

Module 23: Dowry and Dowry Death

1. (A) Personal Details

Role	Name	Affiliation
Principal Investigator	Prof. Sumita Parmar	Allahabad University, Allahabad
Paper Coordinator	Dr. Kiran Gupta	Associate Prof. Incharge Law Centre 2 New Delhi
Content Writer/Author (CW)	Dr Vageshwari Deswal	Faculty of Law University of Delhi.
Content Reviewer (CR)	Prof. Sumita Parmar	Allahabad University
Language Editor (LE)	Prof. Sumita Parmar	Allahabad University

(B) Description of Module

Items	Description of Module
Subject Name	Women's Studies
Paper Name	Women and the Law
Module Name/ Title	Dowry and dowry death
Module ID	Module ID: 23
Pre-requisites	For understanding the module, basic understanding of the ancient practice of dowry system in India and how criminal law operates, is required.
Objectives	The main objective of the module is to highlight the menace of the dowry system of India; To make readers aware of the laws that prohibit giving

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	and taking of dowry; To understand when death of a woman amounts to dowry death.
Keywords	. Dowry, cruelty, presumption, legitimacy

Learning outcomes:

- Introduction to important legislative provisions safeguarding the dignity of women against obscenities and profanities;
- Knowledge of types of activities that constitute criminal behaviour punishable under the law

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1. DOWRY

1.1 Dowry System and India

Though we are living in 21st century but it is surprising that India is still tangled in many social evils like superstition, dowry system, caste system, female foeticide etc. With time many of the traditional orthodox customs have been given up but the custom of dowry still continues. With the increase in dowry demand since 20th century offences related to women like wife beating, harassment of women, bride burning also increased. The menace of dowry is not new in Indian society, it is as old as the civilization itself, but it has flourished over the years. With time the concept of dowry has undergone many changes.

Traditionally the term 'Dowry' means gifts given by parents to their daughter at the time of her marriage. Dowry system has been an integral part of Hindu marriages for long and from there it has seeped into other communities too. Dowry is derived from the ancient Hindu custom of "kanyadan", where the father presents his daughter jewellery and clothes at the time of her marriage, and "vardakshina", where the father of the bride presents the groom cash or kind. Both of these were done voluntarily and out of affection and love. Traditionally kanyadaan was not considered complete unless varadakshina was given. Earlier girls did not enjoy proprietary rights in their parental family, so dowry was considered a substitute for the same. These days, these customs have assumed menacing proportions and have become coercive and brutally dangerous. The custom of dowry which had its origins in sublime sentiments has now become a curse. Dowry as a precondition of marriage is a social evil but continues to be a common practice in almost every part of India. Higher education and economic stability of young men, instead of serving to reduce the problem, in fact seem to have aggravated it. In fact well settled boys have started to consider it their right to be given hefty amounts of dowry as a measure of appreciation for their hard work. Hence this offence has assumed the garb of an inalienable right of the groom's family. Often the demand for dowry is not articulated in clear terms. The hints, suggestions and description of dowry given and taken by others are all vague in nature and open to various interpretations and which have the potential of turning deadly at a later date.

At some places situation is so bad that prices are fixed for I.A.S, I.P.S., doctor, engineer etc. spending a huge amount on the marriage and dowry has become a status symbol nowadays. But this practice of dowry is a curse for poor and middle class parents of girls. Sometimes, demand is not made at the time of marriage but the girl is being harassed after the marriage and forced to bring cash or kind from her parents. Often it happens that a woman commits suicide when it becomes unbearable for her.

1.2 Laws against Dowry in India

1.2.1 Dowry Prohibition Act, 1961

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It was in the year 1961 when the practice of dowry was prohibited and made a punishable offence by passing the Dowry Prohibition Act, 1961 by the Parliament of India. It was the first and the only Act which exclusively deals with the dowry system and prohibits it in any form. Later on amendments were also introduced in Indian Penal Code to make it easy for women to get remedy against the harassment which she has to suffer due to non fulfillment of demand of dowry by her parents. Some references are also made in Code of Criminal Procedure and Protection of Women against Domestic Violence Act, 2005.

