section 304B:- A careful analysis of section 304B, IPC shows that section has the following essentials-

- a) Death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances;<sup>6</sup>
- b) Death should have occurred within seven years of her marriage;
- c) The woman must have been subjected to cruelty or harassment by her husband or any relative of her husband;
- d) Cruelty or harassment should be for or in connection with demand for dowry;
- e) Cruelty or harassment should have been meted out to the woman before her death.

Clause (1) of the section 304B, IPC defines ‘dowry death’ and clause (2) prescribes punishment for dowry death.

According to clause (1) of section 304B, the death of a woman will be designated as ‘dowry death’ when it is caused:

- a) by burns, bodily injury, or occurs otherwise than in ordinary circumstances; and
- b) as a result of cruelty, or harassment caused by her husband or her husband’s relations, or in connection with any demand for dowry.

In case of death of a woman caused under the above circumstances, the husband and the husband’s relatives will be presumed to have caused a ‘dowry death’ and be liable for the offence, unless it is proved otherwise. That is to say, the burden of proof shifts on the part of the accused to prove his innocence unlike other offences wherein the accused is presumed

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<sup>6</sup> .(2003) 1 SCALE 30. A two-judge Bench of the Supreme Court Y.K. Sabharwal and H.K.Sema, delivered the judgment.

innocent.<sup>7</sup>

Clause (2) prescribes a minimum punishment of seven years of imprisonment which may extend up to life imprisonment in case of dowry death.

To curb the practice of dowry death there is an urgent need to enforce effectively the punitive and preventive measures with iron hands. At the same time the law must be made more effective. Police should be more watchful with respect to such offences, as pointed out by the Supreme Court in *V.N. Pawar v. State of Maharashtra*,-

....Wife-burning tragedies are becoming too frequent for the country to be complacent. Police sensitization mechanisms which will prevent the commission of such crimes must be set up if these horrendous crimes are to be avoided. Likewise, special provisions facilitating easier proof of such special class of murders on establishing certain basic facts must be provided for by appropriate legislation.<sup>8</sup>

### **Presumption of Dowry Death**

A combined reading of section 304B of the Indian Penal Code and section 113B of the Indian Evidence Act indicates that there must be material to show that immediately before her death the victim was subjected to harassment or cruelty. Both the provisions are departure from the normal rule of evidence and a presumption arises against the accused in a case where the death of the victim occurred unnaturally within a period of seven years of the marriage. Virtually the same ingredients are required to be raised for the presumption under both the sections. The presumption under these sections will apply if parties were validly married whether under personal law or customary law or statutory law.

A number of cases have come before courts in which the husband has harassed or treated with cruelty his wife within seven years of marriage leading to her death either because she was led to commit suicide or was poisoned or was put to death by pouring kerosene on her and setting her ablaze. In some cases the accused have been found guilty both under section 304B and section 498A of the Indian Penal Code and have been sentenced to various terms of imprisonment and a fine.<sup>9</sup> Accordingly, in *Prem Singh v. State of Haryana*,<sup>10</sup> unnatural death of married woman in her husband's house within seven years of her marriage. Harassment by the husband for not bringing sufficient dowry was established. Medical evidence shows that

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<sup>7</sup> . *Hans Raj v. State of Punjab*, AIR 2000, the term 'otherwise than normal circumstances' means not the natural death.

<sup>8</sup> . AIR 1980 SC 1271; 1980 CAR 187 (SC); 1980 Cr LR 704 (SC); 1980 SCR 1209.

<sup>9</sup> . *State of Andhra Pradesh v. T. Basava* (1990) 1,SC 611.

<sup>10</sup> . (1998), SCC 1714.

the deceased died due to asphyxia as a result of smothering which is an unnatural death. No explanation offered by the husband as to how the deceased sustained several abrasions contusions on her body. The court observed that, in the circumstances, presumption of dowry death can be raised against the husband. High Court justified in reversing his acquittal.

