Chapter - V

Marriage related crimes against women.

The marriage related crimes against women are broughtly classified under following heads.

1. Cruelty to woman by husband or relative of husband u/s 498 A IPC (added in 1983)

2. Abetment to commit suicide due to cruelty to woman u/s 306 IPC and 498 A IPC.

3. Dowry Death u/s 304 B IPC. (added in 1983)


1. Cruelty to women by husband or relative of husband u/s 498 A IPC.

By the Criminal Law (Second Amendment) Act 1983, (Act. of 46 of 1983), a new section of 498 A was added to IPC for dealing with crime of atrocities and torture against women (w.e.f. 25th Dec., 1983). It never mean that there were no atrocities against women prior to 1983. The atrocities on women prior to 1983 were certainly going on without any cognizance. Hence the number of victim women of cruelty and torture might be quite large as there was no punitive and deterrent effect of law on the husband and his relatives which were taken cognizance of though very late by the Law Makers and finally came out with amendment by new legal provision in the form of section 498-A IPC. It is traditionally known fact that the women is subjugated to the whims and caprices of the man especially in the relationship between husband and wife due to customary male-dominated family system in India which makes the life of woman so miserable and intolerable that the woman is left no alternative but to commit suicide and ends the life. But there was no law to punish the culprits of woman cruelty and torture prior to Amendment in 1983.

Besides physical cruelty, the mental cruelty which makes the life of woman miserable and intolerable was not punishable prior to amendment in
1983. The conscience of the modern society violently reacted to this lacuna in Penal Law and hence the Legislators have finally tried to give relief to the women through this new Amendment by adding new section 498 A IPC.

**Objects and Reasons:**

Section 498 A IPC has been enacted with a view to punish a husband and his relatives who harass or torture the wife, physically or mentally. It has punitive as well as deterrent objects. In the *statement of Objects and Reasons*, it has been stated as follows:

"The increasing number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the working of the Dowry Prohibition Act, 1961. Cases of cruelty by the husband and relatives of the husband which culminate in suicide by, or murder of, the hapless women concerned, constitute only a small fraction of the cases involving such cruelty. It is, therefore, proposed to amend the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by their in-laws.

2. The following are the changes which are proposed to be made:

(i) The Indian Penal Code is proposed to be amended to make cruelty to a woman by her husband or any relative of her husband punishable with imprisonment for a term which may extend to three years and also with fine. Willful conduct of such a nature by the husband or any relative of the husband as is likely to drive the woman to commit suicide or cause grave physical or mental injury to her, and harassment of a woman by her husband or by any relative of her husband with a view to coercing her or any of her relatives to meet any unlawful demand for property would be punishable as cruelty. The offence will be cognizable if information relating to commission of the offence is given to the officer in charge of a Police Station by the victim of the offence or a relative of the victim of the offence or, in the absence of any such relative, by any public
servant authorised in this behalf by the State Government. It is also being provided that no court shall take cognizance of the offence except upon a police report or a complaint made by the victim of the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or with the leave of the Court by any other person related to her by blood, marriage or adoption (vide Clauses 2, 5 and 6 of the Bill).

(ii) Provision is being made for inquest by Executive Magistrates and for postmortem in all cases where a woman has, within seven years of her marriage, committed suicide or died in circumstances raising a reasonable suspicion that some other person has committed an offence. Post-mortem is also being provided for in all cases where a married woman has died within seven years of her marriage and a relative of such woman has made a request in this behalf (vide 3 and 4 of the Bill).

(iii) The Indian Evidence Act, 1872 is being amended to provide that where a woman has committed suicide within a period of seven years from the date of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty, the Court may presume that such suicide had been abetted by her husband or by such relative of her husband (vide Clause 7 of the Bill).

3. The Bill seeks to achieve the above objectives*

In Brij Lal v. Prem Chans,' the Supreme Court observed:

"it would not be out of place for us to refer here to the addition of sections 113 A and 113 B to the Indian Evidence Act and sections 498- A and 304 B to the Indian Penal Code have been introduced in the respective enactments by the Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983) and section 113 B of the Evidence Act and 304 B of Indian Penal Code have been introduced by Act No. 43 of 1986. The degradation of society due to the pernicious system of dowry and the unconscionable demands made by greedy and unscrupulous husbands and their parents and relatives resulting in an alarming number of suicidal and dowry deaths by women
has shocked the Legislative conscience to such an extent that the Legislature has deemed it necessary to provide additional provisions of law, procedural as well as substantive to combat the evil and has consequently introduced sections 113 A and 113 B in the Indian Evidence Act and sections 498 A and 304 B in the Indian Penal Code. By reason of section 113 A, the Courts can presume that the commission of suicide by a woman has been abetted by her husband or relation if two factors are present \textit{viz.} (1) that the woman had committed suicide within a period of seven years from her marriage, and (2) that the husband or relation had subjected her to cruelty. We are referring to these provisions only to show that the Legislature has realised the need to provide for additional provisions in the Indian Penal Code and the Indian Evidence Act to check the growing menace of dowry deaths. In the present case, however, the abetment of the commission of suicide by Veena Rani is clearly due to instigation and would therefore fall under the first clause of section 306, Indian Penal Code.”

\textbf{Section 498 A : Husband or relative of husband of a woman subjected her to Cruelty}

\textbf{Whoever, being the husband or the 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 be liable to fine.}

\textit{Explanation.---} For the purposes 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 to the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

\textbf{Ingredients of section 498 A :} The following ingredients are necessary to prove the offence of 498 A:

(1) The woman must be married;
(2) She must be subjected to cruelty or harassment; and

(3) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband.

**Evidence essential for proving the offence:** The prosecution must prove the following:

that *(i)* the woman was subjected to cruelty or harassment;

*(ii)* such cruelty or harassment was shown either by the husband of the woman or by the relative of the husband;

*(iii)* such cruelty was with a view to drive her *(a)* to commit suicide; or *(b)* to cause grave injury or danger to her life, limb or health, whether mental or physical; or

*(iv)* such harassment was *(1)* with a view to coercing her or any person related to her to meet any unlawful demand of any property or valuable security; or *(2)* on account of failure by such woman or any person related to her to meet such unlawful demand.

**On the conviction of other relatives of the Accused:**

In *Kans Raj,*¹ it was held that for the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases where such accusations are made, the overt acts attributed to persons other than husband are required to be proved beyond reasonable doubt. By mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths.

**Can the accused be punished under section 498A IPC when he is charged alongwith other serious section 302 or 304 B IPC:**

In *Chandu Laxminarayan,*² and *Keshav Chandra Panda,*³ it was decided by AP and Orissa High Courts that the acquittal of the accused for the larger offences under sections 302 and 304 B will not be an impediment.

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2. 1996 Cri LJ 2670 (AP).
3. 1995 Cri LJ 174 (Or.).
for convicting accused for the lesser offence under section 498 A IPC on the ground of prejudice.

In case of Shanti,\(^1\) the ruling was given that section 304 B and section 498-A can not be held to be mutually exclusive. The provisions under both the section deal with two distinct offences. It is the fact that 'cruelty' is a common essential to both the sections and the 'cruelty' or 'harassment' in section 304 B has the same meaning as is mentioned in Explanation to section 498 A. Under section 304B, it is the 'dowry death' which is punishable and that should be occurred within seven years of her marriage but no such period is essential in section 498 A, hence the husband or his relative would be liable for subjecting the woman to cruelty any time after the marriage as time limit is not essential ingredient in section 498 A IPC.