Section 2 of the Dowry Prohibition Act, 1961 as amended by the Dowry (Prohibition) Amendment Act, 1984 & 1986 defines dowry as follows:-

“Dowry” means any property or valuable security given or agreed to be given either directly or indirectly:-

by one party to a marriage to the other party to the marriage; or

by the parents of either party to a marriage; or

by any other person, to either party to the marriage or to any other person;

at, or before, or any time after the marriage, in connection with the marriage of the said parties, but does not include dower or *mehr* in the case of persons to whom the Muslim Personal law (Shariat) applies. Thus, there are three occasions related to Dowry:-

- Before marriage;
- At the time of marriage; or
- Any time after the marriage.

Valuable security has been defined under section 30 of Indian Penal Code. According to section 30 the word “Valuable Security” denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguish or release, or whereby any person acknowledges that he lies under legal liability, or has not a certain right.

It is clear from the language of section 2 that the word dowry covers not only things given by bride’s family but also covers things given by bridegroom’s family as the legislature uses the term any property or valuable security given by one party to the marriage to the other party to the marriage. But any present made at the time of marriage to either party in the form of cash, ornaments, clothes or any other article shall not come within the meaning of dowry unless they are paid as consideration to marriage.

Sec 2 of Dowry Prohibition Act also clarifies that marriage expense includes expenditure incurred on

- a. Thakka, sagai, tikka, shagun and milni ceremonies;
- b. Gifts made by one party to the marriage to other party to the marriage or by the parents, grandparents and brother of one party to the marriage to the other party of marriage or to their blood relatives.
- c. Illumination, food and arrangement for serving the foods to the members of marriage party and expenses incidental thereto.

Only the gifts made by parents, grandparents and brothers are considered as marriage expenses. Gifts made by other than them do not come within the purview of marriage expenses. Therefore, article received as presents or gifts at the time of marriage cannot be termed as dowry.

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The punishment for giving and taking dowry or abetting the give and take of dowry was earlier punishable by imprisonment up to 6 months, or a fine up to Rs. 5,000. Demanding dowry directly or indirectly from the parents or guardian of a bride was also liable for similar punishment. This punishment was later enhanced by the amendment act and now these offences are punishable with a minimum of six months and maximum ten years of imprisonment. The fine limit has been enhanced to Rs 10,000 or to an amount equivalent to the dowry given, taken or demanded whichever is more. The court has been given the discretion to reduce the minimum punishment though in doing so the court is required to record in writing adequate and special reasons for doing so. (Sec 3 and 4 of the Dowry Prohibition Act, 1961) However, Section 4 clearly mentions that there must be a demand of dowry. If dowry is not demanded provisions of this section does not attract.

While taking the evil of dowry more seriously Parliament inserted Section 4-A imposing a ban on advertisement. Accordingly, if any person through an advertisement offers any share in his property or business or of any money or any other interest as consideration for the marriage of his son and daughter or any other relative and print, publish and circulate any such advertisement, he shall be punished for a term of imprisonment which shall not be less than six months but which extend to five years. He may also be liable to fine up to fifteen thousand rupees. The court has power to impose a punishment of less than six months if it has adequate and special reasons for it. The court has to mention its reasons in the judgment for awarding a punishment less than six months. Advertisement may be in any newspaper, periodical, journal or through any other media.

Therefore, any kind of advertisement offering any consideration for marriage by parents or relatives of a girl or boy is strictly prohibited and punishable under the Act.

Section 5 is also one of the steps to prohibit giving and taking of dowry. It states that any agreement for giving and taking of dowry shall be void. Therefore, such an agreement cannot be enforced under Indian Contract Act, 1872.

Section 6 provides for transfer of dowry received by any person other than the women in connection with whose marriage such dowry is given. According to this section if any such dowry is received by a person then he shall transfer such property to that woman ó

- a. If such dowry is received before marriage, within three months after the marriage
- b. If the dowry is received at the time of marriage or after the marriage, within three months after the receipt of it
- c. If the dowry is received when the woman is minor, within three months after she attains the age of eighteen years.