It should be noticed that the words in section 113B of the Indian Evidence Act are that the married woman was subjected to cruelty or harassment soon before her death. This implies that there has to be close proximity between the incidents of cruelty or harassment for demand of dowry and the death of the woman. If the two are apart, the presumption will not apply. It can happen that after marriage a woman is subjected to cruelty or harassment, but party's compromise an acts of cruelty or harassment cases. Thereafter if the woman died, no presumption can be raised. Thus proximity test is applied for determination whether the presumption under section 113B of the Indian Evidence Act could be invoked.<sup>11</sup> However, once proximity test becomes applicable under section 113B, it becomes mandatory to apply the presumption and no option is left with court. The court will presume dowry death unless some cogent evidence is led to rebut presumption. The fact of the matter is that presumption under section 113B reverse the rule that burden of proof is on the prosecution.<sup>12</sup> *Thakkan Jha and others v. State of Bihar*,<sup>13</sup> inapplicability of condition that "soon before" her death the victim was subjected to cruelty or harassment by the accused for or in connection with any demand of dowry. The Court observed that, the said presumption would not be drawn if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty or harassment thereafter. But, mere lapse of some time by itself would not provide the accused a defense, if the course of conduct relating to cruelty or harassment is shown to have existed earlier in time not too late and not too stale before the date of death of the victim. This is so because the expression used in the relevant provision is "soon before". The term "soon before" is not synonymous with term "immediately before". The said term would normally imply that the interval should not be much between the cruelty and harassment concerned and the death in question i.e., there must be existence of a proximate and live link between the two. The determination of the period which can come within the term "soon before" is left to determined by the courts, depending upon the facts and circumstances of each case. No straitjacket formula can be laid down by fixing any time-limit in this regard. Once these three circumstances are proved, the offence under section 304B of the Penal Code is established. When once there is demand for dowry and harassment

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<sup>11</sup> . *Samir Samanta v. State of West Bengal*, (1991) 2,SC 867.

<sup>12</sup> . *Boora Singh v. State of Uttar Pradesh* (1992), Cri. LJ, 2294.

<sup>13</sup> . (2006), SCC 309.

against the deceased, death occurs within seven years after the marriage, the other things automatically follow due to the statutory presumption contemplated under section 113B of the Evidence Act.

### **Dying Declaration of Victim**

The dying declaration of a victim is considered as a relevant evidence for conviction the accused because it is based on the belief that the dying victim shall not tell a lie. However, there is neither rule of law nor of prudence that dying declaration cannot be accepted without corroboration.<sup>14</sup> If the Court is satisfied that the dying declaration is true and voluntary, it can base conviction on it without corroboration.<sup>15</sup> The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result to tutoring, prompting or imagination. The deceased has opportunity to observe and identify the assailants and was in a fit state to make the declaration.<sup>16</sup>

Where dying declaration is suspicious it should not be acted upon without corroboration.<sup>17</sup> Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.<sup>18</sup> A dying declaration, which suffers from infirmity, cannot form the basis of conviction.<sup>19</sup> Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected.<sup>20</sup> Equally merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement, itself guarantees truth.<sup>21</sup> Normally the Court in order to satisfy whether deceased was in a fit mental condition to make dying declaration looks up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail.<sup>22</sup> Where the prosecution version differs from the versions given in the dying declaration, the said declaration cannot be acted upon.<sup>23</sup> It is observed that the in dowry cases the citadels of justice including the Supreme Court of India and other High Court have ignored the victims dying declaration as not full proof evidence and not necessarily authentic.

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<sup>14</sup> . Hannu Raja v. State of M.P., 1976 (2), SC 761.

<sup>15</sup> . *State of U.P. v. Ram Sagar Yadav* AIR 1985 SC 415 and *Ramavati Devi v. State of Bihar*, AIR 1983, SC 154.

<sup>16</sup> . *Ram Chandra Reddy v. Public Prosecutor*, AIR 1976 SC 1094.

<sup>17</sup> . *Rasheed Beg v. State of Madhya Pradesh*, 1974 (4) SCC 264.

<sup>18</sup> . *Kake Singh v. State of M.P.*, AIR 1982 SC 1021.

<sup>19</sup> . *Ram Manorath v. State of U.P.*, AIR 1981 SCC 581.

<sup>20</sup> . *State of Maharashtra v. Krishna Laxmipati Naidu*, AIR 1961 SC 617.

<sup>21</sup> . *Surajdeo Oza v. State of Bihar*, AIR 1979 SC 1505.

<sup>22</sup> . *Nanahau Ram v. State*, AIR 1988 SC 912.

<sup>23</sup> . *State of U.P. v. Madan Mohan*, AIR 1989 SC 1519.

## Unnatural Death

A perusal of the provisions of Section 304B shows that one of the essential ingredients that have to be established is that death was otherwise than in normal circumstances. In the case of *Akula Ravinder v. State of Andhra Pradesh*,<sup>24</sup> the other circumstances namely that the death occurred within seven years of the marriage and that before her death they have harassed her for demand of dowry are established. Coming to the other ingredient, the prosecution miserably failed to establish that death was otherwise other than in normal circumstances. It was however submitted that the deceased was young and the death was not due to natural neither cause nor it was due to an accident and the only inference that can be drawn is that it was otherwise than under normal circumstances. In a case of this nature, the court acquitted the accused on the ground, the prosecution also failed to establish that it was unnatural death it cannot be surmised that death must be due to unnatural circumstances. But in *Santosh Rani Jain and Another v. State of W.B.*,<sup>25</sup> an unnatural death occurred within four months of the marriage and the court found issues regarding dowry demand, harassment and beating. Accused person mercilessly beat the deceased and throwing her body on the pavement outside their residential building. Version of the defence was that, the deceased committed suicide by jumping from the terrace was not acceptable. The Supreme Court observed that, in the circumstance the High Court rightly observed that the death of the deceased was caused in furtherance of common intention of mother-in-law and husband of the deceased and upheld acquittal of the brother-in-law of the deceased.

Section 498A was inserted to Indian Penal Code by Amendment Act of 1983. The Section deals with husband or relatives of husband of a woman subjecting her to cruelty. Whoever, being the husband or relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also liable to fine.<sup>26</sup> 'Cruelty' includes both physical and mental torture. The word cruelty in the Explanation clause attached to the section has been given a wider meaning to include-

- (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide, or to cause a grave injury or danger to life, limb or mental or physical health of the woman, or
- (b) harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for property or valuable security or on account of

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<sup>24</sup> . AIR 1991 SC 1142.

<sup>25</sup> . (1998) SCC 466.

<sup>26</sup> . Section 498A, Indian Penal Code.

failure by her or any person related to her to meet such demand (*i.e* the demand of dowry).

## **V. CONCLUSION**

Despite being educated, considering dowry as illegal by law, dowry related violence has not been eradicated, on the contrary, it is rapidly increasing and spreading all over the country. Dowry which was earlier practice to provide economic support to the daughter has now become fashion and culture. Due to socio-cultural norms and values, victims who are suffering from the dowry based violence are silent and do not lodge complaint in police due to which it is difficult to collect and document the data on dowry victims. Women receiving justice are very rare. Thus laws are needed to be implemented and evaluated strictly.

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**VI. REFERENCES**

1. Gaur .K.D, “Textbook on Indian Penal Code”, Universal Law Publishing Co., New Delhi, 2014.
2. Goonesekere Savitri, “Reflection on Violence against women and the legal system of some South Asian countries”, The Hindu.
3. Misra .S.N, “Indian Penal Code”, Central Law Publication, Allahabad, 2013.
4. Nalwa Suman and Hari dev kohli, “Law Relating to Dowry, Dowry Death, Cruelty to Women and Domestic Violence”, Universal Law Publishing Co., New Delhi. 2011.
5. Pandey Dr. J.N., “The Constitutional Law of India”, Central Law Agency, Allahabad, 2011.
6. Paranjapee N.V., “Criminology and Penology with Victimology”, Central Law Publication, Allahabad, 2012.
7. <https://amp-theguardian-com.cdn.ampproject.org>
8. <https://www-mapsofindia-com.cdn.ampproject.org>.
9. <https://www.quora.com/When-and-how-did-the-dowry-system-start-in-india>.
10. <http://www.hitxp.com/articles/history/origin-dowry-system-bride-woman-india-british>.

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