**Meaning of cruelty:** In the same section it self, the cruelty has been defined in Explanation as follows:

(i) **Explanation (a)** has defined cruelty as "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 or limb or health (whether mentally or physical) of the woman.

In Shabha Rani,\(^2\) and in Pawan Kumar,\(^3\) case it was held that harassment to the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security would also constitute cruelty to woman.

(ii) **Explanation under clause (b) to 498 A IPC:** It provides that the harassment of the woman where such harassment is with a view to coercing her on any person related to her to meet any unlawful demand for property or valuable security or is on account of failure to meet such demand would amount to cruelty u/s 498 A.

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As is held in Ravindra Pyarelal Bidlan, under the clause (b), mere harassment is not cruelty. Mere demand for property itself is not cruelty. It is only where harassment is shown to have caused for the purpose of coercing a woman to meet the demand of property is cruelty which is punishable.

In Sarojkshan Shankaran Nayar, where the deceased wife belonged to a respectable orthodox family and the husband was of highly suspicious nature and made the life difficult for deceased by demeaning and insulting her, calling her prostitute, not allowing her to meet others and denying her family life and comforts, it was held by Bombay High Court that the trial Court was justified in convicting the accused under section 498 A for cruelty.

In Balram Prasad Agrawal, it was held that the ill-treatment by the husband and in-laws for dowry and for being issueless which persisted even after giving birth to two sons would amount to cruelty u/s 498 A.

In State v. Vasant Shankar Mhasane, where the wife was harassed, tortured, assaulted, never appreciated, loved or allowed to be happy, and there was continuous and incessant harassment driving her to commit suicide, it was held that all these amounted to cruelty u/s 498 A.

The effect of delay in filing FIR:

In State v. Orilal Jaiswal, it was held that the delay in filing the First Information Report, ipso facto, would not go to show that the case against the accused was false or got up. The court may, however, take into account all the circumstances including the one that there was delay in lodging the First Information Report and in the light of all the circumstances come to its own finding as regards correctness or otherwise of the prosecution case against the accused.

1. 1993 Cri. LJ 399 (Bom.).
2. 1995 Cri. LJ 340 (Bom.).
4. 1993 Cri. LJ 1134(Bom.).
5. AIR 1994 SC 1418; 1994 Cri. LJ 2104(SC); 1994 SCC (Cri.) 107.
On the discharge of accused:

In *Stree Atyachr Virodhi Parishad v. Dilip*, where *prima facie case* has been made out against the accused by the prosecution and the charge is framed against him, the Apex Court held that the High Court should not discharge the accused. At the stage of framing of the charge, what was to be seen is only the satisfaction of the court regarding *prima facie* nature of the allegations against the accused. It was further held that the court is not expected to screen or to apply the standard as to whether the prosecution will be able to prove the case against the accused.

In *Ajit Singh*, it was held by the High Court that discharging the accused at the stage of framing of charge is not proper where there was sufficient evidence on record to presume that the accused had committed an offence under this section. The prosecution cannot be thrown out merely by observing that the averment in the complaint/FIR are vague.

**On limitation:**

In *Vanka Radhamanohari*, it was held that the offences of cruelty on woman are of serious nature and such offences are continuing offence and hence the provision of section 468 of Criminal Procedure Code, 1973 would not apply to these offences and therefore the complaint in respect of such offences cannot be dismissed on the ground that it is time barred.

In *Arun Vyas v. Anita Vyas*, the Supreme Court held that the essence of the offence in section 498A being cruelty, it is a continuing offence and on each occasion on which the victim was subjected to cruelty, she would have a new starting point of limitation. Section 473 of Criminal Procedure Code, 1973, enables the court to take cognizance of an offence after the period of limitation, *inter alia*, if it is satisfied on the facts and in the circumstances of the case that it is necessary so to do in the interests of justice. The court held that the expression ‘in the interest of justice’ in

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section 473 does not mean in the interest of prosecution. What the court has to see is 'interest of justice' and the interest of justice demands that the court should protect the oppressed and punish the oppressor/offender. In complaints under section 498A, the wife will invariably be oppressed. According to the Supreme Court, it is, therefore, appropriate for the courts, in case of delayed complaints, to construe liberally section 473, Cr PC in favour of a wife who is subjected to cruelty if on the facts and in the circumstances of the case, it is necessary so to do in the interests of justice.

In Vijaya v. Laxmanrao, 1 the Supreme Court held that when section 498 A is brought to use in the case of cruelty on women, the law of limitation is not that rigid so as to non-suit the aggrieved wife. A fair dose of liberalities is warranted, so that the law as an instrument comes in aid of the aggrieved due to gender inequalities. In that case, matter was remanded back to the High Court with a direction to grant leave considering that refusal to grant leave was on ground that the complaint for offences under sections 420 and 498A was belated by two years.

On concession by Govt. Pledger in favour of accused:

In Deepti, 2 wherein the concession was given by the Govt. Pledger that no case has been made out against the accused husband. It was held by the court that the offences punishable under chapter XXA are very serious and when a complaint is made and criminal proceedings have been initiated, the court must decide the case in the light of evidence adduced in the case and the proceedings cannot be dropped or quashed on a concession by a Govt. Pledger that no case had been made out against the accused husband or relative of the husband.

On compounding of offences: Not compoundable:

The offence u/s 498 A is not compoundable and hence it is not open to the parties to give consent and the proceedings cannot come to an end. It is not compoundable even as a special case as was held in State v. Srinivasa Iyengar, and in State v. Revanasiddappa.

On Legality: In Sushil Kumar Sharma v. Union of India (AIR 2005 Supreme Court 3100), the Legality of section 498 A was challenged. It was held by the S.C. that mere possibility of abuse of a provision of Law does not per se invalidate a legislation. Hence the plea that section 498 (A) has no legal or constitutional foundation was held not tenable. It was held that provision of section 498 (A) is not unconstitutional and ultravires.

On procedure:

An offence u/s 498A is Cognizable, Warrant-case, Non-bailable, Non-Compoundable and triable by Magistrate of the First Class.

2. Abetment to commit suicide due to cruelty to woman u/s 306 & 498 A IPC.

In respect of crimes against women, the crime of abetments to commit suicide due to cruelty to woman constitute considerably large number of crimes against women and hence the maximum lives of women are being sacrificed through suicidal death. Here, two distinct offences are involved viz. i) Abetment to commit suicide u/s 306 IPC and

ii) Cruelty to woman u/s 498 A IPC.

Section 306: Abetment to commit suicide:

If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term which may extent to ten years, and shall also be liable to fine.

The penal provision of this section is applicable when the person commits the suicide himself/herself due to compulsion through aid or abetment by the other person who is liable for punishment under section 306 I.P.C. The another section dealing with suicide is that of “attempt” to commit suicide which is different offence under section 309 I.P.C.

1. H.S. 1996 Cr.I 3103 (Kam.).
2. ILR 1994 Kam. 15-43.
Constitutional validity of sect.306 vis-à-vis sect.309.

In Ratiram P., a Division Bench of two Judges of Supreme Court has considered the constitutional validity of this section and declared that section 309 IPC is ultra vires of Art.21 of the Constitution, by holding that the "right to live" includes "right to die".