Till the property is transferred such person shall hold the property in trust for the benefit of woman. If such person fails to transfer the property within the time limit prescribed, he may be punished with an imprisonment for a term not less than six months but which may extend to two years or with fine not less than five thousand rupees but which may extend to ten thousand rupees or with both.

In case where the woman dies before receiving the property then her heirs would be entitled to claim such property from such person. But if such woman dies within seven years of her marriage and the death is not occurred due to natural causes then her property shall be

- a. Transferred to her children, if she has children;
- b. Transferred to her parents, if she has no children.

When a person is convicted for failure to transfer property, the Court in addition to punishment for non transfer may also direct that such person shall transfer the property to that

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woman and if the woman is died within seven years of her marriage and the death is not occurred due to natural cause to her children or parents as the case may be.

Section 7 of the Act states that only a Metropolitan Magistrate or a Judicial Magistrate of first class shall have jurisdiction to try a case under this Act. No court inferior then that can try cases under Dowry Prohibition Act. Court is empowered to take cognizance of offence under the Act only on:

- a. Its own knowledge or on receiving a police report of the fact which constitute such offence or
- b. A complaint by the person aggrieved or by parents or other relatives of such person or by any recognized welfare institution and organization.

Recognized welfare institution means a social welfare institution and organization recognized by the Central or State government in this behalf.

Section 8 states that offence shall be considered to be cognizable for some purposes and Code of Criminal Procedure, 1973 shall apply to the Act. Offences shall consider being cognizable:

- a. For the purpose of investigation of such offences;
- b. For the purpose and matter other than the matter referred in section 42 of the Act i.e. when a person refuse to give his name, residence etc. and the arrest of a person without warrant or without an order of the magistrate.

Every offence under this Act shall be non bailable and non compoundable.

Section 8-A provides that if any person has been prosecuted under this Act either for giving, taking and demanding dowry, the burden to proving that he had not committed such offence shall lie upon prosecuted person.

Appointment and functions of Dowry Prohibition Officers is provided under section 8-B of the Act. This section provides that State Government may appoint as many Dowry Prohibition Officers as it thinks fit. The State Government is also empowered to specify their jurisdiction and functions. Following are the functions and powers of Dowry Prohibition Officer;

1. To see that the provisions of the Act are complied with
2. To prevent taking, abetting of taking and demanding of dowry
3. To collect such evidence as may be necessary for the prosecution of persons committing offences under the Act.
4. To perform such other functions as may be assigned by the State Government.

State Government has power to assign the powers of police officer to dowry prohibition officers. The State Government may also appoint and advisory board consisting of not more than five social workers out of which two should be women for the purpose of assisting and advising the Dowry Prohibition Officer in the efficient performance of their function.

Section 9 of the Act gives power to the Central Government to make rules for carrying out the purpose of Dowry Prohibition Act. Section 10 has given the rule making powers to the State Government for carrying out the purpose of this Act.

1.2.2 The Dowry Prohibition (Maintenance of Lists of Presents to the Bride and the Bridegroom) Rules, 1985

In exercise of the powers given under Section 9 of the Dowry Prohibition Act, the Central Government has enacted The Dowry Prohibition (Maintenance of Lists of Presents to the Bride and the Bridegroom) Rules, 1985. These rules came in to effect from October 2nd, 1985.

It provides that the bride shall maintain a list of presents which are given to her at the time of marriage and the bridegroom shall maintain a list of presents which are given to him at

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the time of marriage. Every such list shall be maintained by the bride or bridegroom as the case may at the time of marriage or as soon as possible after the marriage. Such list shall be in writing and must contain the following:

- a. a brief description of each present
- b. the approximate value of present
- c. the name of the person who has given the present
- d. where the person giving the present is related to the bride or bridegroom, a description of such relationship

Such list must be signed by both bride and the bridegroom. If the bride or bridegroom, as the case may be, is unable to sign the document, the list shall be read over to her and the person reading the list shall put his signature on the list and thereafter the bride or bridegroom shall put her thumb impression on it.

