

DOWRY DEATH- SECTION 304B OF INDIAN PENAL CODE

Crime, by its very character, is common around the world in as much that the ingredients that constitute a crime are more or less the same everywhere. So murder is murder, whether it is in USA, Russia or India. So also is the case with other crimes of passion. And then there are economic offences, that differ in scale and size, but still contain common constituents in its accomplishment across the world.

Dowry, and dowry death, is probably unique to India, or maybe the sub-continent. I am certain it is almost unheard of in the Western or Far Eastern or African nations. And there in lies the whole story, and the whole problem. A phenomenon that has its origins in culture and tradition, much before any codified law appeared on the horizon, presents enormous challenges to the very law that tries to contain it, challenge it and eradicate it.

And although this article deals with the problems faced with victims of false complaints, there is no doubt in my mind that it is an endemic that must be eradicated ruthlessly.

In this article, we will deal with:

- 1) The dangers of victimization of innocent people by a false complaint combined with an overzealous and/or corrupt officer at the helm of investigation.
- 2) The legal strategy/solution to be adopted by those who are actually innocent and falsely implicated.
- 3) The PRACTICAL SOLUTION to this whole 'national disease' of dowry as well as cases of Harassment under Section 498A of IPC. (and the practical solution has nothing to do with law)

We begin with point no. 3. Once that is out of the way, we will jump right into Point No. 1 and 2.

THE PRACTICAL SOLUTION to the whole problem.

- a) 1st Suggestion and solution, Parents must stop organizing, initiating 'arranged marriage' altogether: Arranged marriage, that glorious tradition, again unique to India and the sub-continent, is the origin, the genesis, of this whole problem. And the parents of the 'boy or the son or the groom' have several chips on their shoulder in this entire process. And this itself is because of an entirely different but equally shameful malady. The desire to have a male child. But that is a subject by itself, which we will deal with in another issue. Equally, the parents of the girl are adamant that their 'girl' must be married according to the wishes of the parents. Anything less means social stigma and censure. The stage is set. Parents want a male child, and

treasure the arrival of one in the family. Even the best and the most educated and refined parent (men, mostly) can hardly conceal disappointment when the child is a girl. If so, they will promptly 'try again' and 'again' until economics and finance of life put an end to the 'trials'. So the boy grows pampered, the girl is a burden. The boy is 'reared' literally and the girl 'merely prepared'. It is astonishing how the 'boy' sits through the whole sham of arranged marriage like a most obedient son, when in reality he is just an average spoilt-rotten idiot who is bold enough to chase skirts all over town but turns into a coy doll when with his parents in this whole marriage business. If there is ever a dowry demand, which leads to the arrest of this idiot, it is probably richly deserved. And so also, the parents who created this idiot must face the consequences.

The parents really have no business choosing the 'bride' or the 'groom' for their child. At best they must guide, hand-hold, advise and counsel. But when they get right into 'choosing and deciding' they are setting the stage for disaster. As a country, we must mature now. A child, upon reaching the age of consent, is not a child anymore. All arranged marriages may not be based on dowry, but ALMOST all dowry related cases are through arranged marriages.

b) 2nd Suggestion and solution, The couple must live separately, in their own household: I am told, by seasoned elders, that the actual idea of Dowry, several hundred years ago was this- A newly wed couple must start their life together, and away from the household they have grown up in, this must be difficult as they may not be in a station in life where they can afford to set up a home, and therefore the people, relatives from both sides and well-wishers would gift them all that was needed to start well. This was the reason and purpose for Dowry.

Not anymore. The purpose is lost. Most of our young men live with their Papa and Mama well into their 30's, and sometimes all their life. (look at our movie stars). The young man is brave and confident to go clubbing alone, to booze alone, to womanize alone, to party alone.....but needs Papa and Mama to go back home to. He will even romance alone.....but will opt for a love-arranged marriage. The difference between pure arranged marriage and love-arranged marriage is this, and it is simple- In Pure Arranged marriage the parents of both the boy and the girl do the

entire deal and in Love-arranged the boy presents the girl for approval to his parents, who then promptly do the deal with the girls parents. End result is almost the same, always. If the end result is different, it is ONLY because the boy has the guts to put his feet down. Of late, there has been an increasing trend of girls refusing to marry boys who ask for dowry. And it is heartening to learn this.

As long as the boy lives with his Parents, he will be submissive to the commands of his father and the love of his mother. His wife does not stand a chance at all. In fact the very day she steps into such a joint family household, her fate is sealed. It is worse than any demand of dowry. She has no choice but to toe the line. Her education, upbringing, intelligence, beauty, skills everything will come to a naught if she ever 'disrespects' one of the boys parents or crosses their path. They may be very wrong, but the boy just does not have the stomach to take an insult to his beloved Papa and Mama. And many actions are classified as 'disrespect and insult' in our touchy feely society.

Why the boy continues to stay with his parents is both a function of money as well as emotional attachment. In many cases, he takes up the same line of work as his father. If not, he is simply too attached to his mother to consider staying elsewhere. And the only instance where he walks away and lives separately with his wife is when the wife is actually shrewd enough to steal him from his mother! Ah! No wonder all our TV serials based on mother-in-law and daughter-in-law fracas find such an echo in people's hearts.

- c) 3rd Suggestion and Solution, The boy must MAN UP and must be resilient and strong: **Only if the boy decides become man, will this whole problem stop. He must insist that he will choose his bride. He must be man enough to provide for his own marriage and for each other after marriage. And he must categorically state his intentions to keep his love for his parents and that for his wife clearly separate. He must be man enough to find his own accommodation, even if it means finding his own work, and live their with his wife.**

The dangers of victimization of innocent people

Law becomes dangerous when the onus of proving innocence is on the accused. In normal circumstances, the onus is on the state to prove that the

accused is guilty. By shifting this onus on to the individual, the state gives birth to a regime that can revel in extortion, arbitrariness and vengeance. Let us. Let us take a look at Section 304B of IPC.

“304B. Dowry death.—(1) 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 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.

Explanation.- For the purposes of this subsection, " dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) 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.”

For making out an offence of ‘dowry death’ under Section 304B, the following ingredients have to be proved by the prosecution:

- (a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;
- (b) such death must have occurred within seven years of her marriage;
- (c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and
- (d) such cruelty or harassment must be in connection with the demand for dowry.

And what exactly is Dowry?

“2. Definition of `dowry’.- “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 parent 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 mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation I—.....(Omitted).

Explanation II—The expression “valuable security” has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).”

It is evident that the law was promulgated after several decades of torment suffered by women in India. However, the solution to end this torment is not obtained by being overzealous. Anything that gives even an iota of possibility to trouble an innocent person must be viewed with concern and struck down

with vigor and speed. The following wordings/description are the dangers of this law:

1. **“Burns or bodily injury otherwise than under normal circumstances”** is a flawed description. Burns and bodily injury are themselves always a result of abnormal circumstances. And then again, any burn can be easily explained away by ‘dowry harassment’ than anything else. There is no explanation of ‘normal circumstances’ thereby rendering all circumstances as suspicious in the eyes of an investigating officer. For instance, it is highly probable, if not normal, that serious burn injury may happen in rural households, or bodily injury in urban life, would this mean that a mishap in kitchen will be viewed as normal. No way. By putting the onus on the husband and his relatives to prove that they are innocent of the harm caused by burn or any other bodily injury, the law is erring and easing the burden of its own mechanism of prosecution.
2. **“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”**. In all 498A complaints, the essence of the complaint is Dowry demand. It is now a very potent weapon, which is wielded with craftiness by many a woman. Displeasure for the lady at home means just one thing, demand for dowry. Just like it was once easy for a household to demand dowry, and get away with torture, it is now easy for the lady to walk into the nearest Police station and lodge a complaint for harassment under Section 498A or the Domestic Violence Act.
3. **“by her husband or any relative of her husband”**. What if the husband is away at a far away location and ‘any relative’ turns out to be a long lost cousin who is out to incite trouble? And to what degree is a relation of a husband still within the ambit of being called ‘a relative’?