In Maruti Shripati Dubal, the Bombay High Court held section 309 IPC as unconstitutional whereas in Chenna Jagadeeswar, the High Court of Andhra Pradesh held the provision of Sec. 309 as intra vires and constitutional.

The Supreme Court's Division Bench in Gian Kaur, has considered the correctness of the law, laid down in Rathinam P. and over-ruled the law laid down in Rathiram P. and also "Maruti Shripati and approved the ruling in Chenna Jagadeeswar and held that Section 309 has neither offended Art.21 nor Art.14 of the Constitution.

Where the punishment under Section 309 for attempt to commit suicide is not considered desirable, its abetment under section 306 is made penal. Such offences are punishable for cogent reasons in the interest of society, as declared in Gian Kaur, by the Supreme Court and declared that section 306 can not be held unconstitutional.

The ingredients of Sec. 306 and the Evidence to prove:

The prosecution must prove the following two ingredients:

i) the commission of suicide by a person.

ii) the accused has abetted the commission of suicide.

Here, the act of accused of abetment to commit suicide is examined as per provision of section 107 IPC.

As per section 107, the abetment is constituted by –

i) instigating a person to commit an offence or

ii) by engaging in a conspiracy to commit it or

iii) by intentionally aiding a person to commit it.

1. AIR 1994 SC 1844; 1994 Cri LJ 1605 (SC); (1994)3 SSC 364; 1994 SCC (Cri) 740.
2. 1987 Cri LJ 743:88 Bom LR 589:1986 Mah LJ 913,
4. AIR 1996 SC 946; 1996 Cri LJ 1669 (SC); 1996 Cri LJ 1668 (SC); (1996) 2 Sec 648: 1996 SC (Cri) 374,
5. AIR 1996 SC 946; 1996 Cri LJ 1660 (SC); (1996) 2 SCC 648: 1996 SCC (Cri) 374;
The procedure: It is a cognizable, non-bailable, non-compoundable and triable by Court of Session.

A few cases on conviction:

In Nirmala Devi, the conviction of the accused-mother-in-law was upheld by the High Court wherein the dying declaration stated that her mother-in-law maltreated her and taunted her for bringing insufficient dowry owing to which she took the extreme step of burning herself.

In Pawan Kumar, Pawan Kumar, wherein there was repeated demand for various articles from the husband's side just after the marriage and on failure to bring the articles from parents, she was tortured, harassed to commit suicide, the accused was convicted for an abetment to the commission of suicide by the deceased girl.

In State v. Siddaraju, the conviction under sections 306 and 498 A, was upheld where in the wife had committed suicide shortly her husband contracted second marriage within two years of his first marriage and the first wife i.e. the deceased was being ill-treated by her husband and his second wife and even the deceased was not given the food. The High Court held that there was a direct nexus between the act of cruelty and the suicide and observed further that "this is a class of offence which can only be categorized atrocious and the commission of the suicide itself is indicative of the utter desperation to which the victim is subjected as in society at the strata to which the party belong, a marriage alliance is not only sacred but is also a social obligation for live and if the husband rejects the wife in favour of some other woman, it is mentally shattering and virtual end of the road for the first wife".

In Dayanand Reddy, wherein the accused husband obsessed with a vice of gambling, alleged to have inflicted cruelty to his wife and because of the cruelty inflicted on the wife by accused continuously, incessantly and over a period of time, she was driven to the act of suicide, the court held

1. 1983 Cr. LJ (NOC) 230 (P&H).
4. 2000 Cr. LJ 4220 (Kar.),
5. S.T.2000 Cr. LJ 2064 (Kar.)
that there being a nexus between the acts of the accused that pushed the wife to suicide, a conviction under section 306 for abetment of suicide would be justified

In Ashok Kumar,¹ wherein accused husband was held guilty of harassing his wife on account of dowry and abetting her to commit suicide, no leniency in sentence is deserved by the accused, but looking at the fact that eleven years had passed by since the incident, the accused had remarried and also had a daughter,. The sentence of seven years; rigorous imprisonment was reduced to four years imprisonment while maintaining sentence awarded to him under section 498A.

In Malik C.P.,² wherein the wife was abused, maltreated by the husband and then was kicked out of the matrimonial home in the dead of night when she had to take shelter in her parents house where also accused followed her and started shouting and hurling abuses loudly on her and other family members, which resulted in her consuming Baygon causing her death, the same evening. Charge under section 306/34, was made out against the accused persons..

In State V. Siddiaraju,³ where the wife has committed suicide due to mental and physical cruelty, being meted out by her husband who has contracted second marriage within two years of his first marriage, the court has convicted the accused with rigorous imprisonment for a period of five years with a fine of Rs.1000/-.. The husband was sentenced to four years rigorous imprisonment and also imposed fine of Rs.200/- for abetment of suicide of his wife due to mental agony and cruelty.

In Pawan Kumar,⁴ wherein the Court has upheld the conviction of husband who was sentenced to four years rigorous imprisonment and also imposed fine of Rs. 200/- for abetment of suicide of his wife due to mental agony and cruelty,

1. 1997 Cri. LJ 1377 (P&H),
2. 1999 Cri. LJ. 4325 (Del.),
3. 2000 Cri. LJ 4220 (Kar.)
The Supreme Court in a landmark judgement, given in **State V. Kuna Satyanarayana**, expressed a very critical observation on the judgement given by the High Court. In this case, the husband was convicted by trial court for abetment of his wife’s suicide by imposing five years rigorous imprisonment but in revision, the High Court reduced the sentence to two months without giving any reason justifying the reduction of sentence. The Supreme Court holding it as a mockery of the law, imposed a sentence of three years plus a fine of Rs.5000/- the amount of fine to be paid to the father of the victim.

**On Acquittal:**

In **Gurdip Kumar**, the accused could not be held guilty for abetment of suicide on the basis of mere fact that the newly married girl did not take food for few days and she was not persuaded by her husband and parents-in-law to take food.

In **State V. Sunilkumar Kanaiyalal Jani**, the accused husband was acquitted as the mere fact that the husband did not treat the wife properly and treated her with cruelty was not sufficient to establish abetment to commit suicide. In this case, the married life of the husband and wife was quarrelsome and it led to the dejection and mortification of the wife, which resulted into her committing suicide.

In **Surinder Kumar**, the accused could not be held guilty of abetment of committing suicide wherein the accused, who was a friend of the deceased, got himself photographed with her which showed that they were intimate with each other and later on, he threatened her to marry him or else she should die or she would be kidnapped by him and the deceased before committing suicide the next day, has written a letter to her father, stating that because of the deception, practiced upon her by him she was going to end her life.

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1. (1998) 8 SCC 268,
2. 1981 CrLJ (NOC) 178 (P & H),
3. 1997 CrLJ 2014 (Guj),
In Satish, the accused was acquitted. In this case, the accused was having a love affair with the deceased girl, marriage was settled between them but the accused did not turn up and the girl committed suicide, the deceased nowhere attributed pregnancy to the accused and in her complaint also she only accused his mother demanding money as precondition of marriage, it was not proved that the accused intended that she should commit suicide or knew that she was likely to commit suicide. It was held that it was an independent act of deceased herself and hence, the accused could not be held guilty of abetment of committing suicide.

In Sudhakar, the accused could not be held responsible for the abetment of the ultimate offence of suicide. Here, as held by the Supreme Court, in the absence of the charge being proved under section 376, the prosecution could not have asked for conviction of the accused under section 306, as according to prosecution story, it was the commission of the rape on her which resulted in the suicide of the prosecutrix, allegedly on the abetment of the accused. It was held that, if the cause for committing suicide is not legally proved, then how can the accused be held responsible for the abetment of the ultimate offence of suicide.

In Bommidi Rajamallu, wherein the only allegation against the husband was that he used to come to the house, in a drunken condition and used to abuse her and beat her up and once, he told her that he did not bother if she lived or died and asked her to die, which resulted into her committing suicide, the court held that attribution of the husband’s act does not constitute the commission of suicide by the wife.

1. 1997 Cri LJ 935 (Bom).
An offence under Section 306 IPC is not minor offence in relation to offence under section 302 IPC & Section 304-B under the provision of section 222 of Cr.P.C.: 

In Sangaraboina Sreenu, wherein the accused was acquitted of charge under section 302, which was the only charge framed against him, the accused could not be convicted of offence under section 306, as section 306 cannot be said to be a minor offence in relation to an offence under section 302, within the meaning of section 222 of Cr. P. C.

In Dasrath Sao v. State of Bihar, the Court has held that Sec. 306 IPC is not minor offence in relation to offence under section 304-B IPC. However in Bijay Uraon v. State of Bihar, it was held that a person charged under section 304-B IPC, if charge is not proved can be convicted for minor offence under section 306 IPC, even if no charge has been framed.

Section 222 (2) Cr. P. C. provides that when a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

Section 222 Cr. P. C. under sub section (3) further provides that when a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged. However by sub section (4), it makes clear that nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

Evidence to prove the offence of abetment to commit suicide due to cruelty to woman u/s 306 & 498-A IPC:

As the suicidal death was due to cruelty or torture physically or mentally to woman, the following ingredients of both the sections need to be proved by the prosecution:

(i) the woman was subjected to cruelty or harassment;

(ii) such cruelty or harassment was shown either by the husband of the woman or by the relative of the husband;

2. 2001 Cr. LJ 4336 : 2001 (4) Crimes 140 Jharkhand,
(iii) such cruelty was with a view to drive her (a) to commit suicide; or (b) to cause grave injury or danger to her life, limb or health, whether mental or physical; or

(iv) such harassment was (1) with a view to coercing her or any person related to her to meet any unlawful demand of any property or valuable security; or (2) on account of failure by such woman or any person related to her to meet such unlawful demand.

(v) the commission of suicide by the deceased.

(vi) The accused has abetted the commission of suicide due to ill-treatment/torture to the deceased woman.

Discretionary presumption as to abetment to commit suicide under section 113 A of Evidence Act.

By the same Criminal Law (Second Amendment) Act 1983, (Act No.46 of 1983), new section 113 A was added to Indian Evidence for providing discretionary presumption in favour of prosecution.

Section 113 A of Evidence Act: Presumption as to abetment of suicide by a married woman.

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation—For the purposes of this section, “cruelty” shall have the same meaning as in Section 498-A of the Indian Penal Code (45 of 1860).
In *K. Prema S. Rao v. Yadla Srinivasa Rao*, it was held that where the evidence show that the wife was abetted to commit suicide due to cruelty by the accused, then the presumption u/s 113 A of Evidence Act is attracted.

**Essential Ingredients to attract section 113 A of Indian Evidence Act:**

The prosecution must prove the following to attract presumption u/s 113A Evidence Act:

i) The married woman has committed suicide.

ii) She has committed suicide within seven years from the date of her marriage and

iii) She was subjected to cruelty by her husband or the relative of the husband.

To prove the charge of abetment to commit suicide due to cruelty to woman u/s 306 & 498 A IPC, it is not essential ingredient to prove that the victim has committed suicide within seven years from the date of her marriage. But if the evidence is collected to show that the victim has committed suicide within seven years from the date of her marriage and she was subjected to cruelty by her husband or the relatives of the husband, then only the benefit of presumption u/s 113 A of Evidence Act can be given to prosecution by the Court. Hence the Investigating officer must collect the evidence to fulfill the necessary ingredients of section 113 A of Evidence Act, as mentioned above.

The legal provision under section 113 A of Evidence Act was enacted to give discretion to the Court to punish the culprit husband or his relatives so that the combined legal provision of abetment to commit suicide u/s 306 IPC and cruelty to woman u/s 498-A IPC can be more effective in prevention of suicidal death of woman due to cruelty to them.

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1. *AIR 2003 SC 11.*
3. Dowry Death u/s 304 B IPC.

Background.

The evil system of giving and taking dowry has been in practice in Indian Society since long time as a customary requirement for a marriage of a young woman. The dowry demand is not only at the time of arranging the marriage but also it is insisted upon even after marriage and the non-fulfillment of dowry demand has claimed innumerable deaths of a young married women in spite of legal penal provisions for its prevention.

The phrase dowry death indicates the death, occurred as the outcome of non-fulfillment of dowry demands.

Original provisions in IPC for dealing with death (i.e. prior to Amendment of 1986 for additing Section 304 B - for dealing with dowry death)

The death can be either natural or unnatural and an unnatural death can be accidental, suicidal or homicidal. The legal provision for dealing with accidental (Section 304 A), suicidal (Abetment to commit suicide under section 306) and homicidal (Section 302) death has been in Indian Penal Code since it’s inception by Lord Macaulay in 1860. But if the death is occurred in suspicious circumstances and when there is possibility of inclination of homicidal death due to non-fulfillment of dowry, there was no provision in IPC to deal with such situation, hence it was felt necessary for the law makers to have new provisions in the form of new section 304-B, for dealing with dowry death.

As per Indian Criminal Jurisprudence System on the rule of evidence, the case has to be proved by prosecution beyond doubt. It is based on a British Law maxim that ten guilty men should escape rather than one innocent man should suffer which is the main principle of ‘inquisitorial system’ that the ‘accused is presumed to be innocent until he is proved guilty’.

An object of Section 304 B : An Inherent logic behind enactment of Scc. 304 B, dealing with “Dowry death”
An object of Section 304 B: An inherent logic behind enactment of Sce. 304 B, dealing with “Dowry death”

Most of the deaths, due to non-fulfillment of dowry occurred at the place of in-laws (Sasural); making it difficult to get an independent and direct evidence which is very much essential to prove the case beyond doubt. Hence it was felt absolutely necessary to have new provisions for dealing with “Dowry death” by adding new Sec. 304 B and also corresponding provision in Indian Evidence Act., by adding new sections 113B which provides for the mandatory presumption in favour of prosecution.

An inherent object of Section 304 B – “Dowry death” is to curb and combat increasing menace of dowry death with a firm hand. In Objects and Reasons for this new provision, while enacting the Dowry Prohibition Act., 1961, it was stated as follows:

“The object of this Bill is to prohibit the evil practice of giving and taking of dowry. This question has been engaging the attention of the Government for some time past, and one of the methods by which this problem, which is essentially a social one, was sought to be tackled was by the conferment of improved property rights on women by the Hindu Succession Act, 1956. It is, however, felt that a law, which makes the practice punishable and at the same time ensures that any dowry, if given, does ensure for the benefit of the wife will go a long way to educate public opinion and to the eradication of this evil. There has also been a persistent demand for such a law both in and outside Parliament. Hence, the present Bill. It, however, takes care to exclude presents in the form of clothes, ornaments, etc., which are customary at marriages, provided the value there of does not exceed Rs. 2,000. Such a provision appears to be necessary to make the law workable.”

In this context in, State v. Iqbal Singh,¹ the supreme Court observed:

“The legislative intent is to curb the menace of dowry deaths with a firm hand. We must keep in mind this legislative intent. It must be remembered that since crimes are generally committed in the privacy of residential

homes and in secrecy, independent and direct evidence is not easy to get. That is why the legislature has by introducing sections 113A and 113B in the Evidence Act. tried to strengthen the prosecution hands by permitting a presumption to be raised, if certain foundational facts are established and the unfortunate event has taken place within seven years of marriage."

As mentioned above, the new Section 304 B "Dowry death" has been added to IPC by the Dowry Prohibition (Amendment) Act., 1986 which came into force w.e.f. 19.11.1986.

**Section 304 B : Dowry death:**

(i) 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 or 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 sub-section “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act., 1961 (28 of 1961)

(ii) 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.

The new section deals with the dowry death which provides that where the death of a woman is caused by any burns of bodily injury or occurs otherwise than under normal circumstances i.e. under suspicious 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 and shall be punished with imprisonment for a minimum period of seven years but which may extend to life imprisonment. To prove dowry death, following ingredients need to be established:
**Ingredients of Sect. 304 B. “Dowry death.”**

(i) The death of a woman must have been caused by burns of bodily injury or otherwise than under normal circumstances;

(ii) Such death must have occurred within seven years of her marriage;

(iii) Soon before her death, the woman must have been subjected to cruelty of harassment by her husband or by relatives of her husband;

(iv) Such cruelty of harassment must be for or in connection with demand for dowry;

(v) Such cruelty of harassment is shown to have been meted out to the woman soon before her death.

Section 304 B provides for mandatory provision of minimum punishment of 7 years’ imprisonment if the “dowry death” is approved.

In *Pawan Kumar*,¹ the Supreme Court held that the concept of deemed “Dowry death brought in by Criminal Law (Second Amendment) Act., 1986, has a role to play and cannot be taken lightly and ignored to shield an accused, otherwise the very purpose of the amendment will be lost, of course, the prosecution has to prove the ultimate essential ingredients beyond all reasonable doubt after raising the initial presumption of "deemed dowry death."

In *Ashok Kumar*,² the Appex court stated that bride burning is a shame of our society. Poor never resort to it, Rich do not need it obviously because it is basically an economic problem of a class which suffer both from ego and complex. Unfortunately, the high price rise and ever increasing cost of living coupled with enormous growth of consumer goods effacing difference between luxury and essential goods appear to be luring even the new generation of youth, of the best service, to be as much part of the dowry menace as their parents and the resultant events flowing out of it.

1. *AIR* 1998 SC 958; 1998 Cr. LJ 1144; (1998) 3 SCC 369; 1998 SCC (Cri) 740,

Corresponding provision in Indian Evidence Act.

By the same Amendment Act. of 1986, Section 113B has been added in the Evidence Act. which provides for mandatory presumption in favour of prosecution. It is as follows:

“Presumption as to dowry death”: 113 B Evidence Act:

When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry the Court shall presume that such person had caused the dowry death.

Explanation- for the purpose of this section “dowry death” shall have the same meaning as in section 304B of the Indian Penal Code.”

Ingredients of presumption u/s 113 B of Indian Evidence Act:

The prosecution must prove the following to attract the presumption in favour of prosecution:

i) It should be shown that soon before the death of victim woman, she had been subjected to cruelty or harassment by the accused person/persons and

ii) Such cruelty or harassment was for the purpose of dowry or any demand of dowry.

Hence the prosecution must prove the demand for dowry and cruelty to victim woman soon before her death due to non-fulfillment of such demand of dowry to attract the mandatory presumption u/s 113 B of Indian Evidence Act.

Meaning of dowry:

It has the same meaning as defined in the Dowry Prohibition Act., 1961. It is defined as “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 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”.
Meaning of cruelty.

The term "Cruelty" has not been defined in section 304B. However, it is defined in explanation to section 498A.

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 demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

In Anand Kumar, Madhya Pradesh High Court held that maltreatment, demand and lust for money from beginning of marriage, subjecting the deceased to torture and assault on refusal to fulfill demand of money and not being allowed to meet or talk to her family members will amount to cruelty.

Section 304B and 498A:

Section 304B and Section 498A of IPC are not mutually exclusive. They are dealing with different and distinct offences but cruelty in both the substantive offences is a common and essential element.

Cruelty under section 498A is itself an offence and punishable but in Section 304B, cruelty is one of the essential ingredients. Hence along with cruelty, the other essential ingredients viz death occurred within seven year of her marriage, soon before her death, she was subjected to cruelty for dowry and her death occurred in unnatural circumstances need to be established.

In Shanti, the Supreme Court held that a person charged and acquitted under section 304B can be convicted under section 498A without a specific charge being there, if such a case is made out.

1. (1987 Cr. L.J. 1035 M.P.)
Section 304B and 306 IPC:

Section 306 makes abetment of committing suicide as an independent substantive punishable offence, however it remained in the statute book without any practical use till 1983. But by the introduction of section 113A in the Evidence Act., the offence under section 306 has acquired wider dimensions and has become a serious marriage-related offence. Section 113A provides the discretionary presumption in favour of prosecution under certain conditions, almost similar to the condition for dowry death. It provides that the court may presume having regard to the circumstances of the case that the suicide has been abetted by her husband or his relatives. However, the presumption under section 113A is not statutory compulsion as it is under section 113B, hence, the accused can persuade the court against drawing presumption adverse to him. Under section 113B, the burden is on the accused to disprove it, if the other ingredients are well established by the prosecution. If the accused fails to rebut the presumption, the court is bound to act on it as it is mandatory presumption in favour of prosecution.

Section 304B applies to unnatural death. When the death occurred under unnatural circumstances i.e. under suspicious circumstances either homicidal or suicidal, such death would be dealt with under section 304-B IPC.

In Kans Raj,¹ the Supreme Court held that the expression otherwise than under normal circumstances in section 304B would mean the death not in usual course but apparently under suspicious circumstances, if not caused by burns or bodily injuryd.

Section 304B: Whether prospective or retrospective.

As it creates an substantive penal offence, it has no retrospective operation. Hence where the incident has taken place prior to Nov.19, 1986, the accused cannot be prosecuted and convicted under section 304B as the trial would be hit by the constitutional provision of Art. 20(1) of the Constitution.

¹ AIR-2002 SC 2324; 2000 Cri LJ 2993 (SC):
The presumption u/s 113 B of Evidence Act when arises:

The presumption arises, when the following ingredients are established.

(i) the death occurred within seven years of her marriage.
(ii) soon before her death, she was subjected to cruelty for or in connection with dowry.
(iii) when the death occurred under unnatural circumstances i.e. under suspicious circumstances.

When the above ingredients are established, then the court shall presume that a person (accused) has caused the dowry death.

It is imperative, for invoking the legal presumption, to prove that “Soon before her death” she was subjected to such cruelty or harassment.

In Keshab Chandra Panda, the Orissa High Court held that the expression “Soon before” would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

In relation to dowry death, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct and such conduct may be spread over a period of time. If the cruelty or harassment for demand of dowry is shown to have persisted, it shall be deemed to be “soon before death.” Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry and cruelty or harassment for such dowry demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough. The expression is pregnant with the idea of proximity test;

1. 1995 Cri. LJ 174 (Ori).
In **Prem Singh**,\(^1\) the supreme Court upheld the conviction of the husband under section 304B. In this case a woman died due to asphyxia due to smothering- an unnatural death, the death had occurred admittedly within seven years of the marriage and where her husband had failed to give any probable and reasonable explanation as to how the deceased wife died in his house, sustained several abrasions and contusions on her body and where the explanation given by her husband that she might have swallowed some poisonous substance being far from the truth. However, conviction of mother-in-law of the deceased was set aside as she was residing separately from her son and there was no evidence on the record to show that his mother was instigating husband of the deceased to demand additional amount of dowry or for that purpose letting him to cause ill-treatment or harassment to the deceased.

In **Sant Raj**,\(^2\) the Supreme Court upheld the conviction of dowry death under section 304-B IPC. The court held that the husband was deemed to have caused her death. In this case, the deceased was known to be healthy and her death occurred in abnormal circumstances as she committed suicide within seven years of her marriage but no effort was made by her husband to send a messenger to her parental family, informing them of the death of the deceased and no effort was made to report it either to a magistrate and the husband, on the contrary, maintained that his wife had stomach-ache and on that account had died a natural death when there was no evidence to support it, there being also evidence of cruelty or harassment by her husband for demand of dowry.

In **Venugopal**,\(^3\) the Supreme Court has upheld the High court's conviction of husband under section 304B, by acquitting him under section 302 IPC. In that case, the demand of dowry and harassment was proved and the death has also taken place within about a year and a half from her marriage and the evidence was shown that soon before her death, she was subjected to ill-treatment by her husband.

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\(^1\) AIR SC 2670 : (1998) 8 SCC 70.
\(^3\) (1999) 1 SCC 216 : 1999 SCC (Cri) 1592.
In Rajayyan, the supreme Court has upheld the conviction of husband under 304B IPC. In this case, the death was caused by falling in well within 3½ years of her marriage. The evidence was established to show that there was demand for dowry and she was subjected to ill-treatment both mentally and physically for the dowry. The husband has gone to the extent of stating in a statement, recorded under 313 Cr.P.C. that she was not his wife. In above circumstances, the Supreme Court has upheld the husband’s conviction under 304B I.P.C.

In the following case, the accused were acquitted.

In State V. Madan Lal, the High Court has acquitted the accused wherein the deceased wife was died within one year of her marriage due to burn injuries but the motive to kill her on account of the demand of dowry was not established and explanation by the accused husband that he received burn injuries while extinguishing fire and saving life of the deceased corroborated with the evidence of witnesses, was seemed to be proper.

In State V. Pundalik, the Karnataka High Court has acquitted the husband accused. In this case, the deceased has committed suicide six years after the marriage and the prosecution concentrated on the evidence with regard to what was demanded and what was exchanged at the time of marriage and there being no satisfactory evidence with regard to whether the demand which are dowry related persisted for as long as a period of six years. Hence, the conviction by the Lower Court was held not sustainable.

In Arvind Singh, the accused had been acquitted in this case. The prosecution case was that Kerosene was poured all around and thereafter with lighted match-stick, the girl was burnt to death alive. The FIR, depicting the case of torture with allegation of dowry demand was disbelieved and the accused was acquitted when the High Court found the original FIR was interpolated, alterations having been made with regard to demand of dowry.

1. AIR 1998 SC 1211; 1998 (Cri) LJ 1633 (SC); (1998) 4 SCC 85; 1998 SCC (Cri) 811,
2. 1999 (Cri) LJ 4833 (HP),
3. 1999 (Cri) LJ 4751 (Kar),
4. AIR – 2001 SC 2124; 2001 Cri. LJ 3556 (SC)
Importance of Dying Declaration in cases of dowry death:

In (i) Padmaben, (ii) Ved Prakash, and (iii) Goverdhan Raoji Ghayare, the Appex Court held that a Statement made before doctor by the deceased when she was in a fit state of mind and was able to speak albeit with difficulty is admissible in evidence and such dying declaration is acceptable and conviction can be based on such dying declaration.

In Surinder Kumar, the High Court has upheld the conviction of the accused wherein the wife was deserted by the husband on account of bringing insufficient dowry and she was staying with her parents at the time of committing suicide, the dying declaration and the suicide note made it amply clear that she had taken the extreme step because she was being abused and harassed for bringing insufficient dowry, it was sufficient incitement and continuous harassment to attract the rigour of this section.

However in State V. Shankar, the Karnataka High Court has acquitted the accused when therein no other evidence except dying declaration alone and when the mother and brother of the deceased have turned hostile. Acquitting the accused, the court- observed that it would be unsafe to record a conviction in the absence of the certificate of doctor that the deceased was in a fit-condition to make the statement.

In Arvind Sing, the Supreme Court acquitted the accused in a bride burning case wherein the evidence of dying declaration depicted that just before a few minutes of her death, the deceased made a declaration quietly to her mother naming therein all the three relations along with the husband who poured kerosene to burn her alive. The primary element in the matter of obtaining the medical certification as to fit state of mind of deceased at the time of declaration not having been obtained, the uncorroborated testimony of the mother was held as not acceptable.

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5. 2000 CrL J. 1917 (Kar).
The Directives of Karnataka High Court for recording dying declaration into dowry death cases:

Considering the rising rate of acquittal of such cases, the Karnataka High Court has issued some directives regarding the manner and requirement for recording dying declaration in dowry death cases. The High Court has directed that the steps should be taken to ensure that every dying declaration is recorded in the manner as prescribed by a Magistrate or other quasi-judicial authority and that the doctor treating the patient shall certify on the dying declaration that the patient was conscious and in a fit condition to make a statement. A true copy of the dying declaration shall be forthwith filed with the Magistrate and a record of the acknowledgment shall be maintained in the case papers. The above directives were issued in the case – State v. Pundalik,\(^1\)

On Motive:

In Ashok Kumar,\(^2\) Court held that “Motive” for a murder may or may not be there. But in dowry death, it is inherent and hence, what is required of the Court to examine is as to who translated it into action as motive for it is not individual, but of family.

Appreciation of Evidence:

In State v. Iqbal Singh,\(^3\) the Supreme Court has observed that it cannot be ignored that such crimes are generally committed in four corners of matrimonial homes and in secrecy and hence, independent and direct evidence is ordinarily not available. That is why, the legislature has introduced sections 113A and 113B in the Evidence Act by permitting presumption to be raised in certain circumstances. When the question at issue is whether a person is guilty of dowry death of a woman and the evidence discloses that immediately before her death she was subjected by such person to cruelty and/or harassment for, or in connection with, any demand for dowry, section 113B of the Evidence Act enacts that the court shall presume that such person had caused the dowry death.

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1. 1999 Cr. L.J. 4751 (Kar.)
2. AIR 1990 SC 2124; 1990 CrL J 2276 (SC); (1999) 1 SCC 166; 169-70: 1990 SCC (Cri.) 126.
The guidelines by Karnataka High Court for improving the Quality of investigation in dowry death cases:

Considering the acquittal rate of such dowry death cases, the Karnataka High Court in State V. Pundalik,\(^1\) has issued the following detailed guidelines for increasing professionalism in investigation of such cases.

(a) A separate record shall be maintained by the police department of all dowry death cases and the department shall ensure that the investigation of every such case is entrusted to a police officer of not less than seven years seniority in the department, who shall report directly to the SP or DCP concerned. The superior authority shall supervise the investigation right from the very beginning and shall also ensure that the Senior Public Prosecutor is consulted whenever and wherever necessary.

(b) The Investigating officer shall ensure that all incriminating evidence such as the clothes of the deceased, the weapons or implements used, the stove in burning cases along with all related evidence is seized at the earliest point of time in the presence of persons of sufficient social status.

(c) Wherever there is necessity of chemical analysis or forensic evidence in respect of medical samples or specimens, these shall be properly preserved and forwarded to the concerned authorities without any loss of time.

(d) The investigating officer shall also ensure that the hospital case papers are duly preserved and zerox copies of the same duly certified by the authorities shall be maintained in the case papers in order to avoid tampering.

(e) Steps shall be taken to ensure that the witnesses and all material evidence are kept ready and produced before the court and the Director of Public Prosecutions shall ensure that this class of cases are only entrusted to a Senior Public Prosecutor of proven integrity and ability.

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1. 1999 Cri L.J 4731 (Kar)
(f) Stringent action shall be taken against the prosecutor and the police officers where the prosecution has failed due to incompetent or inept handling or due to the deliberate non-production of evidence or if the record indicates collusion with the accused or the defence.

The above guidelines though are applicable to Police officers in Karnataka State, should be made applicable to Police officers / I.O. in Dowry cases, in every State as there guidelines will centrally increase the conviction rate in dowry death cases.

**The Supreme Courts observations on the point of establishing prosecution case of dowry death.**

In Arvind singh case, the Appex Court while upholding the acquittal by the High Court on the basis of material alteration having been made in FIR with regard to demand of dowry, the Supreme Court has observed that while it is true that husband being the companion in the bedroom ought to be able to explain as to the circumstances, considering the early hours of the day and the factum of the wife being burnt and found lying on the bed, but there exists an obligation on the part of the prosecution to prove the guilt of the accused beyond all reasonable doubt. Criminal jurisprudential system of the country has been to that effect and there is neither any departure nor any escape therefrom. The Court observed that it is undoubtedly a social and heinous crime to have the wife burnt to death but without any proper and reliable evidence, the Law Court cannot by itself also justify its conclusion in the matter of involvement of the husband. Direct evidence may not be available but circumstantial evidence with reasonable probity and without a snap in the chain of events would certainly tantamount to a definite evidence about the involvement but not otherwise.

**The Supreme Court on Anticipatory Bail in Dowry death cases:**

In Samunder Singh, the Supreme Court held that normally it would neither be prudent nor advisable for a Court of Session or High Court to grant anticipatory bail to a person against whom investigation in a dowry

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death is pending. However, in *Dolat Ram*, the Supreme Court held that if there are sufficient grounds and relevant circumstances present, anticipatory bail can be granted by the court.

**Regarding imposition of punishment in dowry death:**

The Supreme Court in *Kailash Kaur*, and in *Machhi Singh*, held that severe sentence should be imposed on the perpetrators of gruesome murder of young wives who have killed them only for the purpose of extraction of dowry as such case would fall within the category of rarest of rare cases.

However, in some other cases, the Supreme Court has taken liberal view.

In *Hem Chand*, the Supreme Court observed has taken liberal view and held that the maximum punishments of imprisonment of life can be awarded only in rare cases.

In another case *Ravindra*, wherein a woman was murdered in a most foul manner of severing a head and cutting a body into nine pieces, the trial court has awarded the “death penalty”, considering it as a rarest of the rare cases. The death penalty has also been confirmed by the High Court, however, the Supreme Court has observed that it was not one of the rarest case of the rare cases and reduced the death penalty into imprisonment for life.

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Awarding minimum punishment under section 304-B IPC:

In Shanti,1 and also in Kuna Satyanarayana,2 the Supreme Court held that the minimum prescribed punishment, of not less than seven years imprisonment must be awarded on the offender.

In Sant Raj,3 wherein the deceased has committed suicide within seven years of her marriage and her husband did not bother to send a message of her death to her parental family and there were instances of cruelty or harassment, the husband was convicted for life imprisonment under section 304B IPC but the Supreme Court has reduced the conviction of life imprisonment to minimum i.e. seven years rigorous imprisonment.

In Pawan Kumar,4 where the deceased was repeatedly coerced for not fulfilling the demand of dowry and she was subjected to mental torture and agony which ultimately resulted into her death, the Court has awarded the minimum punishment of seven years rigorous imprisonment to the husband with a fine of Rs.500/-.5

In Updesh Sing,6 wherein the deceased was died within a year of her marriage due to burn injuries in her in-laws place, and the evidence was shown that the husband used to demand dowry of Rs.5000/- regularly and had given a threat only before a day of her death, the husband was convicted for the offence of committing dowry death. Since the husband had remained in custody for more than nine years, the sentence was reduced to the period of imprisonment which he had already undergone.

In Surinder Kumar,6 the Court has held that the conviction of accused mother in-law cannot be set aside merely on the ground that she would bring up the child, left by the deceased.

In Yashoda v. State of M.P.,7 the Supreme Court has upheld the conviction u/s 304(B) IPC wherein the deceased was died within 4 years of her marriage. There was persistent demand for gold ornaments ever since

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5. 2000 Cr L J 12161 (Pa):
her marriage with accused. Demand was reiterated just 15 days before the occurrence. She was admitted to hospital for complaints of diarrhoea and vomiting and died within half-an hour. The dead body of the deceased was cremated hurriedly and her parents were informed later. Deceased being young girl was not suffering from any ailment, hence the conviction was upheld under the presumption available to dowry death u/s 304 B IPC.

In *Satbir Singh v. State of Haryana*, the Apex Court has upheld the conviction of the accused. In this case, the deceased was died of unnatural death within seven years of her marriage. Evidence was shown that the deceased was harassed for not bringing more dowry. The ingredients of sec. 304 (B) IPC were established by the prosecution, hence the onus lies on the accused to rebut presumptions/s 113 B of Evidence Act. The defence plea that the deceased was died of heart attack was held not tenable in absence of any evidence showing that the deceased was suffering from heart ailment. Hence the S.C. has held the conviction of the accused as proper.

**Procedural:** The offence under Section 304B IPC is cognizable, non-bailable, non-compoundable and triable by Court of Session.

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1. AIR 2005 S.C. 3546.

The Prohibition of Dowry Act, 1961:

The evil practice of demanding, accepting and giving of dowry has been prevailing in Indian Society since long time. Dowry means the property or money, being brought by a bride to her husband when she is married. Due to non-fulfillment of dowry demand by the parents of a bride, the number of brides are deliberately subjected to harassment and cruelty not only by the husband but also by every member of the husband's family including young sister-in-laws which results into sacrifice of many lives of young married women. The evil effects of dowry system have been well recognised by the Law-Makers and hence they have enacted the Dowry Prohibition Act in the year 1961 with the object of prohibiting the evil practice of giving and taking of dowry. However, it excludes the presents in the form of clothes, ornaments etc. which are customary at marriage, provided the value of such presents is not excessive having regard to the financial status of the person by whom or on whose behalf such presents are given.

The meaning of dowry u/s 2 of Dowry Prohibition Act: Dowry means anything which was 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 after the marriage as consideration for the marriage of the said parties.

Stridhan and Dowry:

Stridhan means the property of wife whereas dowry means the property or money brought by a bride to her husband when she gets married.
In Pritam Singh v. State of Delhi, Journal of criminal cases 313(Delhi), it was held that Stridhan includes and means dowry as well as gifts received by wife.

In Vinod Kumar v. State, it was observed that nowhere it says that all the wife's property belongs jointly to the couple or that Stridhan was abolished and she cannot be the exclusive owner thereof. Similarly no other provisions in Hindu Marriage Act could be pointed out which erodes the concept of Stridhan or in any way incapacitates the Hindu wife to hold the property as an exclusive owner.

The Penal Provision for giving or taking Dowry:

Section 3 of Dowry Prohibition Act was inserted by Act 63 of 1984 and subsequently amended by Act of 43 of 1986 (w.e.f 8.9.1986), which provides as follows.

Section 3(1): If any person, after commencement of this Act gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more:

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years.

(2) Nothing in sub-section (1) shall apply to, or in relation to, --
(a) presents which are given at the time of marriage to the bride (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;
(b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf):

1. 2000 (I).
2. AIR 1962 P & H 372.
Provided that such presents are entered in a list maintained in accordance with the rules made under this Act:

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.

The penal provision was made more serious and deterrent in nature as it provides for minimum mandatory punishment of five years imprisonment and fine of Rs.15,000/- or the amount of value of such dowry whichever is more. It impliedly give more discretion to the Judge for giving more sentence than five years imprisonment as it does not prescribe the upper limit of imprisonment but the Judge has no discretion to award less punishment than five years imprisonment except for adequate and special reasons, to be recorded in the judgement.

Penal Provision for demanding dowry u/s 4:

Section 4 of Dowry Prohibition Act provides that if any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

The object of section 4 which provides penalty for demand of dowry was to discourage the very demand for property or valuable security as consideration for marriage between both the parties.
Section 5 of the Act, provides that any agreement for the giving or taking of dowry shall be Void. Hence the agreement for giving or taking of dowry can not be enforced even in Civil Court.

The provisions for taking cognisance of the offences Under Dowry Prohibition Act:

Section 7 (1) of the Act provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 to 1974)—

(a) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act;

(b) no Court shall take cognizance of an offence under this Act except upon—

(i) its own knowledge or a police report of the facts which constitute such offence, or

(ii) a complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any recognized welfare institution or organization;

(c) it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to pass any sentence authorised by this Act on any person convicted of any offence under this Act.

Explanation.— For the purpose of this sub-section, “recognized welfare institution or organization” means a social welfare institution or organization recognized in this behalf by the Central or State Government.


(3) Notwithstanding anything contained in any law for the time being in force, a statement made by the person aggrieved by the offence shall not subject such person to a prosecution under this Act.
The offences are non-bailable and non-compoundable u/s 8 of the Act:

Section 8 (1) provides that the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to offences under this Act if they were cognizable offence,

(a) for the purposes of investigation of such offences; and

(b) for the purposes of matters other than,--

(i) matters referred to in Section 42 of that Code; and

(ii) the arrest of a person without a warrant or without an order of a Magistrate.

(2) Every offence under this Act shall be non-bailable and non-compoundable.

Section 8 of the Act was amended by the Act of 43 of 1986 and made all the offences non-bailable under this Act instead of earlier provision of bailable offence.

It is pertinent to mention here that the new section was added to IPC for providing serious punishment upto life imprisonment for ‘dowry death’ u/s 304 B IPC by the Dowry Prohibition (Amendment) Act 1986 with the object of combating the increasing menace of dowry deaths (w.e.f. 19.11.1986.). By the same Amendment, the new section 113-B was added to Indian Evidence Act, raising for mandatory presumption as to dowry death in certain circumstances in favour of prosecution.

Provision for withdrawal of complaint u/s 257 Code of Criminal Procedure Code:

If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused, against all or any of them, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused against whom the complaint is so withdrawn.

When the complaint was permitted to be withdrawn, the Magistrate has to write a separate order for the acquittal of the accused. Mere
permission to withdraw the complaint does not amount to acquittal, as held in *Dhanapati Devi v. Corporation of Calcutta*,¹ But the complaint can be withdrawn at any time before the Judgment is pronounced:

**In brief,** the increasing cruelties to women were realised by the Law Makers and they have come out with amendment in 1983 to IPC providing stringent provisions for dealing with ill-treatment to women by new section 498(A) IPC, covering both type of atrocities i.e. physical and mental. It has both punitive as well as deterrent object.

Since from the inception of IPC, the provision for abetment to commit suicide u/s 306 was there in IPC but was not in much use to protect the women in absence of any provisions dealing with cruelty to women, prior to new section 498(A), added to IPC in 1983. But as the women were subjected to cruelty for various reasons including non-fulfillment of dowry demands, leaving them with no alternatives except committing suicide, the provision u/s 306 IPC was resorted to alongwith new provision of section 498(A) IPC for dealing with the crime of abetment to commit suicide due to ill-treatment to women. The maximum lives of women are being scarified by suicidal death due to un-tolerable cruelties to them and hence the crimes u/s 306 and 498 (A) IPC are to the extent of magnified limit. To give more discretion to the judiciary, new provision for providing discretionary presumption u/s 113 (A) has also been added to Indian Evidence Act, by amendment in 1983 in cases of abetment to commit suicide if the victim has committed suicide within seven years from the date of her marriage

In spite of stringent provisions in Dowry Prohibition Act in 1961 the sacrifice of number of lives of women due to non-fulfillment of dowry demand were continued which was well recognised by the Legislators and new provisions dealing with ‘dowry death’ was added to IPC by the Dowry Prohibition (Amendment) Act of 1986 with corresponding provisions in Indian Evidence Act, providing for mandatory presumption under section 113 (B) in dowry death cases so as to give more discretion to the judiciary for punishing the culprits of dowry death crimes. The provisions u/s 304 (B) IPC, dealing with ‘dowry death’ has both ‘punitive’ as well as ‘deterrent’ objects behind the new amendment in 1986.

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¹ AIR 1952 Cal 457.
However, whether both 'punitive' and 'deterrent' objects of newly added provisions u/s 498(A) IPC in 1983 for dealing with cruelties to women and dowry deaths of young married women u/s 304(B) IPC added in 1986, armed with slight favourable rule of evidence in favour of prosecution u/s 113 (A) and 113(B) in Indian Evidence Act have been fulfilled or not will be tested during present study through secondary date i.e. crime statistics from 1983 onwards and primary data i.e. informations / views through questionnaires.

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