All agreements with regard to giving and taking dowry are null and void and they cannot be enforced in any court of law. When a person other than the woman to be married, receives any dowry, such person is required to transfer it to the woman within three months of its receipt. In case the bride is a minor then it must be transferred to her within three months of her attaining majority. In cases where the bride dies before such transfer then her heirs would be entitled to the same. Failure to do so is construed as a dowry offence punishable under this act and in such cases courts do not have the discretion to award lesser sentence than the prescribed minimum.

The jurisdiction to try dowry offences lies only with the metropolitan magistrates or magistrates of the first class. Cognizance of dowry offences can be taken by the magistrate himself, or on the basis of a police report of the facts which constitute such an offence, or on a complaint lodged by a parent or other relative of such person, or on the basis of a complaint lodged by a recognized welfare institution or organization. Usually the bride or her parents are hesitant to complain, so the recognition of complaints lodged by welfare organizations has broadened the scope of this act.

1.2.3 Dowry Prohibition (Amendment) Bill 2010 Amendments have been brought about in the Dowry Prohibition Act to remove the defects which existed in the main legislation. The ministry of women and child development (MWCD) is seeking further amendments in the existing provisions of the Dowry Prohibition Act, 1961 in order to provide more teeth to dowry prohibition laws. In 2009 the National Commission for Women proposed some changes to this act. These recommendations were discussed in an Inter-Ministerial meeting and the Dowry Prohibition (Amendment) Bill 2010 was drafted in consultation with the Ministry of Law and Justice. The highlights of the proposed amendments are

1. Authorize the Protection Officers appointed under the Domestic Violence Act, 2005 to carry out the duties of Dowry Protection officers too.
2. Allow women to file dowry complaints at the place where they temporarily or permanently reside.
3. Prescribe lesser punishment for giving dowry and higher penalty for taking the same as usually the girl's parents are compelled to give dowry against their wishes and prescribing same punishment for them discourages them from complaining.
4. There should be a clear distinction between "gifts" given voluntarily and those given under compulsion or duress
5. Make it mandatory for the couples to maintain in the form of a sworn affidavit the list of all gifts exchanged in connection with the marriage and get that list duly notarized by a

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Dowry Prohibition Officer. Non compliance with the above requirement would attract penalty for the groom, the bride as well as their parents.

2. DOWRY DEATHS

2.2.1 Problem of Dowry Deaths in India:

Dowry death means death in relation to dowry. Death of a bride caused by homicide or suicide within seven years of her marriage on account of dowry related harassment is termed as dowry death. Most dowry deaths occur when the bride, unable to bear the harassment and torture, commits suicide. This is known as constructive homicide whereby instead of killing of a person by another person, such circumstances are created, whereby the victim is forced to take his/her own life.

2.2.2 Provisions to check dowry deaths under the IPC:

Dowry death has been defined in section 304-B of IPC as follows: "When 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, 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."

2.2.3 Essential Ingredients of Section 304-B IPC

- **Death of a Woman:**

whether homicidal or suicidal, must be caused.

- **Death to be non –natural:**

For this the prosecution is required to rule out the possibility of a natural or accidental death so as to show the death occurred under non-natural circumstances. Death due to burning, bodily injury, strangulation, poisoning, hanging etc. is all non natural causes of death

- **Death to occur within seven years of her marriage:**

For prosecution under 304-B the statutory time period of seven years must not have elapsed. This period of seven years has to be counted from the date of marriage and not from the date of the ceremony of sending of the girl. In D.S. Shishodia v. K.C. Samdariya (2001 Cr.L.J. NOC 156 Raj) the Rajasthan High Court held that the date of marriage should be reckoned from the date of solemnization and not from the date of 'Muklava' ceremony.

- **She must have been subjected to cruelty or harassment by her husband or any relative of her husband:**

The term cruelty used here includes physical as well as mental cruelty and also of the description mentioned under section 498-A of Indian Penal Code. In the case of Shanti (Smt.) v. State of Haryana, (AIR 1991 SC 1226) The supreme court said, "In Section 304B there is no explanation about the meaning of 'cruelty' but, having regard to the common background of such offences, we have to take that the meaning of 'cruelty or harassment' will be the same as we find in the explanation to Section 498A under which cruelty by itself amounts to an offence and is punishable."

