LEGISLATIVE MEASURES
TO CONTAIN EVILS OF DOWRY

"Legislation cannot by itself normally solve deep rooted, social problems. One has to approach them in other ways too, but legislation is necessary and essential, so that it may give that push and have that educative factor as well as the legal sanctions behind it which help public opinion to be given a certain shape."

- Jawaharlal Nehru
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CHAPTER 3

The evils of dowry system have been a matter of serious concern to every one in view of its ever increasing and disturbing proportion. Government has been making various efforts to deal with the problem.

Even the social reformers like Raja Ram Mohan Roy, Ranade, Ishwarchandra Vidyasagar, Mahatma Gandhi and many others of the nineteenth and early twentieth century have striven hard and dedicated their lives for the abolition of various social evils including the evils of dowry from which the Indian women were suffering.

The fruitful results of the efforts of social reformers were perceived to some extents even long before India gained independence, first of all in Sindh. The then provincial Government of Sindh passed an enactment known as “Sindh Deti-Leti Act, 1939” with a view to deal effectively with the evil of dowry system but the enactment had neither any impact nor could create the desired effect. It prohibited payments in excess of limits specified in the list applicable to the girls’ family which were drawn either by the respective Panchayat or failing which, by the provincial government. Such lists were registered and published and were binding upon every members of the Panchayat and also provided punishment for contravention of the provision of the Act. It prohibited giving and taking of dowry in excess of limits specified as part of contract of betrothal or marriage.
Next step was perceived in clause 93 of the Hindu Code Bill put up before the Provisional Parliament of India. In this clause it was stated that dowry shall be deemed to be the property of the bride and that the person who receives it should hold it in trust for the benefit and separate use of the bride and transfer it to her on completing the age of eighteen years. Undoubtedly in both these attempts dowry was not prohibited but the effects of these provisions could certainly achieve some measure of restriction or check on this evil practice. These provisions attempted at wiping away the wrong uses of dowry but not the evils of dowry.

During the last few decades the evils of dowry system has taken an acute form in almost all parts of the country and in almost all the sections of the society.

After independence, in a bid to eradicate this evil from the society, two states, Bihar and Andhra Pradesh, which in their keenness to stamp out the evil effects of dowry system which was effecting the vitals of the society, enacted Acts in their respective states.

The first step was taken by the government of Bihar and the Bihar Dowry Restraint Act, 1950 was enacted. It defined “dowry” as “Anything paid or delivered as consideration of a contract of any betrothal or marriage” and prescribed limits on the amount to be paid in cash or kind on different occasions excluding voluntary gifts. The giving and taking of dowry were punishable offences but the prosecution for an offence under the Act could commence against a person only after giving him a notice to show cause.

Similarly, the Government of Andhra Pradesh enacted the Andhra Pradesh Dowry prohibition Act, 1958. It defined “dowry” as “any property or valuable security given or agreed to be given as consideration for any betrothal or marriage.” It made the act of giving or taking of dowry as unlawful and any agreement in that regard as void.
Giving or taking of dowry was made punishable offence which was non-cognizable, bailable and non-compoundable.

**The Legal Aspect of Dowry Related Crime with Respect to Human Rights:**

Before discussing the various legislative measures taken up by the Government to contain the evil of dowry, it would be proper to examine the legal aspect of dowry related crimes with respect to Human Rights. The international movement for women's human rights with the associated slogan that *women's rights are human rights* gained momentum in the past decade. At the United Nations World Conference on Women in Nairobi (Kenya) in 1985, human rights began to emerge as a key issue for women, and by the year 1995 World Conference on Women in Beijing (China) human right became the framework for the entire Government plan of action.

At other intervening conferences like the World Conference on Human Rights in Vienna (1993), World Conference on Population and Development at Cairo (1994) and the World Summit for Social Development in Copenhagen (March, 1995), women rights activists challenged the neglect of women and their rights in all of these areas and argued that the improvement of women's status anywhere depends on advancing their rights.¹

The various UN Conventions and Covenants on human rights at the international level have been proclaimed and a large number of countries of the world are signatories to them. The Convention on Elimination of All Forms of Discriminations against Women (CEDAW) was signed in 1979 and entered into force in 1981. This is the legally binding document prohibiting discriminations against women and obligating Governments to take affirmative steps prohibiting not maintaining the equality of women. The Convention on the Rights of

the Child was adopted in 1989 which come into force in 1990. This sets forth the civil, cultural, economic, social and political rights of children. India has ratified both these Conventions. A special effort has been made to incorporate the issue of violence against women in the human rights perspective. The United Nations Human Rights Commission has appointed a Special Reporter on Violence against Women while the UN General Assembly has adopted a declaration on Violence against Women (1993) i.e. on the right of women to be free from violence and the obligations of Governments to take step to eliminate violence against women. The Committee on the Violence against Women (1992), formed to enforce CEDAW which defines violence as a form of discrimination against women.

The women groups in India, as elsewhere, consider violence against women as violation of their human rights. These groups focus on the understanding of various human rights protection mechanism, their enforcement and on the strategies to assert and protect women’s human rights. The Indian Constitution grants and secures fundamental rights of every citizen irrespective of religion, race, caste, sex or place of birth. There are various legislations dealing with women’s right to equality, freedom, opportunity and protection. However, the violence against women continues to exist and accelerate, and those related to dowry have exacerbated and taken different forms over the years.

Violence is described as a physical act of aggression of one individual or group against another or others. Violence against women means any act of violence, which results in, or is likely to result in physical sexual or psychological harm or suffering to women. This also includes threats of such acts, coercion or arbitrary deprivation of liberty, in public or private life and violations of human rights of women in violent situations. There are the more latent and unquantifiable aspects of aggression or invasion of the self by outside agents, namely
emotional violence and other forms of cruelty which end up in suicides, self-stimulation, negligence of ailments, sex determination tests and denial of food. Therefore, though cruelty and dowry deaths may be designated as ‘crimes’ under the Indian law, various acts leading to these constitute denial of women’s human rights. Many times such situations are not taken seriously and only when they lead to ‘crime’ that they come into focus.

The three major Acts which govern legal trials in India are the Indian Penal Code (IPC), which lays down categories of offences and stipulates punishments, the Criminal Procedure Code (Cr.PC) which lays down procedural rules for investigation and trial and the Indian Evidence Act, which prescribes the rules of evidence to be formed during a trial. In those crimes in which women alone are the victims are referred to as violence against women and special laws are made to tackle them. Under this, homicide for dowry, dowry deaths and the attempt, come under Section 302/304-B, IPC and the torture, both mental and physical under Section 498-A, IPC. Besides those identified by the IPC, there are crimes under the Special Laws as well. Reprehensible social practices like demand for dowry or trafficking of women for immoral purpose are identified as offences punishable under special social enactments to safeguard women and their interests.

In this chapter the various legislative measures taken up by the Government to contain the evil of dowry are being discussed.

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3. 1. Substantive Measures

3. 1. 1. Dowry Prohibition Act, 1961:

The social reformers went on with their efforts to meet their persistent demand to eradicate this evil practice both inside and outside the parliament. Thus there was a long felt need for a statute on all India basis for prohibiting the evil practice of dowry in all its aspects. The efforts at last bore fruits in the year 1961 when parliament passed the Dowry Prohibition Act, 1961 which got assent by the president of India on May 20th, 1961 and was enforced with effect from July 1st, 1961.

Even after making of this enactment, the government has been making various efforts to deal with this problem. In addition to issuing instructions to the State Governments and the Union Territory Administrations with regard to the making of thorough and compulsory investigations into cases of dowry deaths and stepping up anti dowry publicity, government referred the whole matters for consideration to a Joint Committee of both the Houses of Parliament to examine the question of working of the Dowry Prohibition Act 1961. The Committee went into the whole matter in great depth and its proceedings helped in no small measure in focusing the attention of the public and rousing the consciousness of the public against this evil.

The Dowry Prohibition Act, 1961 was amended by the Dowry Prohibition (Amendment) Act, 1984\(^3\) to give effect to certain recommendations of the Joint Committee of the Houses constituted to examine the question of working of the Dowry Prohibition Act, 1961 and to make the provisions of the Act more stringent and effective.

\(^3\) Received the assent of the President on September 11, 1984 and came into force on October 2, 1985 vide SO GIO (E) dated August 19, 1985, published in the Gazette of India, Extraordinary, Part II, Section III (ii) Page 396.
Although the Dowry Prohibition (Amendment) Act, 1984 was an improvement on the existing legislation, opinions have been expressed by representatives from women’s voluntary organizations and others to the effect that the amendments made are still inadequate and the Act needs to be further amended. In view of the opinion thus expressed the Parliament further amended the Dowry Prohibition Act, 1961 by passing the Dowry Prohibition (Amendment) Act, 1986 (Act No. 43 of 1986).

A detailed discussion of the Dowry Prohibition Act, 1961 as amended by the Dowry Prohibition (Amendment) Act, 1984 and the Dowry Prohibition (Amendment) Act, 1986 are as follows:

**Section 2. Definition of “Dowry”** — Section 2 of the Act defined dowry which have been already discussed in Chapter 1 of this study. Hence at the cost of repetition it is thought unnecessary to discuss it here.

**Section 3. Penalty for giving or taking dowry** — Section 3 of the Act provides for the punishment for giving, taking and abetting the giving or taking of dowry. The 1961 Act merely prescribed a punishment of imprisonment extending to six months or fine which may extend to five thousand rupees or both if any person gave or took or abetted the giving or taking of dowry.

The 1984 Amendment however enhanced the sentence to a term which shall not be less than six months but which may extend to two years and with fine which may extend to rupees 10,000/- or the amount of the value of such dowry whichever is more. Sub-section (2) was added by the 1984 Amendment to the effect that the presents which were given at the time of marriage to the bride without any demand having been made in that behalf shall not be treated as dowry.

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4 Received the assent of president on Sept 8, 1986 and came into force on Nov 19, 1986. vide gazette of India Extraordinary part II sec 3(i), dated 5 Nov, 1986 and published in gazette of India, Ext, part II sec I dated Sep 9, 1986
provided that such presents are entered in a list maintained in accordance with the rules made under this Act. Further, presents which were given at the time of marriage to the bridegroom without any demand having been made in that behalf shall not be treated as dowry. These presents were also to be entered in a list maintained in accordance with the rules. A proviso was added that such presents were of a customary nature and the value thereof was not excessive having regard to the financial status of the person by whom or on whose behalf such presents are given.

The 1986 Amendment became effective from 19th November, 1986. It has increased the quantum of punishment. The imprisonment to be awarded shall not be less than five years instead of two years laid down by the 1984 Amendment. Further the fine has also been increased from Rs. 10,000/- to Rs. 15,000/- or the amount of the value of such dowry, whichever is more.

Law penalises action or omission by inflicting a suffering on the perpetrators either by depriving him of personal liberty or money or both. It is the retribution due to the society for the evil deeds of the doer. Law measures penalty keeping in mind the prevalence of the mischief, the harm it causes and the fear which is likely to deter the wrongdoer. The measure of gravity of an offence is measured by the quantum of punishment for it. The enhancement of punishment by the 1986 Amendment Act, therefore, is a clear indication of the Parliament's intention to treat demand of dowry as a very serious offence.

One feature of punishment which seems to be reflected in the Dowry Prohibition Act’s enhanced punishment is that where avarice actuates crime, punishment by deprivation of property seems to balance the scales equitably with the increasing importance attached to wealth and its social consequence underscore human conduct in current times. The direct dread of its deprivation may deter the doers. It is true in no small measure in India that money regulates human
relationships the noble philosophy of non-acquisitiveness, sacrifice and other virtues are largely ornamental exhibits. Therefore, it can be hoped that the enhancement of fine by the 1986 Amending Act may to some extent succeed in discouraging the dowry demands.

The minimum sentence now laid down is not less than six months. In statutes where minimum sentence is prescribed the command of the legislature is certain and it has to be obeyed. The object is plain - to make the punishment deterrent. Thus where the legislature provides a minimum punishment it restricts judicial discretion and its intent is clear that the wrong against the society is grave, frequent and deserves deterrence to protect the society from its evil consequences.

In Section 3 of the Act there is a proviso giving courts the option to award punishment less than the minimum. Two conditions have been mentioned by a conjunctive “and” to warrant the awarding of a sentence less than the minimum. Therefore both the conditions which must be present before a court could exercise its discretion of awarding punishment less than the minimum are (a) adequate and (b) special reasons.

Section 4. Penalty for demanding dowry — This section provides for the punishment for demanding dowry with imprisonment for a term which may extend to two years and with fine which may extend to ten thousand rupees.

The whole section has been newly added by Section 4 of the 1984 Dowry Prohibition Amendment Act (63 of 1984) with effect from October 2, 1985. The changes introduced are:

(1) The minimum sentence provided is not less than six months while it was the maximum under the unamended Act. Now the Maximum sentence is two years. There is however a discretion given to the court
to award less that the minimum ‘for adequate and special reasons to be mentioned in the judgment’.

(2) The ceiling for fine has been increased from rupees ten thousand to fifteen thousand.

(3) No sanction from the State Government or an officer authorised in this behalf is necessary before cognizance could be taken by court.

The provision for minimum sentence is designed to deter people from the disgraceful dowry demand. The discretion on the court for imposing less than the minimum punishment have been conferred with the condition that the reasons should be adequate and special reasons to be mentioned in the judgment.

The increase in the maximum fine imposable is also aimed to achieve a deterrent effect. Possibly, the devaluation in the value of rupee since 1961 has also found legislative recognition.

The Sanction of the State Government, originally needed for prosecuting a person for the offence of demanding dowry, has been dispensed with. The concept of sanction has its justification for the safeguard against frivolous prosecution. The need for sanction sometimes becomes an expensive hurdle in seeking justice. Going to a court of law for prosecuting a person is in itself a fairly discouraging exercise. He who goes to court as a matter of last resort undergoes an experience of repetition which sanity often forbids. Therefore, the legislature has in its wisdom thought it fit to delete the State Government’s sanction clause because the prospect of long-lived litigation, its enormous expense and endless suspense and uncertainties constitute an inbuilt inhibition against its frivolous exercise.

Section 4-A. Ban on Advertisement — With introduction of Sec. 4-A by means of Act 43 of 1986 a new offence has been
created which provides for penalty for advertising by whatever means that mundane advantage would accrue to a person by entering into marriage with a certain boy or girl. The ingredients of the offence are:—

1. A person who offers —

   (a) through any advertisement —

      (i) in any newspaper,

      (ii) periodical,

      (iii) journal or

      (iv) through any other media;

   (b) (i) any share in his property or

      (ii) any money or both as a share in any business or other interest;

   (c) as consideration of the marriage of his son or daughter or any other relative;

      OR

2. A person who —

   (i) prints, or

   (ii) publishes, or

   (iii) circulates any advertisement referred to above

shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to five years, or with fine which may extend to fifteen thousand rupees.
For adequate and special reasons to be recorded in writing
the court has been given discretion to impose a punishment of less than
six months.

The nature of advertisement cast by this section is wide
and comprehensive and covers all the medium of advertisement.

Section 5. Agreement for giving or taking dowry to be
void — This section expressly and unequivocally declares any
agreement for the giving or taking of dowry to be void. The Indian
Contract Act in Section 2(g) lays down that “an agreement not
enforceable by law is said to be ‘void’.” The Dowry Prohibition Act
declares an agreement for giving or taking of dowry to be void. In other
words, it is unenforceable at court of law. Under Section 23 the
consideration or object of an agreement is unlawful unless (a) it is
forbidden by law; (b) if permitted would defeat the provision of any law
or (c) which the court regards as immoral or opposed to public policy.
Here, in view of Section 5 of the Dowry Prohibition Act, every
agreement whose consideration is giving or taking of dowry shall be
void because it is forbidden by law and if permitted would defeat the
provision of the Dowry Prohibition Act.

Section 6. Dowry to be for the benefit of the wife or her
heirs — This section provide that whoever it may be who receives any
dowry on behalf of the woman in connection of whose marriage it is
given, such woman shall be the owner of such dowry. Thus so long the
evil of dowry is not eradicated at least the recipient (other than the
woman) shall not be owner. This declaration acts against the avarice
which usually motivates the bridegroom or his kinsmen to extort the
price for him. This provision would at least discourage dowry demands
when its benefits are assured for the woman.

When the woman is major it shall be returned to her within
three months. If she is dead then the dowry goes to her heirs. If she is
minor then the dowry takers keeps the property in trust until she has attained the age of 18 years and pending such transfer it “shall be held in trust for the benefit of the women”.

Section 6(2) provides stringent punishment for failure to return the dowry within the time stipulated under Section 6(1) and if she dies within that time her heirs are given the right to claim it.

Section 6(3-A) is a new provision which obliges the court to return the dowry within a specified period or an amount equal to the value of the dowry is made recoverable as fine and the goods or its value is to be given to the women. This eliminates necessary legal action for the recovery of the dowry.

Prior to the 1984 Amending Act the prescribed punishment was imprisonment for a period of six months or with fine up to rupees five thousand or both. By the 1984 Amending Act which became effective from 02. 10. 1985 the punishment was enhanced. The minimum sentence prescribed was six months and the maximum was for two years and the limit of fine was increased from rupees five thousand to rupees ten thousand.

The 1984 Amendments were of far reaching consequences. They changed the law on the following points:

(i) The unamended Section 6 provided a period of one year for the return of dowry in all the 3 clauses of Section 6(1). This period has been reduced to 3 months. The shrinking of the period in each of these clauses is intended to emphasise the urgency because, the longer the time lag the greater is the mental lethargy and staleness of the transaction. Further, the period of one year had the danger of truth being mutilated either intentionally or for lapse of memory.

(ii) The punishment provided for failure to return the dowry received within stipulated time has been increased. In stead of original
maximum sentence of six months the maximum has been raised to two
years and further the minimum sentence of six months has been
provided. There is no discretion conferred on court to reduce the
minimum sentence of six months.

The maximum fine in the original Section 6(2) has been
raised from rupees five thousand to rupees ten thousand.

(iii) Section 6(3-A) is a newly added provision. It is a penal
clause which comes into operation if the dowry has not been returned
at all. Then in addition to the stringent sentence provided in Section
6(2) the court shall direct the return of the dowry within a specified
period failing which an amount equal to the value of the dowry is to be
recovered from such person as fine and the woman or her heirs are to
be paid such fine.

This is a compensatory provision. The period within which
the dowry is to be returned, has not been laid down. This discretion
may have been provided, because sometimes the dilatory tactics dilute
such directions to a point of almost nullifying the beneficent provisions.

The 1986 Amending Act, effective from 19. 11. 1986 has
introduced further amendments which may be analysed as under:

(i) The punishment prescribed for non-transfer of dowry in
regard to fine, a minimum of rupees five thousand has
been prescribed with the limit remaining the same as of
ten thousand rupees.

(ii) A proviso has been added to sub-section (3) to the
effect that if the woman dies within seven years of her
marriage, otherwise than due to natural cause, such
property shall —

(a) if she has no children, be transferred to her parents,
or
(b) if she has children, be transferred to such children and pending such transfer, be held in trust for such children.

(iii) In accordance to the above said proviso, changes have been introduced in sub-section (3-A) and the words “her heirs” have been now substituted by the words “her heirs, parents or children”.

The aforesaid amendments have prescribed more stringent punishment. The judicial discretion has been constrained and there is no provision to reduce the sentence of imprisonment lower than six months or fine of less than rupees five thousand even for adequate and special reasons.

Another important change which has been introduced by the 1986 Amendment is that where the married woman dies childless and the death is not due to natural causes the dowry shall be transferred to her parents. If such a woman has children then the dowry shall stand transferred in trust to the children.

The words in the 1986 Amendment which call for a close examination are “dies ....... otherwise than due to natural causes”. Death has been defined as the end or termination of life. But when such termination takes place due to causes other than those which are natural, such an event is visited by different legal consequences.

The legislature has wisely made this provision for the recovery of the money value of the dowry not transferred to the woman as fine in stead of driving her to a civil court.

Section 7. Cognizance of Offences — The provisions of Section 7 are basically procedural specifying the court which will take cognizance on information or complaints from specified persons and
declares that certain parts of the Code of Criminal Procedure shall be inapplicable.

The section opens with a non-obstante clause. It says whatever provision may be there in the Code of Criminal Procedure qua the form of trial of offences, the offences under the Dowry Prohibition Act will not be tried by a Magistrate inferior to a Metropolitan Magistrate or a Judicial Magistrate of first class.

Section 7(1) (b) lays down the circumstances under which a court will take cognizance of an offence under the Dowry Prohibition Act. The word cognizance has its own connotation in criminal law. When a Magistrate applies his mind to an alleged violation of law, he is said to be taking cognizance of an offence as distinguished from an offender. Taking cognizance of an offence has been understood to imply taking notice in a limited sense.

Sub-clause (c) of Section 7(1) further empowers the Metropolitan Magistrate or a Judicial Magistrate of first class to pass any sentence authorised by the Dowry Prohibition Act.

Social Welfare Institutions for the purpose of Section 7 are only those which are recognized by the Central or the State Government. This provision is intended to safe guard against seasonal institutions which claim to intervene sometimes for oblique motive.

Section 7(2) excludes the applicability of Section 467 of Chapter XXXVI of the Code of Criminal Procedure, 1973 which prescribes for the period of limitation. As a matter of fact the Code of Criminal Procedure, 1973 has introduced a period of limitation for launching criminal prosecution first time in regard to offences not punishable with imprisonment for a term exceeding 3 years.

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5 Sourendra, ILR 37 Cal 412; Dahu, AIR 1948 Pat 25.
Sub-section (3) provides immunity to the statement made by the person aggrieved by the offence. This provision was necessary. Section 3 of the Act, for example, says that the giver and the taker both are punishable. Dowry is sometimes given under coercive circumstances. In other cases the giver may be in a penitent mood and may be keen to expose the wrong. In either case he runs a risk of being punished under the Act. Hence he has been given a legal umbrella of immunity by Section 7(3) of the Act.

Section 8. Offence to be cognizable for certain purposes and to be non-bailable and non-compoundable — The Dowry Prohibition Act, 1961 merely said that the offences under the Act were non-cognizable, bailable and non-compoundable.

The 1984 Amending Act made offences under the Act cognizable for investigation purposes but excluded the provisions of Section 42 of the Code of Criminal Procedure, 1973 and the powers to arrest without a warrant or without the order of a Magistrate. The 1986 Amending Act made offences under the Act non-bailable.

The section makes the Code of Criminal Procedure, 1973 applicable to the trial of offences punishable under the Dowry Prohibition Act, 1961 subject to the specifications spelt out in this section.

Section 8(1) lays down that the offences under the Act shall be deemed to be cognizable offences as defined in the Code of Criminal Procedure but for the limited purposes only. Thus the offences under the Act shall be treated as cognizable offences for the purposes of investigation and the entire scheme of investigation laid down in Section 154 to 176 of the Cr.PC will be followed for the purpose of investigation but Section 42 of Cr.PC with regard to arrest of a person without warrant or without an order of a magistrate, would not apply.
The Code of Criminal Procedure classifies criminal cases into three categories: (1) cases which are capable of being compounded by persons who are directly affected, (2) cases which can be compounded with the permission of the court by person indicated in the table to Section 320 (2) and (3) all other cases are non-compoundable. The offences under the Dowry Prohibition Act have been placed by the legislature in Group 3. In matrimonial relations there could be no end of pulls and pressure once the offence is alleged and proved and the legislative intention to lead social reforms could be frustrated with the distressing feature of compounding the offence when complained.

By making the offences under the Act non-bailable, the granting of bail has become a matter of discretion with court and the accused cannot be granted bail as a matter of right. This is an appropriate amendment in view of the enhanced punishments for the offences under the Act.

Section 8-A. Burden of proof in certain cases — This new section has been inserted by the Amending Act of 1986. The general rule as to burden of proof and the consequent obligation of beginning is that proof of any particular fact lies on the party who alleges it, not on him who denies it. The principles in other words is that the party who asserts the affirmative in any dispute ought to prove his assertion to such a degree that it looks the probable truth and the person denying till then may rest comfortable with his mere denial. Section 8-A has changed this obligation. It appears that the complainant may begin his evidence only to state his case on oath and then the onus shifts on to the accused to prove his denial or any other exception to escape the consequences. This is a reversal of well-known and uniformly accepted doctrine that it is for the accusing finger to prove its case beyond reasonable doubt. The basic principle laid down in Section 102 of the Indian Evidence Act is that the burden of proof in a
suit or proceeding lies on him who would fail if no evidence at all were given on either side. The mere statement of an accusation under Section 8-A of this Act will shift the burden of proving innocence on the party asserting it.

This is a reversal of fundamental principle of innocence and seems to have been the result of righteous indignation of the society provoked by the prevalence of the evil and its shamelessness. In some cases it may prove some what dangerous. Widespread prevalence of the evil justifies this presumption but at the same time the increased misuse of the dowry Acts call for its judicious handling by the court.

Section 8-B. Dowry Prohibition Officer — This provision has been introduced by Amending Act of 1986. The post of Dowry Prohibition officers was created with an objective that they will discharge the functions of Enforcement officers who may prevent the pernicious practice of dowry. They will also be investigating officers to collect evidence for the prosecution of the offenders. They may be further empowered to perform other functions as the rules under the Act may specify.

There is also a provision for appointment of an Advisory Board for assisting the Dowry Prohibition officer. The Board shall consist of social workers whose number shall not exceed five out of whom two shall be women.

It was hoped that the officers appointed under this provision shall fulfil the objectives aimed at and will be degenerate as some other functionaries would have been under the scheme of things.

The weight of custom, the desire to out step the neighbour, the evil of unaccounted money, the approbation and applause that ostentation receives from society, the bottomless avarice for wealth, the bad example set by the leaders of society, all conspire to defeat the
machinery of law to curb the evil of dowry. Dowry is the step sister of bribery and has not shown any decline because the participants are cooperative conspirators\(^7\). It was expected that a dedicated set of Dowry Prohibition officers may be able to curb the evil to some extent, but all this has come to a halt due to the negligence of the State towards a serious cause. Regrettably, even 23 years after passing of Amending Act of 1986, no post has been created nor any appointment has been made on the post of Dowry Prohibition officer in Bihar.

**Section 9. Power to make rules** — The section has been amended once by the Amending Act of 1984 whereby sub-section (3) was inserted with the intention of allowing the Central Government to make sure that expeditious reforms are introduced towards the enforcement of the Act.

This is a legislative authority for delegated legislation to the executive. The section authorises the Central Government to make rules for the carrying out of the purposes of this Act. In particular there are two subjects on which rules could be made. The one is the form and manner in which lists of the presents as provided in sub-section (2) of Section 3 have to be made, and the other is the better coordination of policy and action with respect to the administration of the Act. Rules have been already made under this section which has been discussed in this chapter later on.

Section 9(3) is an effective device for a vigilant Parliament to scrutinize the rule and if it thinks fit either amend the rule or delete it. It is, therefore, enough of a safeguard against the executive acting beyond delegated powers and a step towards vigilance and control of sub-ordinate law-making authority.

**Section 10. Power of the state Government to make rules** — The section has been amended by the Amending Act of 1986

\(^7\) Beri, Justice B P, op. cit. p. 122
whereby a legislative authority for delegated legislation has been provided for the State Executives other than those as provided in Section 9 for the Union Executives to make rules for carrying out the purposes of the Act. The Act provides that the State Executives can empower the Dowry Prohibition Officers to perform certain additional functions and also the limitations and conditions under which he may exercise his functions.

Sub-section 10(3) provides for control of State Legislature over the rules made under Sub-section (1) and (2).
3. 1. 2. The Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules, 1985:

In exercise of powers conferred by Section 9 of the Dowry Prohibition Act, 1961 (28 of 1961) the Central Government made the Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules, 1985 which came into force w.e.f. 02.10.1985.

The relevant Rules provide that –

(1) The list of presents given at the time of marriage to the bride shall be maintained by the bride.

(2) The lists of presents given at the time of marriage to the bridegroom shall be maintained by the bridegroom.

(3) Every list of presents, shall be prepared in writing at the time of marriage or as soon as possible after the marriage and shall contain (i) brief description of each presents, (ii) the approximate value of the presents, (iii) the name of the person who has given the presents and (iv) where the person giving the presents is related to the bride or bridegroom, a description of such relationship and shall be signed by both the bride and bridegroom.

(4) It has also been provided that the bride or the bridegroom if she or he so desires, may obtain on either or both of the list, the signature or signatures of any relations of the bride or the bridegroom or of any other person or persons present at the time of marriage. Such a signature has got its evidentiary value and may be helpful in case of any dispute relating to the authenticity of those lists.

8 Gazette of India, Extraordinary, Part II, Section (3) (i), Dated 19.08.1985. p. 2.
9 Appendix “B” to this work
Though these rules are aimed to attain the worthy purpose of maintaining a record of presents given at the time of marriage, but, unfortunately, they are yet to give any outcome as provided in the Act or Rules because of failure of the people to comply with them. Again the position of the bride people is so humble and weak at the time of marriage that they all prays that every thing is going well in the marriage ceremony. Because of the weak and lower position of the bride people in the marriage negotiation that they are even not able to think about a list as envisaged in Dowry Prohibition Rules and complying with it is still far away.
3.1.3. Indian Penal Code, 1860:

In order to prevent the crimes related to demand of dowry two amendments were also made in Indian Penal Code, 1860. By the first amendment a new “Section 498-A” and by the second amendment another new “Section 304-B” was inserted in the Indian Penal Code, 1860.

The new Chapter XX A was inserted by the Criminal Law (Second Amendment) Act, 1983 in the Indian Penal Code, 1860 which makes the act of cruelty by husband or relatives of husband an offence punishable under Section 498-A and reads as follows:

498-A. Husband or relative of husband of a woman subjecting her to cruelty — Whoever, being the husband or the relative of the husband of a woman, subjects 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.

Explanation — For the purpose of this section, ‘cruelty’ means —

(a) any wilful 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.”

The following are the ingredients of this section:

10 By Act No. 46 of 1983 Section 498-A and by Act No. 43 of 1986 Section 304-B was inserted in IPC
(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 the husband of the woman or by the relative of her husband.11

Explanation (a) gives meaning of cruelty. The meaning of 'cruelty' for the purpose of this section has to be gathered from the language as found in Section 498-A and as per that section 'cruelty' means "any wilful 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, etc. or 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".12

The new dimension has been given to the concept of cruelty. Explanation to section 498-A provides that any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide would constitute cruelty. Such wilful conduct which is likely to take grave injury or danger to life, limb or health whether mental or physical of the woman would also amount to cruelty. Harassment of 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.13

If cruelty is by itself established and the fact of suicide is also established, it would not be sufficient to bring home the guilt of committing cruelty as explained in clause (a) of the Explanation. A

reasonable nexus has to be established between the cruelty and the suicide in order to make good the offence of cruelty. Alternatively, the cruelty established has to be of such gravity as is likely to drive a woman to commit suicide. If suicide is established, it is further to be established that it was occasioned on account of cruelty which was of sufficient gravity so as to lead a reasonable person placed in similar circumstances to commit suicide.¹⁴

Where the only grievances made in the dying declaration was that she wanted to live separately, but her husband was not prepared and on that score, the husband had beaten her in the afternoon on the previous day and that her grand mother disliked her, the court held that these statements in the dying declaration were not sufficient to substantiate the prosecution case that the deceased was meted out with ill treatment, an offence punishable under section 498-A of the Indian Penal Code.¹⁵

Clause (b) does not make each and every harassment cruelty. The harassment has to be with a definite object, namely to coerce the woman or any person related to her to meet any unlawful demand. Hence, mere harassment is not cruelty. Mere demand for property, etc. by itself is not cruelty. It is only where the harassment is shown to have been committed for the purpose of coercing a woman to meet the demands that is cruelty and this is made punishable under the section.¹⁶

The expression cruelty postulates such a treatment as to cause reasonable apprehension in the mind of the wife that her living with the husband will be harmful and injurious to her life. Therefore, to decide the question of cruelty the relevant factors are matrimonial relationship between the husband and wife, their cultural status, temperament, state of health, their interaction in the daily life which

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dominate the aspect of cruelty. Where the deceased wife belonged to respectable orthodox family and the husband was of highly suspicious nature and made life difficult for the deceased by demeaning and insulting her, calling prostitute, not allowing her to meet others, and denying her family life and comforts, the trial court was justified in convicting the accused under the section.\textsuperscript{17}

But where the evidence showed that the deceased underwent mental suffering and unhappiness largely due to incompatibility of temperament and attitude and not because of any ill-treatment by the accused-husband and his parents on account of dowry, the conviction was not proper.\textsuperscript{18}

For the fault of the husband, the in-laws or 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 conjecture and implications such relations cannot be held guilty for the offence relating to dowry death.\textsuperscript{19}

The second amendment in order to prevent dowry related crime was insertion of Section 304-B in Indian Penal Code by the Dowry Prohibition (Amendment) Act, 1986\textsuperscript{20}

The newly inserted Section 304-B of Indian Penal Code reads as follows:

"304-B. Dowry death – (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than in 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

\textsuperscript{17}Sarojakshan Shankaran Nayar v. State of Maharashtra, 1995 Cri L J 340 (Bom).
\textsuperscript{18}State v. Ramaswamy Dr H A 1996 Cri LJ 2628 (Kar).
\textsuperscript{20}Received assent of the president on September 8th, 1986, was published in Gazette of India, Extraordinary, Part ii, Section1, dated September 9th, 1986 and came into force w.e.f. 8th September, 1986.
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 purpose of this sub-section, “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 be not less than seven years but which may extend to imprisonment for life.”

Before Section 304-B I.P.C. may apply, the following essentials must be satisfied:

1. The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances.

2. Such death must have occurred within seven years of marriage.

3. Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband.

4. Such cruelty or harassment must be for or in connection with demand for dowry.

5. Such cruelty or harassment is shown to have been meted out to the woman before her death.21

It is only when the aforementioned ingredients are established by acceptable evidence such death shall be called “dowry death” and such husband or his relative shall be deemed to have

caused her death. In case of offence under section 304-B of IPC an exception is made by deeming provision as to nature of death as “dowry death” and that the husband or his relative, as the case may be, is deemed to have caused such death, even in the evidence to prove these aspects but on proving the existence of ingredients of the said offence by convincing evidence. Hence, there is need of greater care and caution, in scrutinizing the evidence and in arriving at the conclusion as to whether all the above mentioned ingredients of the offence are proved by the prosecution.\textsuperscript{22}

It is not enough that harassment or cruelty was caused to woman with a demand of dowry for some time, if Section 304-B is to be invoked. But it should have happened “soon before her death”. The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object by providing such a radius of time by implying the words “soon before her death” is to emphasize the idea that her death should in all probabilities, have been the aftermath of such cruelty or harassment. In other words there should be perceptible nexus between her death and the dowry related harassment or cruelty inflicted to her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in the position to gauge that in all probabilities the death would not have been the immediate cause of such harassment or cruelty. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept “soon before her death”.\textsuperscript{23}

Deterrent sentence is called for in cases of dowry deaths and harassment of women by husbands or relatives of the husbands. Offences against women are increasing and hence sentence must be

\textsuperscript{22} Sunil Bajaj v. State of M. P. 2002 (1) PCCR 257 (SC).
deterrent. It must be an eye opener to the offender and he must realize that he cannot get away merely by paying some amount as fine or by remaining in jail for some time.\textsuperscript{24}

The Supreme court observed that it is virtually a matter of shame to the civilization that indiscriminate attacks and violence are directed against married women for obnoxious and anti-social demand of dowry and accused are let off imposing free-bite sentence “till rising of the court” or “sentence already undergone” without verifying whether the accused has undergone any sentence. Result is violence against women continues unabated as law loses its deterrent effect.\textsuperscript{25}

Thus as far as the efficacy of anti-dowry law is concern, it has been disheartening. In view of painful and stunning effect of dowry law in containing the menace of evil of dowry researcher is of the view that female education regarding their importance, their value of being progenitor and their contribution on to the human race must start from home and continue under strict patronage of state, parents and women organisations till the age of eighteen years so that they themselves can help the parents and guardians in avoiding the giving the dowry and stand in safer position while being given in marriage.

\textsuperscript{24} Kailash Kaur v. State of Punjab; AIR 1987 SC 1368.
\textsuperscript{25} Narsingh Prasad (2001) 4 SCC 522
3. 2. Procedural Measures

So far the Legislature has taken up the following procedural measures to contain the evils of dowry:

3. 2. 1. Relevant Provisions of Criminal Procedure Code, 1973:

The Criminal Law (Second Amendment) Act, 1983 (46 of 1983) made necessary amendment in the Code of Criminal Procedure, 1973 (2 of 1974) *inter alia* to deal effectively not only the cause of dowry death but also cases of cruelty to married women by their in-laws. The relevant provisions of Criminal Procedure Code after such amendment stand as under:

**Section 174. Police to enquire and report on suicide etc** – This section provides that - (1) When the officer-in-charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another person or by an animal or by machinery or by an accident or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquest, and, unless otherwise directed by any rule prescribed by the State Government, or Sub-Divisional Magistrate shall proceed to the place where the body of such deceased person is, and there, in present of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or as what weapon or instrument (if any), such marks appears to have inflicted.
(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-Divisional Magistrate.

(3) When -

(i) the case involves suicide by a woman within seven years of her marriage; or

(ii) the case relates to death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in that behalf; or

(iv) there is a doubt regarding the cause of death; or

(v) the police officer for any other reason considered it expedient so to do,

he shall subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest civil surgeon, or other qualified medical man appointed in this behalf by the State Government if the state of the weather and distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) The following Magistrates are empowered to hold inquest, namely, any District Magistrate or Sub-Divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate.
The second procedural measure in this regard is incorporated in Section 176 of Criminal Procedure Code, 1973 to know the cause of death of a woman.

**Section 176. Inquiry by Magistrate into cause of death**

– (1) When any person dies while in the custody of police or when the case is of the nature referred to in clause (i) or clause (II) of subsection (3) of Section 174, the nearest Magistrate empowered to hold inquest shall, and in any other case mentioned in sub-section (1) of Section 174, any Magistrate empowered may hold an enquiry into the cause of death either in stead of, or in addition to, the investigation held by the police officer and if he does so he shall have all the powers in conducting it, which he would have in holding an enquiry into an offence.

(2) The Magistrate holding such an enquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case.

(3) Whenever such magistrate considers it expedient to make an examination of dead body of any person who has been already interred, in order to discover the cause of his death the Magistrate to be cause the body may disinterred and examined.

(4) Where an enquiry is to be held under this section, the Magistrate shall, whenever practicable, inform the relative of the deceased whose names and addresses are known, and shall allow them to remain present in the enquiry.

**Explanation** – In this section, the expression “relative” means parents, children, brothers, sisters and spouse.

In addition to the above two procedural measures to be adopted while dealing with case of death of a woman especially the dowry-death a strict condition is put on the Judicial Magistrate taking
cognizance of the offence of cruelty under Section 198-A which is reproduced below -

Section 198-A. Prosecution of offences under Section 498-A of the Indian Penal Code – No Court shall take cognizance of an offence punishable under Section 498-A of the Indian Penal Code except upon a police report of the fact which constitute such offence or upon a complaint made by the person aggrieved by 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 person related to her by blood, marriage or adoption.
3. 2. 2. Indian Evidence Act, 1872:

In order to remove the procedural lacunae and avoid wastage of time in establishing before the court a fact to be admitted, the state has introduced a presumption of fact for the court dealing with the case of suicide of a married woman in connection with dowry and cruelty. Accordingly a new Section 113-A\textsuperscript{26} was introduced in the Evidence Act which is reproduced below for the purpose of discussion and analysis.

**Section 113-A. 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 other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

*Explanation* – For the purpose of this section, “Cruelty” shall have the same meaning as in Section 498-A of the Indian Penal Code, 1860.

This amendment was necessitated to meet the social challenge to save the married women from being ill treated or forced to commit suicide by the husband or relative of the husband generally in order to coerce her to fetch more dowry or on her refusal to do so kill herself keeping in view that the maltreatment of a married woman is usually confined within the four-walls of her matrimonial home which in

\textsuperscript{26} By Criminal Law (Second Amendment) Act, 1983 Indian Evidence Act, 1872 was amended and a new Section 113-A was inserted which came into force w.e.f. 26\textsuperscript{th} December, 1983.
the most cases are located far away from the home of the her parents and there is no likelihood of availability of any evidence.

Young women do not set fire to themselves to welcome or embrace the death unless provoked or compelled to take that desperate step by the intolerance of their misery. The greed for dowry, and indeed the dowry system as institution calls for the severest condemnation. It is evident that the legislative measures including the Dowry Prohibition Act have not met with the success for which they are designed. Perhaps the legislation in itself cannot succeed in stamping out such evil, and the solution must ultimately be found in the conscience and the will of the social community and its active expression through legal and constitutional methods.

In a case where a wife dies in suspicious circumstances in the husband’s home, it is invariably a matter of considerable difficulty to ascertain the precise circumstances in which the incident occurred. As the incident takes place in the home of the husband, the material witnesses are usually the husband and his parents or other relatives of the husband staying with him. Whether it was cooking at the kitchen stove which was responsible for the accident according to the inmates of the house or there was an inexplicable urge to suicide or whether indeed the young wife was the victim of a planned murder, are matters closely involve the intimate knowledge of a woman’s daily existence.

If the incident is a result of a crime by the husband or his family, the problem of ascertaining the truth is burdened by the privacy in which the incident occurred.

By introducing this provision of presumption the Court has been facilitated to raise a presumption though rebuttable. The presumption is only applicable within duration of seven years from the date of marriage because in those years the newly married woman after transplantation in her new family is in the process of taking roots and
thus vulnerable to various adverse factors which may amount to cruelty. With passage of time after marriage and birth of children there are remote chances of treating a married woman with cruelty by the husband or his relative.

Presumption of abetment of suicide can be drawn only when the prosecution has discharged the initial onus of proving cruelty. 27

For applying the provisions of this section resort to straight jacket approach for raising a presumption of abetment of suicide is not correct. It may be correct approach in all circumstances that as no other earthly reason for commission of suicide was forthcoming before the Court (in absence of any probe at all into that aspect), therefore, by reason of cruelty a presumption of abetment of suicide may be drawn against the husband and the in-laws. The legislative mandate of this section is that where a woman commits suicide within seven years of marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty as the terms has been defined in Section 498-A, Indian Penal Code 1860, the Court may presume, having regard to all other circumstances of the case that such suicide has been abetted by such person. It is evident that legislature was extremely careful in drafting the provisions of this section of the evidence Act. Had it been the intention of the legislature that the court should in all cases jump upon a conclusion as a rule that there has been abetment of suicide simply because the suicide has been committed by the woman within seven years of marriage and she was subjected to cruelty, the legislature would not have used such flexible expression as “the Court may presume having regard to all other circumstances of the case, that such suicide has been abetted.” 28

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One may not be oblivious that the presumption under section 113-A or B about abetment of committing suicide, there must be evidence that the husband or relation, who were charged, had subjected the deceased to cruelty, and only on existence and availability of these circumstances, the court can presume that suicide had been abetted by husband or relation. Abetment, as has been reiterated in catena of decisions by the court, does not envisage that actual words must be used to that effect but what constitute instigation, must necessarily and specifically be suggestive of the consequences, yet a reasonable certainty to incite the consequences must be capable of being spelt out. Where the appellants had by their acts or omission or by their continued course of conduct created such circumstances as to drive the deceased to commit suicide, they shall be held responsible. Some sort of bald assertions made by some witnesses about maltreatment of the deceased or even husband beating her, particulars thereof were conspicuously wanting in their evidence are not sufficient to prove the offence. Even if cruelty by itself is established, and the fact of suicide too is established, it can be safely inferred that it would not be sufficient to bring home the guilt of committing cruelty, as defined in explanation A, as a reasonable nexus had to be established between cruelty and suicide, in order to make good offence of cruelty, and that apart, cruelty, even if established, has to be of such gravity which is likely to drag a woman to commit suicide. Even if cruelty or harassment had been meted out to the deceased, there must be close proximity between period of cruelty and death of the deceased. It is no longer res integra that there must be perceptible nexus between period of cruelty and also period of death and if the interval between two periods is wide, even if there be evidence of cruelty, it would not bring the offence under the mischief of Section 306/304-B IPC.\(^{29}\)

\(^{29}\) Gopal Prasad v. State of Bihar, 2004 (1) PCCR 299 (PHC)
Section 113-A has been created looking to a very peculiar, particular and special circumstance in which a wife is placed in her husband’s house in the Indian Society.

Further by the Dowry Prohibition (Amendment) Act, 1986, a new Section 113-B has been inserted in the Indian Evidence Act, 1872. The Section reads as follows:

**Section 113-B. Presumption as to dowry death** – 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 has 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 has caused the dowry death.

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

There is no doubt that in view the impediment in the pre-existing law in securing evidence to prove dowry related death; on proof of certain essentials the presumptive section 113-B in the Act has been inserted.

As per the definition of dowry death in Section 304-B, IPC and the wording of the presumptive Section 113-B of the Act, one of the essential ingredients, amongst other, in both the provisions is that the concerned woman must have been “soon before her death subjected to cruelty or harassment “for or in connection with the demand of dowry”. Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death. The
presumption shall be raised only on the proof of the following essentials.\textsuperscript{30}

1. The question before the Court must be whether the accused has committed the dowry death of a woman (this means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B, IPC).

2. The woman was subjected to cruelty or harassment by her husband or his relatives.

3. Such cruelty or harassment was in connection with any demand for dowry.

4. Such cruelty or harassment was soon before her death.

A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the “death occurring otherwise than in normal circumstances”. The expression soon before is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty and harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. “Soon before is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the

proof of an offence of dowry death as well as for raising a presumption under section 113-B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression “soon before” is not defined. A reference to expression "soon before" used in Section 114, Illustration (a) of the Evidence Act is relevant. It lays down that the court may presume that a man who is in the possession of goods “soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the expression “soon before” is left to be determined by the courts, depending upon the facts and circumstances of each case. Suffice, however, to indicate 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 proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If 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.”

This rule of evidence is prescribed in the law to obviate the prosecution of the difficulty to further prove that the offence was perpetrated by the husband or his relative, as then it would be the burden of the accused to rebut the presumption. This section of the Evidence Act have been introduced with a view of combating the increasing menace of dowry deaths looking to a very peculiar, particular and special circumstance in which a wife is placed in her husband’s house in the Indian Society.31

The arguments in favour of this presumption are that dowry-hungry persons usually extort dowry by pressure and resort to

31 Keshav Chandra Panda v. State, 1995 Cr. L. J. 174 (Ori.).
torture, physical or mental or both. Nobody normally wishes to end one’s life for minor irritations that are the part of life and it is ordinarily unbearable pain or humiliation that drives a person to terminate one’s life. The torture being usually practiced in the closed confines of a home, dependable evidence of such tortures is ordinarily not available because of high percentage of illiteracy and the subjugation that womanhood has suffered for ages. It is, therefore, a natural consequence that the newly wedded women are becoming the victim of dowry death.

The arguments against this presumption are that the offence being cognizable even in doubtful cases there is a likelihood of undue harassment elsewhere even of innocent persons. The treatment of a woman being of closed confines the accused will face an equal amount of difficulty in disproving cruelty or harassment.

The demand for dowry is so rampant that the social anger has expressed itself in the legislature by raising the presumption. But today we live in a society in which misuse of Dowry Prohibition laws is in vogue and in such a situation jealous bride people can bring a hell of misfortunes against the husband and his relatives by means of an easily concocted false case of dowry-death and by procuring the support of corrupt police officials. In view of increasing misuse of dowry prohibition law it is humbly submitted that perhaps the object of justice would have been better served by creating a “may presume” rather than a “shall presume”.