- **Such cruelty or harassment should be for, or in connection with demand for dowry:**

The word 'Dowry' has to be understood as it has been defined under Section 2 of the Dowry Prohibition Act, 1961. The crucial words in the definition are 'in connection with the marriage of the said parties'. This means that 'giving or agreeing to give any property or valuable security at any time should be in connection with the marriage of the parties. There can be many other instances of payment of money or giving property to any of the spouses. For example some customary practices in connection with the birth of a child or other ceremonies are

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prevalent in different societies. Such payments are not enveloped within the ambit of the term 'dowry' (Satvir Singh v. State of Punjab, (2001) 8 SCC 633).

Similarly demand for money on account of financial stringency or for meeting urgent domestic expenses are not demand for dowry (Appasaheb v. State of Maharashtra, AIR 2007 SC 763).

- **Such cruelty or harassment should be shown to have been meted out to the woman soon before her death.**

The words 'soon before her death' used in Section 304-B of IPC and Section 113-B of the Evidence Act means that there must be a proximate and live link i.e. a perceptible nexus between the effect of cruelty based on dowry demand and the concerned death. The time interval between the two must not be much.

2.2.4 Punishment for Dowry Death:

The law prescribes a minimum sentence of seven years for one who is found guilty of dowry death and there is discretion with the judges to award a higher sentence. Generally, the legislature prescribes the maximum punishment that can be awarded in case of a particular crime and the judges have a discretion to award lesser sentence, if they deem it appropriate to do so, but in case of Dowry death, the minimum punishment to be awarded has been laid down as 7 years and the judges have liberty to award higher sentences. Although the 18th Law Commission has recommended increasing the minimum sentence in dowry death cases to ten years from the present term of seven years but the suggestion to increase the maximum punishment from life imprisonment to death sentence was turned down.

2.2.5 Presumption as to dowry Death:

As per Section 113-B of Indian Evidence Act, 1872 in a case related to dowry death, the prosecution has to prove only that a woman has died a non natural death within seven years of her marriage and she was being tortured or harassed before her death for dowry. If this can be proven then the law presumes that it is a case of dowry death and the burden of proving innocence is shifted on to the accused persons. The importance of such a provision was highlighted by the court in the following words, "The crimes related to killing of bride for dowry are committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence to establish the guilt of the accused if strict principles of circumstantial evidence are insisted upon by the courts. A judge does not preside over criminal trial merely to see that no innocent person is punished but he also presides to ensure that a guilty man does not escape. When an offence like murder is committed in secrecy inside a house, the initial burden to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer any explanation" (Trimukh Maroti Kirkan v. State of Maharashtra, 2007 Cr.L.J. 20 SC).

2.3 Legitimacy of marriage for affixing liability for dowry death:

What would be the liability of a husband in cases where the validity of the marriage itself was disputed? Reema Aggarwal v. Anupam (2004 Cr.L.J.892 SC) is a very important case

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wherein the Supreme Court discussed the applicability of anti dowry laws to cases where the validity of the marriage itself was in question. Justice Arijit Pasayat stated that "The expression 'husband' should be construed to cover a person who enters into a marital relationship and, under the color of such proclaimed or feigned status of husband, subjects the woman concerned to cruelty or coerce her in any manner or for any of the purposes enumerated in the relevant provisions i.e. section 304-B and section 498-A. Whatever be the legitimacy of marriage, in cases of this nature statutes have to be purposively construed so as to give effect to the legislative intent and fulfill the purpose with which such provision was enacted. The absence of definition of 'husband' to specifically include such persons who contract marriages ostensibly and cohabits with such woman in the purported exercise of his role and status of husband is no ground to exclude them from the purview of sections 304-B and 498-A viewed in the context of the very object and aim of the legislations introducing these provisions".

2.4 Misuse of Sections 304B and 498A of the IPC:

In the case of *Sushil Kumar Sharma v. UOI & others*, (JT 2005(6) SC 266) the Supreme Court said that, "The object of these provisions is to prevent and control the menace of Dowry. But, many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question therefore is what remedial measures can be taken to prevent abuse of the well-intended provisions. Merely because these provisions are constitutional and intra vires, does not give a license to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations".