CHAPTER – III

DOWRY RELATED DEATH UNDER INDIAN PENAL CODE

A. General Introduction

Marriages are made in heaven, is an adage. A bride leaves the parental home for the matrimonial home, leaving behind sweet memories there, with a hope that she will see a new world full of love in her groom’s house. Alas! The alarming rise in the number of cases involving harassment of the newly wedded girls for dowry shatters the dreams. In-laws are characterised to be outlaws for perpetrating terrorism which destroys the matrimonial home. The terrorist is dowry which is spreading tentacles in every possible direction.

Mothers-in-law, sisters-in-law, husbands and other relatives are being increasingly involved in the breaking of the wedlock for the lust of dowry. Dowry death, murder, suicide, and bride burning are symptoms of peculiar social malady and are an unfortunate development of our social set up. During the last few decades India has witnessed the black evils of the dowry death system in a more acute form in almost all parts of the country since it is practised by almost every section of the society. It is almost a matter of day-to-day occurrence that not only married women are harassed, humiliated, beaten and forced to commit suicide, leave husband, etc., tortured and ill treated but thousands are even burnt to death because parents are unable to meet the dowry demands of in-laws or their husbands.¹

A study of dowry gives rise to certain questions, one being, is the unfulfilled demand for dowry the only reason for

¹ Times of India, May 20, 2000.
Dowry-related violence and death. Dowry violence against a woman may be seen as viewing her as an individual found wanting in some respect. Dowry dispute is used as a garb to undermine the value of the woman herself, of taunting her for the sake of troubling her and showing her inferior place. Kanwaljit Deol, a Police Commissioner who headed the first ever Anti-Dowry Cell and Madhu Kishwar the editor of a popular Indian feminist magazine Manushi, both closely involved with the fight against dowry have each pointed out that the abuse of women over dowry was inexorably linked with the wider issue of marital violence and the general mistreatment of women and not dowry per se. Madhu Kishwar phrases this issue well when she states that criticizing the dowry, like criticizing her family, is a way of criticizing her, and the package deal that she represents. Thus to some extent it can be held that dowry is only one among many pretexts used by in-laws to legitimize abuse against the woman and her position as such. To lay the sole blame for all harassment and deaths of Indian women at the door of dowry alone would be to run rough shod over a very complex and deep-rooted social malady.

Dowry has been continuing trend in Indian society as we find its mention even in the roots of our history. Rulers in ancient times made this system rampant. Dowry was seen as a status symbol and a prestige issue in those times. The trend continues even today.

The system of dowry is becoming uglier day by day. The parents of a girl have to pay a heavy price in the name of dowry to the parents of the bridegroom, it they want to see their daughters in comfortable position in the family of their in-laws. Exorbitant amount in the form of cash and luxury items are demanded and have to be paid by the bride’s parents even if they

---

are unable to afford it. So, the marriage of a daughter means complete financial ruin for her parents.

It has been observed by Shah, J.\(^3\),

Daily, the demon of dowry is devouring the lives of young girls, who marry with high hopes of having heavenly abode in their husband's house. In a few cases, the guilty are punished but it has no deterrent effect on mother-in-law or sister-in-law who might have suffered similar cruelty/ tyranny. This deep-rooted social evil requires to be controlled only by the society. The society has to find out ways and means of controlling and combating this menace of receipt and payment of dowry. It appears that instead of controlling payment and receipt of dowry in one or the other form, it is increasing even in the educated class. May be that it is increasing because of accumulation of unaccounted wealth with a few and others having less means follow the same out of compulsion.

The problem is that even after the payment of heavy dowry there is no guarantee that the bride will enjoy a comfortable life in her new family. Additional demands are constantly made and if they are not met by the parents of the bride, she is subject to physical and mental torture by her in-law. Her life becomes miserable. Greed and violence snatch the pleasure of her life.

The custom of dowry started with the giving of presents to the young woman entering upon marriage by her immediate family members and relatives as an expression of love and affection. It was given voluntarily and no compulsion was exercised. But today dowry has become a monstrous evil. When a budding young girl gets married, she is uprooted from her sweet

---

home and transplanted in her husband's house. There, she lives in real hell amidst the jeering, harassment and physical violence from her in-laws in connection with dowry. Here, her ambition turns ambiguous, budding desires turns fading petal, blooming life turns drooping leaves, soaring dreams turn drowning reality.

We come across the reports regarding dowry deaths, mentioned in the newspapers daily. An accurate picture is difficult to obtain, as statistics are varied and contradictory. In 1995, the National Crime Bureau of the Government of India\(^4\) reported about 6,000 dowry deaths every year. In 2007 dowry deaths under Section 304B of IPC have been reported total of 8093 by National Crime Record Bureau, New Delhi\(^5\). A more recent police report stated that dowry deaths had risen by 170 percent in the decade to 1997. All of these official figures are considered to be gross understatements of the real situation. Unofficial estimates cited in a 1999 article by Himendra Thakur “Are our sisters and daughters for sale?” put the number of deaths at 25,000 women a year, with many more left maimed and scarred as a result of attempts on their lives.\(^6\)

Some of the reasons for the under-reporting are obvious. As in other countries, women are reluctant to report threats and abuse to the police for fear of retaliation against themselves and their families. But in India there is an added disincentive. Any attempt to seek police involvement in disputes over dowry transactions may result in members of the woman’s own family being subject to criminal proceedings and potentially imprisoned. Moreover, police action is unlikely to stop the demands for dowry payments.\(^7\)

---

\(^4\) National Crime Record Bureau, New Delhi.
\(^5\) Ibid., p.
\(^7\) Ibid.
The anti-dowry laws in India were enacted in 1961 but both parties to the dowry—the families of the husband and wife—are criminalised. The laws themselves have done nothing to halt dowry transactions and the violence that is often associated with them. Police and the courts are notorious for turning a blind eye to cases of violence against women and dowry associated deaths. It was not until 1983 that domestic violence became punishable by law.

Many of the victims are burnt to death—they are doused in kerosene and set on fire. Routinely the in-laws claim that what happened was simply an accident. The kerosene stoves used in many poorer households are dangerous. When evidence of foul play is too obvious to ignore, the story changes to suicide—the wife, it is said, could not adjust to new family life and subsequently killed herself.

Research done in the late 1990s\(^8\), revealed that many deaths are quickly written off by police. The police record of interview with the dying woman—often taken with her husband and relatives present—is often the sole consideration in determining whether an investigation should proceed or not. As Vimochana\(^6\) was able to demonstrate, what a victim will say in a state of shock and under threat from her husband’s relatives will often change markedly in later interviews.

Of the 1,133 cases of “unnatural deaths” of women in Bangalore in 1997, only 157 were treated as murder while 546 were categorised as “suicides” and 430 as “accidents”. But as Vimochana activist V. Gowramma explained: “We found that of 550 cases reported between January and September 1997, 71 percent were closed as ‘kitchen/cooking accidents’ and ‘stove-bursts’ after investigations under section 174 of the Code of

---

\(^8\) Vimochana, A Women’s Group in the Southern City of Bangalore.

\(^6\) (a) Ibid.
Criminal Procedures.” The fact that a large proportion of the victims were daughters-in-law was either ignored or treated as a coincidence by police.

Figures in *Frontline* indicate what can be expected in court, even in cases where murder charges are laid. In August 1998, there were 1,600 cases pending in the only special court in Bangalore dealing with allegations of violence against women. In the same year three new courts were set up to deal with the large backlog but cases were still expected to take six to seven years to complete. Prosecution rates are low. The results of one court are reported as “Of the 730 cases pending in his court at the end of 1998, 58 resulted in acquittals and only 11 in convictions. At the end of June 1999, out of 381 cases pending, 51 resulted in acquittals and only eight in convictions.”

Young married women are particularly vulnerable. By custom they go to live in the house of their husband’s family following the wedding. The marriage is frequently arranged, often in response to advertisements in newspapers. Issues of status, caste and religion may come into the decision, but money is nevertheless central to the transactions between the families of the bride and groom.

The wife is often seen as a servant, or if she works, a source of income, but has no special relationship with the members of her new household and therefore no base or support. Some 40 percent of women are married before the legal age of 18. Illiteracy among women is high, in some rural areas up to 63 percent. As a result they are isolated and often in no position to assert themselves.

---

10 Ibid.
Demands for dowry can go on for years. Religious ceremonies and the birth of children often become the occasions for further requests for money or goods. The inability of the bride’s family to comply with these demands often leads to the daughter-in-law being treated as a pariah and subject to abuse. In the worst cases, wives are simply killed to make way for a new financial transaction—that is, another marriage.

A recent survey of 10,000 Indian women conducted by India’s Health Ministry found that more than half of those interviewed considered violence to be a normal part of married life—the most common cause being the failure to perform domestic duties up to the expectations of their husband’s family.

The underlying causes for violence connected to dowry are undoubtedly complex. While the dowry has roots in traditional Indian society, the reasons for prevalence of dowry-associated deaths have comparatively recent origins.

Traditionally a dowry entitled a woman to be a full member of the husband’s family and allowed her to enter the marital home with her own wealth. It was seen as a substitute for inheritance, offering some security to the wife. But under the pressures of cash economy introduced under British colonial rule, the dowry like many of the structures of pre-capitalist India was profoundly transformed.

Historian Veena Oldenburg in an essay entitled “Dowry Murders in India: A Preliminary Examination of the Historical Evidence”11 commented that the old customs of dowry had been perverted “from a strongly spun safety net twist into a deadly noose”. Under the burden of heavy land taxes, peasant families were inevitably compelled to find cash where they could or lose

their land. As a result the dowry increasingly came to be seen as a vital source of income for the husband’s family.

Oldenburg explains: “The will to obtain large dowries from the family of daughters-in-law, to demand more in cash, gold and other liquid assets, becomes vivid after leafing through pages of official reports that dutifully record the effects of indebtedness, foreclosures, barren plots and cattle dying for lack of fodder. The voluntary aspects of dowry, its meaning as a mark of love for the daughter, gradually evaporates. Dowry becomes dreaded payments on demand that accompany and follow the marriage of a daughter.”\(^\text{12}\)

What Oldenburg explains about the impact of money relations on dowry is underscored by the fact that dowry did not wither away in India in the 20th century but took on new forms. Dowry and dowry-related violence is not confined to rural areas or to the poor, or even just to adherents of the Hindu religion. Under the impact of capitalism, the old custom has been transformed into a vital source of income for families desperate to meet pressing social needs.

A number of studies have shown that the lower ranks of the middle class are particularly prone. According to the Institute of Development and Communication, “The quantum of dowry exchange may still be greater among the middle classes, but 85 percent of dowry death and 80 percent of dowry harassment occurs in the middle and lower stratas.” Statistics produced by Vimochana in Bangalore show that 90 percent of the cases of dowry violence involve women from poorer families, who are unable to meet dowry demands.

There is a definite market in India for brides and grooms. Newspapers are filled with pages of women seeking husbands

\(^\text{12}\) Ibid.
and men advertising their eligibility and social prowess, usually using their caste as a bargaining chip. A “good” marriage is often seen by the wife’s family as a means to advance up the social ladder. But the catch is that there is a price to be paid in the form of a dowry. If for any reason that dowry arrangements cannot be met then it is the young woman who suffers.

One critic, Annuppa Caleekal, commented on the rising levels of dowry, particularly during the last decade. “The price of the Indian groom astronomically increased and was based on his qualifications, profession and income. Doctors, charted accountants and engineers even prior to graduation develop the divine right to expect a ‘fat’ dowry as they become the most sought after cream of the graduating and educated dowry league.”

The other side of the dowry equation is that daughters are inevitably regarded as an unwelcome burden, compounding the already oppressed position of women in Indian society. There is a high incidence of gender-based abortions—almost two million female babies a year. One article noted the particularly crass billboard advertisements in Bombay encouraging pregnant women to spend 500 rupees on a gender test to “save” a potential 50,000 rupees on dowry in the future. According to the UN Population Fund report for the year 2000, female infanticide has also increased dramatically over the past decade and infant mortality rates are 40 percent higher for girl babies than boys.

Critics of the dowry system point to the fact that the situation has worsened in the 1990s. As the Indian economy has been opened up for international investment, the gulf between rich and poor widened and so did the economic uncertainty facing the majority of people including the relatively well-off. It was a recipe for sharp tensions that have led to the worsening of a number of social problems.
One commentator Zenia Wadhwani noted: “At a time when India is enjoying unprecedented economic advances and boasts the world’s fastest growing middle class, the country is also experiencing a dramatic escalation in reported dowry deaths and bride burnings. Hindu tradition has been transformed as a means to escaping poverty, augmenting one’s wealth or acquiring the modern conveniences that are now advertised daily on television.”

Domestic violence against women is certainly not isolated to India. The official rate of domestic violence is significantly lower than in the US, for example, where, according to UN statistics, a woman is battered somewhere in the country on average once every 15 seconds. In all countries this violence is bound up with a mixture of cultural backwardness that relegates women to an inferior status combined with the tensions produced by the pressures growing economic uncertainty and want.

In India, however, where capitalism has fashioned out of the traditions of dowry a particularly naked nexus between marriage and money, and where the stresses of everyday life are being heightened by widening social polarisation, the violence takes correspondingly brutal and grotesque forms.

B. Incorporation of Section 304B and 498A in the Indian Penal Code

(a) Section 304B

In view of the increasing dowry deaths and the demand of the society to check such inhuman acts being meted out upon women, in 1986 a new offence known as “Dowry Death” was

inserted in the Indian Penal Code as Section 304B by the Dowry Prohibition (Amendment) Act, 1986 with effect from November 19, 1986. The provisions under Section 304B, Indian Penal Code are more stringent than that provided under Section 498A of the Penal Code. The offence is cognizable, non-bailable and triable by a court of Session. In view of the nature of the dowry offences that are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence necessary for conviction is not easy to get. Accordingly, the Amendment Act 43 of 1986 has inserted Section 113 B in the Evidence Act, 1872 to strengthen the prosecution hands by permitting a certain presumption to be raised if certain fundamental facts are established and the unfortunate incident of death has taken place “within seven years of marriage”.

Perhaps, the period of seven years, has been considered cut off period for the reason that a marriage is complete after the bride and bride-groom have taken seven steps before the sacred nuptial fire. One step being considered equivalent to one year. The period of seven years has also been fixed for bigamy under Section 494, IPC to exonerate the husband or wife for marrying again during the lifetime of such husband or wife, if at the time of the subsequent marriage the other party is continuously absent from such person.\(^{14}\) Therefore, the period of seven years, as explained by the Supreme Court in \textbf{Iqbal Singh}\(^ {15}\), is considered to be turbulent one after which the legislature assumed that the couple would have settled down in life. Section 113B of the Evidence Act\(^ {16}\) states that if it is shown that soon before the death of a woman such woman has been subjected 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

\(^{14}\) Tolson v. Tolson, (1880) 23 QBD 168.
\(^{16}\) The Evidence Act, 1872, Section 113B Presumption as to Dowry Death. Inserted by Act 43 of 1986 Sec. 12 (w.e.f. 5.1.1986).
under Section 304B, IPC. The burden of proof of innocence accordingly shifts on defence.

(b) Section 498A

In 1983, to check cruelty to women by husbands and parents-in-law, rampant in an unprecedented scale in the country, a new Chapter, XXA, entitled: ‘Of cruelty by Husband or Relatives of Husband’ was added in the Penal Code. In addition, a consequential amendment to the Evidence Act was also made, shifting the burden of proof of innocence on the part of the accused as against prosecution in the case of abetment of suicide by a married woman and a wife’s death within a period of seven years of marriage – Sections 113A and 113B of Evidence Act, 1872.

An idea about the gravity of the problem can be had from the large number of reported cases of cruelty and torture by the National Record Bureau during 1997 the number was 36592, in 1998 - 41376 and 1999 – 43823, in 2007 -75930 respectively that demonstrate an increase of 5.9 per cent. The object of this chapter is to punish a husband and his relatives who torture and harass the wife with a view to coerce her or any person related to her to meet any unlawful demands or to drive her to commit suicide. To make the offence more deterrent, Section 498A prescribes a sentence of three years and also fine for the husband or the relatives of the husband of a woman who subject her to cruelty.

The recent availability of such data has now enabled researchers to examine some of its implications for women. The

---

17 Inserted by Act 46 of 1983, Section 2.
18 Inserted by the Criminal Law (Second Amendment) Act, 1983, Sec. 5 vide Cr. P.C., 1973, Section 198A, a court can take cognizance of the offence upon police report or upon a complaint by party or women’s parents, brother, sister, etc. The offence is non-bailable. 113A and 113B of Evidence Act, 1872 have shifted the burden of proof on the accused.
present study scrutinizes official data provide by the National Crime Record Bureau (NCRB). Some startling facts emerge from the analysis of data.

The Analysis of data pertaining to State of Haryana regarding cruelty against women during the year 2003-06. It shows that the crime u/s 498-A, IPC reported in all India as well as in the state of Haryana during 2003-2006. It is observes that the crime u/s 498-A, IPC i.e. Cruelty Against of women by husband and relatives of the husband reported an increase of in the state of Haryana from 3.19–3.48–3.55–3.57 respectively from the year 2003-06 as compared in respect of percentage to all India registered cases u/s 498-A, IPC from year 2003-06. The available data indicates an increasing trends during the last Four years i.e. 2003-06 in state of Haryana.

Further, if we analyze the percentage of crime u/s 498-A, IPC in proportion to the total IPC crime committed under IPC in India and in the state of Haryana during 2006. Then the percentage of crime committed u/s 498-A, IPC in the state of Haryana is more then the average percentage of all India. i.e.

Percentage of crime u/s 498-A, IPC in the state of Haryana in proportion to total IPC crime in state is

\[
\frac{2254 \text{ (Crime u/s 498-A, IPC)} \times 100}{50509 \text{ (Total IPC Crime in Haryana)}} = 4.46\%
\]

where as in India the percentage of crime committed u/s 498-A-IPC in proportion to total IPC crime is

\[
\frac{63128 \text{ (Crime u/s 498-A, IPC)} \times 100}{1878293 \text{ (Total IPC Crime in India)}} = 3.36\%
\]

That means if we see over all situation of the country then there are more crime u/s 498-A IPC State of Haryana.

Further, if we analyse the total Crime Against Women registered in state of Haryana during year 2003 to 2006 is
increasing every year. In year 2003 total, incidence of crime against women were 4170 out of that the crime u/s 498-A, IPC were 1618 that means if we see the percentage of crime u/s 498-A, IPC in comparison to every kind of Crime Against Women in state of Haryana is very high, that means the proportion of crime u/s 498-A, IPC is 38.80% as compared to total crime Against Women.

The available data indicates an increasing trends during the last years that is from 2003 to 2005. It was 38.80 % in (2003), 47.38% in (2004) 49.86% in (2005) and in the year 2006, there is slight decrease in the percentage from previous year i.e. 2005. In 2006 the percentage is 48.82%. If we see the available data of the year 2005 and 2006. It shows that all most 50% of the registered cases are u/s 498-A, IPC in proposition to every kind of Crime Against Women in the state of Haryana or we can say that the ratio of crime u/s 498-A and other kind of Crime Against Women is almost 50 : 50.

Further, if we analyse the reported incidence of total cognizable Crime Against Women and incidence of crime u/s 498-A, IPC in each district of the state of Haryana during 2006. It is observed that the crime committed U/s 498-A, IPC as compared to the other cognizable IPC crime against woman. The percentage of crime u/s 498-A, IPC is more than 55 percent in 10 districts of the state. The highest percentage of registered cases u/s 498-A, IPC in comparison to other cognizable IPC Crime against women is in Sirsa Distt. i.e. 77.2%. That means the Sirsa district stands on No. 1 position in respect of registered crime u/s 498-A IPC followed by

Kaithal (73.4), Hissar(64.75%), Ambala (64.2%)
Karnal (63.5%), Panchkula (62.37%) Mehat (61.3%)
Fatehabad (61-0%), Yamunanagar(58.2%) Kurukshtetra(54.4%)
The least percentage of registered Crime U/s 498-A, IPC as compared to total cognizable IPC Crime is in the Districts of Gurgaon (32.0%) Faridabad (32.8%) Mohindergarh (35.3%) Jind (39.5%) and Palwal (40.5%).

If we analyse the overall percentage of registered cases u/s 498-A, IPC as compared to total cognizable IPC Crime Against Women in the State of Haryana, it comes more than 52% whereas the conviction rate in the crime u/s 498-A, IPC is only 14.0%. It shows that in many case there is either compromise out of court or there is settlement between the parties during the trial.21

There may be many reasons where the women may feel harassed and tortured such as marriage against her wishes, financial stress, lack of privacy due to joint family, incompatibility, drinking, smoking, sexual dissatisfaction or other habits of the husband, psychopathic problems or not begetting children but the ultimate recourse to come out of these problems is normally the accusation for harassment and demand of dowry by husband and her in-laws.

The object of Section 498-A IPC is to strike at the roots of dowry menace. But by misuse of the said provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not as an assassin's weapon. If the cry of "wolf' is made too often as a prank, assistance and protection may not be available when the actual "wolf' appears. May instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery.

The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely

because the provision is constitutional and intra-vires, does not give a licence to unscrupulous persons to wreak personal vendetta or unleash harassment. There is a rapidly accelerating social evil in our societies, namely the misuse of the Dowry and Cruelty laws (Criminal Laws), which were originally meant to act "as a shield" for the protection of harassed women. Nowadays, the educated urban Indian women have turned the tables. They have discovered several loopholes in the existing Indian judicial system and are using the dowry laws to harass all or most of the husband’s family that includes mothers, sisters, sister-in-law, elderly grandparents, disabled individuals and even very young children. We are not only talking about the dowry deaths or physical injury cases but also dowry harassments cases that require no evidence and can be filed just based on a singly-sentence complaint by the wife. Dowry is being made a scapegoat for all problems in the family. A man whose wife is not happy in her marriage for whatever reasons is placed in a very vulnerable position.

True, in many of these cases a women may be a victim of dowry harassment but surely not all cases of unhappy or strained relations can be attributed to dowry demands. A women may feel harassed and frustrated for many other reasons like, lack of privacy or independence in joint family, incompatibility, drinking, smoking or other habits of the husband, financial stresses, psychopathic problems and so on. Why then should dowry be made a scape-goat for every unpleasant situation.

Once a family has been tortured by using the section 498-A, IPC weapon, the chances of reconciliation between the husband and wife is nil. The divorce that ensues is another mode of harassment for the already impoverished husband because he is forced to pay the hefty alimony/maintenance demanded by his wife.
Families who have never spent a single minute with lawyers, courts and police, are forced to run frantically from pillar to post to defend an alleged crime which they never committed and they are bound to get depressed with the judiciary and police system. A lot of productive time, energy and money of the accused family are spent in proving themselves innocent. Eventually, the institution of marriage might become more like a business transaction in which a man and wife will have to document each and every agreement in writing in front of the lawyers.

By Jan 2010, one lakh and twenty five thousand cases were registered under 498-A and domestic violence act in three states of Punjab, Haryana and HP. These cases should have been cleared within six months, under the directive of the Supreme Court. Instead, some of the cases have been lingering for 12 to 16 years, since the arrests made under 498A are non-bailable. Those who lack resources to get legal aid remain locked in jail for years. Most of these victims are senior citizens. “Why is it that the older women and men are nowhere on government’s agenda, neither the law enforcers nor the judiciary listens to us?” ask Kiran Sharda (61) retired chief engineer, BBMB( Bhakhra Beas Management Board), and his wife Pinky Sharda (55), who spent their meagre savings paying EMI for their sole flat in Gurgaon, which was claimed by their daughter in law within three years of her marriage. She slapped 9 sections against them and they were arrested like ordinary criminals. Incidentally, it was a love marriage and she never lived with her in-laws. Shardas are now staying in a rented house, contesting a legal battle, they find mindless. And, they are not alone.

In scores of cases across India, the courts have witnessed misuse of section 498 A, while deciding disputes of domestic nature. The law, designed to help women regain social and economic empowerment in a highly patriarchal society, has been
misused in several cases, as is observed even by the apex court. As was in the case of Preeti Gupta v. State of Jharkhand (2010) and Sushil Kumar Sharma v. UOI (2005), where not only the husband but all his immediate relations were implicated under false charges. Such acts of 'over-implication,' are often resorted with the sole motive to wreck personal vendetta, unleashing a sort of 'new legal terrorism.'

What should be done to rein this tendency of 'abuse', 'over-reach' or 'over-implication', which of course cannot be the justifiable purpose of criminal law? To find a solution, The Law Commission in its consultation-paper has crystallised at least two different views. One view, which finds support from the observations of the apex court and also the recommendations of Malimath Committee's report on Reforms of Criminal Justice System, is in favour of 'relieving the rigour' of section 498A of IPC by making the offence under the provisions of the Code of Criminal Procedure (CrPC) as compoundable and bailable instead of non-compoundable and non-bailable.

The other opposite view echoed, inter alia, by the Ministry of Women and Child Development is in favour of maintaining the status quo. In their view, the provisions of section 498A of IPC have been specifically enacted to protect vulnerable married women, who are the victims of cruelty and harassment at the hands of their husbands and their close relatives.

The consultation paper also brings to the fore a third view with some variants, which seem to cut across the two extreme positions as mentioned above. One variation is that the offence under section 498A of IPC should be made 'compoundable' with the permission of the court, as has been done by the State of Andhra Pradesh. However, there is sharp difference of opinions on the second variant, namely, whether the offence under this
section should also be made ‘bailable’, at least with regard to husband’s relations.

Moreover, while the Commission is appreciative of the need to discourage unjustified and frivolous complaints, ‘it is not inclined to take a view that dilutes the efficacy of s. 498A to the extent of defeating its purpose- to protect women against atrocities.

However, having adopted this clear stance, the Commission has hastened to add : ‘A balanced and holistic view has to be taken on weighing the pros and cons. There is no doubt a need to address the misuse situations and arrive at a rational solution – legislative or otherwise.’

The Commission is in search of a ‘rational solution – legislative or otherwise’ through its questionnaire. It has suggested that there is a dire need to create awareness about the penal provisions of the section amongst the poor and hapless rural women ‘who face quite often the problems of drunken misbehaviour,’ by having ‘easy access’ to the Taluka and District level Legal Services Authorities and/or credible NGOs. The Commission has also reminded the lawyers and the police, what is expected of them ‘morally and legally.’

Perhaps the more pragmatic point that the Law Commission has made relates to the linkage of section 498A of IPC with the provisions of Protection of Women from Domestic Violence Act, 2005. Such a linkage is evident at least in two respects. Firstly, in the exposition of ‘domestic violence’ under section 3 of the Act that encompasses the situation set out in the definition of cruelty under section 498A of the Code. This implies that there exists commonality of objective between the Code and the Act in terms of providing protection to married women from ‘domestic violence’ or ‘cruelty’.
Secondly, there is also a ‘functional-linkage’ as is found in the provisions of the Act itself that makes the Magistrate play pivotal role in protecting the married women.

The critical question still remains to be answered is, how to prevent the abuse of section 498A without diluting its deterrent effect? To answer this central issue, we need to remind ourselves that women seek defence outside home only under duress, and the protective umbrella of section 498A offers it.²²

C. Constitutional Validity of Amendments

The amendments to Indian Penal Code for incorporating Section 304B and 498A have been declared valid by various courts. In Polavarpu Satyanarayana v. Soundaravalli²³, the husband who was prosecuted under Section 498A, I.P.C. for subjecting his wife to cruelty, challenged the very definition of ‘cruelty’ as given under the Section as ‘arbitrary’ and ‘delightfully vague’, and as such ultra vires of the fundamental right to equality, guaranteed under Article 14 of the Constitution.

The Andhra Pradesh High Court while admitting that the expression ‘cruelty’ was not capable of precise definition, held that there was no vagueness in its meaning and as such it is not ultra vires of the Constitution. Each case has to be adjudged in the light of the facts of that particular case in the historical circumstances which necessitated the amendment. Similarly, with regard to the second contention that some relatives, i.e., in-laws, cannot be singled out by legislation for punishment and as such new provisions violated the fundamental right to equality, the court replied in the negative. Since dowry deaths are a

²³ 1988 Cr. LJ 1538 (AP). Held, Sec. 498A, I.P.C. applies even where person inflicts such cruelty and harassment as to lead his mistress to commit suicide.
hazard faced by woman, the husband and relatives may be treated as a class. This classification is not unreasonable and is intended to achieve the object of the new law.

The petitioner also challenged the related amendment to the Evidence Act, 1872, vide Section 113A\textsuperscript{24} which states that, if it is shown that a woman committed suicide within seven years of her marriage and her husband or in-laws had subjected her to cruelty, the court may presume that such suicide has been abetted by her husband or relatives of husband. It is for the husband and the in-laws to prove their innocence. This is a departure from the normal principle of criminal jurisprudence as according to settled notions of law, the burden of proof is always on the prosecution to establish beyond a reasonable doubt that the accused committed the offence. But the offence in a marital home pertains to a terrain intractable, to others. Therefore, the lawmakers felt the need for presumptive evidence in favour of the prosecution. However, this does not relieve the prosecution of the need to prove the case beyond a reasonable doubt and the presumption can be rebutted by the husband.

In \textit{Inder Raj Malik v. Sunita Malik}\textsuperscript{25}, the Delhi High Court held that a person can be convicted both under Section 4 of the Dowry Prohibition Act, 1956 as well as under Section 498A, Indian Penal Code because it does not create any situation for double jeopardy. Section 498A, I.P.C. provision is distinguishable from Section 4 of the Dowry Prohibition Act because in the latter mere demand of dowry is punishable and existence of element of cruelty is not necessary, whereas Section 498A, I.P.C. punishes an act of cruelty caused to the newly married woman. It inter alia punishes such demands of property or valuable security from the wife or her relatives as are coupled with cruelty to her. Hence a person can be prosecuted in respect

\textsuperscript{24} Inserted by Act 46 of 1983 Sec. 7.

\textsuperscript{25} (1986) Cr LJ 1510. See Vasanta Tuishiram Bhoyar v. State of Maharashtra, 1887 Cr LJ 901 (Bom).
of both the offences punishable under Section 4 of Dowry Prohibition Act and Section 498A, I.P.C.

D. **Essential Ingredient of Section 304B**

A careful analysis of Section 304B, I.P.C. shows that the Section has the following essential ingredients:-

(a) Death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances;\(^{26}\);

(b) Death should have occurred within seven years of her marriage;

(c) The woman must have been subjected to cruelty or harassment by her husband or any relative of her husband;

(d) Cruelty or harassment should be for or in connection with the demand for dowry;

(e) Cruelty or harassment should have been meted out to the woman before her death.

Clause (1) of the Section 304B, I.P. defines ‘dowry death’ and clause (2) prescribes punishment for dowry death. According to clause (1) of Section 304B, the death of a woman will be designated as ‘dowry death’ when it is caused:

(i) by burns, bodily injury, or occurs otherwise than in ordinary circumstances; and

(ii) as a result of cruelty, or harassment caused by her husband or her husband’s relations, or in connection with any demand for dowry.

In case of death of a woman caused under the above circumstances, the husband and the husband’s relatives will be

\(^{26}\) Kans Raj v. State of Punjab, 2000(3) RI 556.
presumed to have caused a ‘dowry death’ and be liable for the offence, unless it is proved otherwise. This is to say, the burden of proof shifts on the part of the accused to prove his innocence unlike other offences wherein the accused is presumed innocent. Clause (2) prescribes a minimum punishment of 7 years of imprisonment which may extend up to life imprisonment in case of dowry death. An important feature of crimes that led to dowry deaths are that they are invariably committed within the safe precincts of home and the culprits are mostly close relations – brother-in-law, mother-in-law and sister-sin-law living under the same roof. The phenomenon is a by-product of the exploitation of newly married women by husbands and their relations in direct connivance with each other. The family ties are so strong that the truth will never come out and there would be no eye witness to testify against the guilty in a court of law. The circumstances are hostile to an early or easy discovery of the truth. Punitive measures may be adequate in their formal content, but their successful enforcement is a matter of great difficulty. This is why guilty men go scot-free and are seldom brought to book and punished. To curb the practice of dowry death there is an urgent need to enforce effectively the punitive and preventive measures with iron hands. At the same time, the law must be made more effective. Police should be more watchful with respect to such offences, as pointed but by the Supreme Court in V.N. Pawar v. State of Maharashtra.

.... Wife-burning tragedies are becoming too frequent for the country to be complacent. Police sensitization mechanisms which will prevent the commission of such crimes must be set up if these horrendous crimes are to be avoided. Likewise, special provisions facilitating easier

27 See Lucy Caroll, 28 Journal of Indian Law Institute, (1986) pp. 14-35; See Annexure for the development of law represented by Sudha Goel’s case, culminating in reducing of the first ever death sentence for dowry killing to life imprisonment by the Supreme Court.

28 AIR 1980 SC 1271.
proof of such special class of murders on establishing certain basic facts must be provided for by appropriate legislation.

Justice Dr. A.S. Anand in Kundula Bala Subrahmaniam observed:

“There has been an alarming increase in cases relating to harassment, torture, abetted suicides and dowry deaths of young innocent brides. This growing cult of violence and exploitation of the young brides, though keeps on sending shock waves to the civilized society whenever it happens, continues unabated. There is a constant erosion of the basic human values of tolerance and the spirit of “live and let live”. Lack of education and economic dependence of women have encouraged the greedy perpetrators of the crime. It is more disturbing and said that in most of such reported cases it is the woman who plays a pivotal role in this crime against the younger woman, with the husband either acting as a mute spectator or even an active participant in the crime, in utter disregard of his matrimonial obligations. In many cases, it has been noticed that the husband, even after marriage, continues to be ‘Mamma’s baby’ and the umbilical cord appears not have been cut even at that stage!” (para 12 at p. 1645).

The need of the hour is to replace hatred, greed, selfishness and anger by mutual love, trust and understanding and if women were to receive education and become economically independent, the possibility of this pernicious social evil dying its natural death may not be a dream.
E. Cruelty as Defined under Section 498A of Indian Penal Code

Under Section 498A, Indian Penal Code, ‘cruelty’ means 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 it is mental or physical of the woman; 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 related to her to meet such demand. The High Courts of Andhra Pradesh and Calcutta have decided two cases in which the accused were prosecuted under Section 498A, I.P.C. for cruelty to wife. The cases are important as the very definition of cruelty was challenged being violative of Article 14 of the Constitution.

In a significant case, the husband who was prosecuted under Section 498A, I.P.C. for subjecting his wife to cruelty, challenged the very definition of ‘cruelty’ as given under the Section as ‘arbitrary’ and ‘delightfully vague’, and as such ultra vires of the fundamental right to equality, guaranteed under Article 14 of the Constitution. The Andhra Pradesh High Court while admitting that the expression ‘cruelty’ was not capable of precise definition, held that there was no vagueness in its meaning and as such it is not ultra vires of the Constitution. Each case has to be adjudged in the light of the facts of that particular case in the historical circumstances which necessitated the amendment. Similarly, with regard to the second contention that some relatives, i.e., in-laws, cannot be singled out by legislation for punishment and as such new provisions violated the fundamental right to equality, the court replied in the

---

29 Explanation, Section 498A, Indian Penal Code.
30 Ibid.
31 Polavarpu Satyanarayana v. Soundaravalli, 1988 Cr. LJ 1538 (AP). Held, Sec. 498A, I.P.C. applies even where person inflicts such cruelty and harassment as to lead his mistress to commit suicide.
negative. Since dowry deaths are a hazard faced by woman, the husband and relatives may be treated as a class. This classification is not unreasonable and is intended to achieve the object of the new law.

The petitioner also challenged the related amendment to the Evidence Act, 1872, vide Section 113A\(^\text{32}\) which states that, if it is shown that a woman committed suicide within seven years of her marriage and her husband or in-laws had subjected her to cruelty, the court may presume that such suicide has been abetted by her husband or relatives of husband. It is for the husband and the in-laws to prove their innocence. This is a departure from the normal principle of criminal jurisprudence as according to settled notions of law, the burden of proof is always on the prosecution to establish beyond a reasonable doubt that the accused committed the offence. But the offence in a marital home pertains to a terrain intractable, to others. Therefore, the lawmakers felt the need for presumptive evidence in favour of the prosecution. However, this does not relieve the prosecution of the need to prove the case beyond a reasonable doubt and the presumption can be rebutted by the husband.

In another important case\(^\text{33}\), the Delhi High Court held that a person can be convicted both under Section 4 of the Dowry Prohibition Act, 1956 as well as under Section 498A, Indian Penal Code because it does not create any situation for double jeopardy.\(^\text{34}\) Section 498A, I.P.C. provision is distinguishable from Section 4 of the Dowry Prohibition Act because in the latter mere demand of dowry is punishable and existence of element of cruelty is not necessary, whereas Section 498A, I.P.C. punishes an act of cruelty caused to the newly married woman. It inter alia punishes such demands of property or valuable security from

\(^{32}\) Inserted by Act 46 of 1983 Sec. 7.


\(^{34}\) Article 20(2) of the Constitution of India prohibits double jeopardy, i.e., no person can be prosecuted and punished for the same offence more than once.
the wife or her relatives as are coupled with cruelty to her. Hence a person can be prosecuted in respect of both the offences punishable under Section 4 of Dowry Prohibition Act and Section 498A, I.P.C. The Delhi High Court has taken a pragmatic approach in the impugned case and said that the word ‘cruelty’ is well defined. The import of the word harassment is also very well known and there can be no arbitrary exercise of power in interpreting those words and it does not come in conflict with Article 14 of the Constitution. The accused were greedy people. They were interested in huge dowry. They started making demands one after the another. Originally, the marriage was arranged to be celebrated in Claridges Hotel, New Delhi at the instance of the accused. The venue was shifted to the Taj Hotel which meant higher expenses for the parents of the complainant. With a view to extort more and more money and articles, the complainant, after marriage, was maltreated, beaten, starved and abused. The parents of the complainant continued to meet some of the demands. The aforesaid maltreatment and beating was specially done during festivals. On 19th February, 1982 she was tortured mentally and physically to the extent that she fainted in her matrimonial home, yet no doctor was consulted. The parents of the complainant wanted to take her to the parental home but the accused did not allow. She was ultimately taken to the parent’s home on 20th February, 1982. She was pregnant and gave birth to a child on 25th August, 1982. Not only was she not looked after by the accused and had to be looked after by her parents, none of the accused came to see her. She was also given threats from time to time. Accordingly, the court rightly held that such threats and harassment amounted to cruelty under Section 498A, I.P.C. While the Andhra Pradesh and Delhi High Court judgements upheld that the word ‘cruelty’ is well define din Section 498A, I.P.C., the judgement of the
Calcutta High Court reported in Indian Express, in a similar situation shows its pitfalls. In this case, 15-year-old Rina was married to Bijay. After six months of alleged cruelty and demands for dowry of Rs. 2,000 and tape recorder she committed suicide. Several relatives led evidence to show that Rina was subjected to cruelty, but the court ruled that the uncorroborated evidence of relatives could not be accepted. There were no physical signs of cruelty. Mental torture by forcing her to do domestic work, after turning out all the servants in the affluent home, was not established. Besides, it is also very much doubtful if doing domestic duties in the absence of servants may be considered torture, let alone torture enough to make a housewife prefer death to get away from it all, says the judgement.

Further, the girl told her mother and her aunt that they would not be able to see her unless the demands of the husband were met. But the court could not relate these demands with the suicide as there were only three weeks between the two, and it was too short a span during which cruel treatment was allegedly meted out to Rina. The court also found the girl sentimental and imaginative from her letters. Therefore, the mother-in-law and the husband who were charged with abetting her to commit suicide were let off.

There are multifarious ways in which cruelty is committed on the wives if one make a critical survey of the cases that come to the police station as well as women's cell daily. In majority of these cases women agree to compromise with their husband as they want to patch up with the erring husband for the sake of social stigma for being a deserted wife or it is for the sake of children. Although, the women’s movement raised the issue and collected empirical data. This remained limited to specific locations. Even studies taken by academicians and

---

organizations are also limited to any particular city, town or state. Lack of macro-level data for the country as a whole has been a major drawback in providing any adequate, detailed, statistical evidence of the rampant domestic violence. It has taken the police establishment over two decades to provide the nation with state and district level data under crime heads such as dowry deaths, molestation, sexual harassment and cruelty by husband or relatives.\textsuperscript{36}

Government too has recognized the rampant practice of domestic violence in Indian society to some extent.

It is a fact, that those who know the social situation in which dowry deaths take place will find it difficult to agree with the reasoning of the High Court. The range of mental cruelty is a vast and intractable terrain, as the Andhra judgement observed, and being forced to do domestic work in the early weeks of marriage after the dismissal of servants would amount to both physical and mental cruelty. If the girl is sentimental and imaginative, such treatment is all the more bound to hurt the teenage psyche. This judgement underlines the fact that it is not enough to pass legislation against social evils unless it is actively supported by investigating authorities, who can make a fool proof case, and a judge whose intellect reflects the social context in which we live, it is difficult to implement social welfare laws. However, in a significant case\textsuperscript{37}, the Allahabad High Court took a pragmatic view in a criminal proceeding initiated by a dowry victim, and done away with jurisdictional technicalities in the matter. The applicant husband wanted to get rid of criminal proceedings which had been initiated by the dowry victim on ground of technicalities of jurisdiction. The criminal proceedings were initiated by the lady from her parental home which fell outside the jurisdiction where the alleged


\textsuperscript{37} Vijay Ratna Sharma v. State of Uttar Pradesh, 1988 Cr LJ 1581 (All).
offence of cruelty and related offences were said to have been committed. The court brushed aside the argument of lack of jurisdiction on technical grounds and held that since from the beginning of marriage, the dowry demand had been present and subsequent behaviour was an ensuing consequence, all the offences in the course of this transaction can be tried together under Section 220 of Cr.P.C., 1973 which clearly says that a series of acts which are connected together form the same transaction.

F. Attempt to Commit suicide due to Demand of Dowry

The menace of dowry is a deep rooted evil in our society. The young ladies are harassed to such an extent that they commit suicide in their blooming age itself. The menace of dowry system is not confined to Indian society, the neighbouring countries also suffer from this infectious disease.

While the rate of dowry deaths is undoubtedly high in India, the demand for dowry and violence related to it is also on the increase across the sub-continent. Most marriages are 'arranged' in these countries and if a family is unable to provide dowry, the girl, even if she is educated, is doomed to remain unmarried. Countries in the region have enacted legislation to stop the practice of dowry and the consequent violence against women that follows if the dowry is not enough. But the practice - and its repercussions - continues. In Pakistan, girls from feudal families are 'married' to the Koran to avert division of family property; in Bangladesh, higher education is seen as inimical to marriage prospects. And in Sri Lanka, property laws that benefit daughters are tacitly subverted, while in Nepal, the move to give
daughters equal rights to parental property is seen by many as a two-edged sword.\textsuperscript{38}

At the same time, in India, dowry violence is shooting up concomitantly with affluence and consumerism. The consumer boom has exacerbated the problem in India. In addition to cash, there is a persistent demand for cars, scooters, television sets and refrigerators. This greed is all pervasive - and is, in fact, more apparent among the educated affluent than among the rural, unlettered poor. So much so that in India, there seems to be a co-relation between increasing prosperity and the incidence of dowry deaths. One dowry death per day is reported in Hubli, an upcoming industrial town in Karnataka. In Bangalore, where five years ago two dowry deaths a day were reported, today, with the city gaining precedence as one of the leading information technology centres of the country, the number has gone up to three each day.\textsuperscript{39}

In Sri Lanka too where women have property and inheritance rights, dowry is viewed as bride wealth or a woman's separate property, says Savitri Goonesekere, an exponent of the Sri Lankan legal system. The custom of obtaining dowry prior to marriage has become a common custom in the three largest communities of the island. Traditionally, if land was given as dowry, the deeds were in the name of the daughter. Recent social trends, however, indicate that parents are under pressure to transfer the daughter's dowry to her husband -- clearly a departure from the practice of vesting land and goods with the daughter. While bride wealth or 'kaikuli' has legal sanction under the Muslim law, there is no legal provision for dowry under the personal laws of the Sinhala and Tamil communities or the country's General Personal Law, which covers all communities.

\textsuperscript{38} http://www.jansamachar.net/display.php3?id=&num=339&lang=English
\textsuperscript{39} Ibid.
Muslim law also permits 'mahr' or a cash gift to the bride from the bridegroom. While the amount given as 'mahr' is decreasing, the amount sought as dowry is on the increase. But unlike other countries of this region, there are very few reports of inadequate dowry leading to violence in Sri Lanka. However, activists maintain that lack of clear evidence of dowry-related violence against women doesn't mean that the problem doesn't exist in the country.\textsuperscript{40}

In Pakistan where, under Islamic law, a woman is entitled to one-eighth of her parental property as dowry, many girls from feudal families are 'married' to the Koran in an attempt to prevent division of family property. In the developed areas of Pakistan, dowry demands are so high among the middle class that many girls remain single. Despite Islam's decree that marriages should be observed in the simplest way and minimum dowry should be given, lavish weddings and large dowries are the order of the day. Activists of the Pakistan Women Lawyers Association maintain that it is impossible to come up with statistics about the number of girls who have ostensibly died of 'stove bursts'. Data also cannot be collected because a large number of dowry deaths occur in rural areas where the women have neither the knowledge nor access to help.\textsuperscript{41}

In Bangladesh too, there is such a great demand for dowry that many poor families are unable to get their daughters married. In Satkira district alone, it is estimated that nearly 50,000 girls from poor families have no hope of getting married because of the inability to meet dowry demands. In Dinajpur district, 2,500 marriages ended in divorce in 1999 because of dowry-related feuds. Even an educated girl finds it difficult to get a groom who is as well qualified as she

\textsuperscript{40} Ibid. \\
\textsuperscript{41} Ibid.
is. So while education is viewed as an asset for a man, it is often considered a liability for a girl's marriage prospects in Bangladesh.\textsuperscript{42}

In fact, many parents who encouraged their older (still single) daughters to pursue higher studies now regret this and have ensured that their younger daughters are not 'educated too much'. Dowry-related violence is on the increase in Bangladesh. From 1990 to 1997, 2,026 women were victims of dowry, according to the Women and Child Affairs Ministry of Bangladesh. The Bangladesh National Women Lawyers Association says that 203 women were killed and 34 tortured for dowry by their in-laws in 2000, the year a law was passed that provides life sentence for women and child bashing. If statistics can tell the story of Asian women brutalized and battered for not meeting the dowry demands of greedy in-laws, India paints a grim picture.\textsuperscript{43}

The number of dowry harassment cases -- officially recorded fatalities -- shot up from 1,912 in 1987 to 4,006 in 1989 and 6,222 in 2000. Many go unrecorded or are categorised as 'accidents' or 'stove bursts'. Despite all the noise women's organisations are making about dowry deaths, the conviction rate for this crime is just three per cent. Educated and high profile women figure as frequently among victims as unlettered rustics. Aparna had an MBA degree but she committed suicide, unable to bear the harassment for more dowries. Sujatha was a gold medallist in medicine. In India, police and officers of the Indian Administrative Service demand more dowry because of their positions in society. Lawyers and judges are known to give dowry even though they know it is not correct to do so. The

\textsuperscript{42} Ibid.
\textsuperscript{43} Ibid.
reality is that dowry, condemned publicly, is condoned and practiced privately by large sections of society.\[^{44}\]

Dowry cases drag on in the courts for several years, despite all countries in this region updating their laws to prevent dowry, violence against women, public display of dowry and wedding extravaganzas. The girl's parents invariably lose the will or the resources to fight the case. A lot of cases are dismissed on grounds of insufficient evidence. There are appeals by the accused to higher courts. A final verdict rarely comes in the lifetime of the complainant. Satyarani Chadha, whose daughter was killed for dowry in 1979, obtained a conviction order from a Delhi court after a 21-year-long battle. Few complainants have that kind of tenacity. Quite obviously, existing laws are not implemented. Corrupt functionaries at the behest of the accused manipulate medical reports; evidence collection is lackadaisical, not thorough enough for public prosecution. The result: Justice gets lost in the highways of the legal system.\[^{45}\]

G. DIFFERENCE BETWEEN MURDER UNDER SEC 302 AND DOWRY DEATH UNDER SEC 304B

The offence of murder under Section 302, I.P.C. is an aggravated form of ‘culpable homicide’. Section 300 of the Code tells when the offence is ‘murder’ and when it is ‘culpable homicide not amounting to murder’. Section 300, I.P.C. begins by setting out the circumstances when culpable homicide turns into murder which is punishable under Section 302, I.P.C. and the Exceptions in the same Section tells when the offence is not murder but is culpable homicide not amounting to murder

\[^{44}\] Ibid.
\[^{45}\] Ibid.
punishable under the first part of section 304, I.P.C. The ingredients of ‘murder’ under Section 300 are:

Except the cases except, culpable homicide is murder, if the act by which the death is caused is done

(i) The murder must have been done with the intention causing death, or

(ii) It should have been done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

(iii) It must have been done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

(iv) If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

The essential ingredients of death under Section 304B, I.P.C. are:

(a) Death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances.

(b) Death should have occurred within seven years of her marriage.

(c) The woman must have been subjected to cruelty or harassment by her husband or any relative of her husband.
(d) Cruelty or harassment should be for or in connection with the demand for dowry.

(e) Cruelty or harassment should have been meted out to the women before her death.

If the case of murder attracts any exception given under Section 302, then it will be not be treated as ‘murder’ but ‘culpable homicide.

**Difference between both Sections**

The murder under Section 302, I.P.C. is an intentional act to cause death by bodily injuries which is sufficient in normal course to cause death of a person. But the death under Section 304B, I.P.C. of a woman is caused by harassing physical and mentally the victim to such an extent that the victim commits suicide. The punishment for murder under Section 302, I.P.C. is death or life imprisonment, but the punishment under Section 304B, I.P.C. is from seven years to life imprisonment. The murder under Section 302, I.P.C. is more grave and the death under Section 304B has been recognized as a grave but to a lesser extent than that under Section 302.

There are exceptions under Section 302, I.P.C. If the case of murder comes in the ambit of any exception, then it is a culpable homicide which attracts lesser punishment. But in case of Section 304B, I.P.C., there is no exception. In this case, harassment whether is physical or mental must be proved beyond reasonable doubt to bring a person, who has harassed the women, in the ambit of Section 304B, I.P.C.

Section 304B and Section 302 are clearly distinguishable. The court before framing of the charges should see and analyze that whether charge can be framed against the accused under Section 302 or not. Charge under 304B is made out in those cases where what is not clear is the cause of the death. The
Section says where death is caused due to burns or bodily injuries or caused otherwise than under normal circumstances. This shows that it may be clear that the death was due to burns or bodily injuries or is otherwise than under normal circumstances (courts say this covers suicide also) so what is not clear is whether those persons who subject the victims to cruelty or harassment are responsible for the cause of the burns or bodily injuries.

In **Hemchand v State of Haryana**\(^{46}\) the Hon’ble Supreme Court has held that Section 113B of the Evidence Act says that when the question is whether a person has committed a 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 had caused the dowry death. The Hon’ble Supreme Court has further held that proof of direct connection of the accused with her death is not essential. The absence of direct connection of the accused with death has to be taken into consideration in balancing the sentence to be awarded to the accused.

In **Ashok Kumar v. State of Rajasthan**\(^{47}\), the Hon’ble Supreme Court has laid down that motive for a murder may or may not be. But in dowry deaths, it is inherent. And hence, what is required of the court is to examine is as to who translated it into action as motive for it is not individual, but of family.

**Framing of charge - whether u/s 302 or 304 B:**

In **Shamsaheb M. Multtani v. State of Karnataka**\(^{48}\), the Hon’ble Supreme Court has observed:

---

\(^{46}\) AIR 1994 (6) SCC 727.
\(^{47}\) AIR 1991 (1) SCC 166.
\(^{48}\) AIR (2001) 2 SCC 577.
“The question raised before us is whether in a case where prosecution failed to prove the charge under Section 302 IPC, but on the facts the ingredients of Section 304-B have winched to the fore, can the court convict him of that offence in the absence of the said offence being included in the charge. Sections 221 and 222 of the Code are the two provisions dealing with the power of a criminal court to convict the accused of an offence which is not included in the charge. The primary condition for application of Section 221 of the Code is that the court should have felt doubt, at the time of framing the charge, as to which of the several acts (which may be proved) will constitute the offence on account of the nature of the acts or series of acts alleged against the accused. In such a case the Section permits to convict the accused of the offence which he is shown to have committed though he was not charged with it.

Section 222(1) of the Code deals with a case “when a person is charged with an offence consisting of several particulars”. The Section permits the court to convict the accused “of the minor offence, though he was not charged with it”. Sub-section (2) deals with a similar, but slightly different situation.

“222. (2) 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.”

What is meant by “a minor offence” for the purpose of Section 222 of the Code? Although the said expression is not defined in the Code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the Section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as minor offence vis-à-vis the
other offence. The composition of the offence under Section 304-B, IPC is vastly different from the formation of the offence of murder under Section 302 IPC and hence the former cannot be regarded as minor offence vis-à-vis the latter. However, the position would be different when the charge also contains the offence under Section 498-A IPC (husband or relative of husband of a woman subjecting her to cruelty). So when a person is charged with an offence under Sections 302 and 498A, IPC on the allegation that he caused the death of a bride after subjecting her to harassment with a demand for dowry, within a period of 7 years of marriage, a situation may arise, as in this case, that the offence of murder is not established as against the accused. Nonetheless, all other ingredients necessary for the offence under Section 304-B IPC would stand established. Can the accused be convicted in such a case for the offence under Section 304-B IPC without the said offence forming part of the charge?

A two-Judge Bench of the Supreme Court has held in *Lakhjit Singh v. State of Punjab*\(^49\), that if a prosecution failed to establish the offence under Section 302 IPC, which alone was included in the charge, but if the offence under Section 306 IPC was made out in the evidence it is permissible for the court to convict the accused of the latter offence. The crux of the matter is this: Would there be occasion for a failure of justice by adopting such a course as to convict an accused of the offence under Section 304-B IPC when all the ingredients necessary for the said offence have come out in evidence, although he was not charged with the said offence? In this context a reference to Section 464(1) of the Code is apposite:

“464. (1) No finding, sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including

\(^{49}\) AIR 1994 supp. 1 SCC 173.
any misjoinder of charges, *unless*, in the opinion of the court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby”.

In other words, a conviction would be valid even if there is any omission or irregularity in the charge, provided it did not occasion a failure of justice. We often hear about “failure of justice” and quite often the submission in a criminal court is accentuated with the said expression. Perhaps it is too pliable or facile an expression which could be fitted in any situation of a case. The expression “failure of justice” would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Diplock in Town Investments Ltd. v. Deptt. of the Environment50). The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage. We have now to examine whether, on the evidence now on record the appellant can be convicted under Section 304-B IPC without the same being included as a count in the charge framed. Section 304-B has been brought on the statute-book on 9-11-1986 as a package along with Section 113-B of the Evidence Act.

Under Section 4 of the Evidence Act “whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved”. So the court has no option but to presume that the accused had caused dowry death unless the accused disproves it. It is a statutory compulsion on the court. However it is open to the accused to adduce such evidence for disproving the said compulsory presumption, as the burden is unmistakably on him to do so. He can discharge such burden either by eliciting answers through cross-examination of the witnesses of the

prosecution or by adducing evidence on the defence side or by both.

At this stage, we may note the difference in the legal position between the said offence and Section 306 IPC which was merely an offence of abetment of suicide earlier. The Section remained in the statute-book without any practical use till 1983. But by the introduction of Section 113-A in the Evidence Act the said offence under Section 306 IPC has acquired wider dimensions and has become a serious marriage-related offence. Section 113-A of the Evidence Act says that under certain conditions, almost similar to the conditions for dowry death the court may presume having regard to the circumstances of the case, that such suicide has been abetted by her husband etc. When the law says that the court may presume the fact, it is discretionary on the part of the court either to regard such fact as proved or not to do so, which depends upon all the other circumstances of the case. As there is no compulsion on the court to act on the presumption the accused can persuade the court against drawing a presumption adverse to him.

But the peculiar situation in respect of an offence under Section 304-B IPC, as discernible from the distinction pointed out above in respect of the offence under Section 306 IPC is this: Under the former the court has a statutory compulsion, merely on the establishment of two factual positions enumerated above, to presume that the accused has committed dowry death. If any accused wants to escape from the said catch the burden is on him to disprove it. If he fails to rebut the presumption the court is bound to act on it.

Now take the case of an accused who was called upon to defend only a charge under Section 302 IPC. The burden of proof never shifts onto him. It ever remains on the prosecution which has to prove the charge beyond all reasonable doubt. The said
traditional legal concept remains unchanged even now. In such a
case the accused can wait till the prosecution evidence is over
and then to show that the prosecution has failed to make out the
said offence against him. No compulsory presumption would go
to the assistance of the prosecution in such a situation. If that be
so, when an accused has no notice of the offence under Section
304-B IPC, as he was defending a charge under Section 302 IPC
alone, would it not lead to a grave miscarriage of justice when he
is alternatively convicted under Section 304-B IPC and sentenced
to the serious punishment prescribed there under, which
mandates a minimum sentence of imprisonment for seven years.

The serious consequence which may ensue to the accused
in such a situation can be limned through an illustration: If a
bride was murdered within seven years of her marriage and there
was evidence to show that either on the previous day or a couple
of days earlier she was subjected to harassment by her husband
with demand for dowry, such husband would be guilty of the
offence on the language of Section 304-B IPC read with Section
113-B of the Evidence Act. But if the murder of his wife was
actually committed either by a dacoit or by a militant in a
terrorist act the husband can lead evidence to show that he had
no hand in her death at all. If he succeeds in discharging the
burden of proof he is not liable to be convicted under Section
304-B IPC. But if the husband is charged only under Section 302
IPC he has no burden to prove that his wife was murdered like
that as he can have his traditional defence that the prosecution
has failed to prove the charge of murder against him and claim
an order of acquittal. The above illustration would amplify
the gravity of the consequence befalling an accused if he was
only asked to defend a charge under Section 302 IPC and was
alternatively convicted under Section 304-B IPC without any
notice to him, because he is deprived of the opportunity to
disprove the burden cast on him by law.
In such a situation, if the trial court finds that the prosecution has failed to make out the case under Section 302 IPC, but the offence under Section 304-B IPC has been made out, the court has to call upon the accused to enter on his defence in respect of the said offence. Without affording such an opportunity to the accused, a conviction under Section 304-B IPC would lead to real and serious miscarriage of justice. Even if no such count was included in the charge, when the court affords him an opportunity to discharge his burden by putting him to notice regarding the prima facie view of the court that he is liable to be convicted under Section 304-B IPC, unless he succeeds in disproving the presumption, it is possible for the court to enter upon a conviction of the said offence in the event of his failure to disprove the presumption.

As the appellant was convicted by the High Court under Section 304-B IPC, without such an opportunity being granted to him, we deem it necessary in the interest of justice to afford him that opportunity. The case in the trial court should proceed against the appellant (not against the other two accused whose acquittal remains unchallenged now) from the stage of defence evidence. He is put to notice that unless he disproves the presumption, he is liable to be convicted under Section 304-B IPC. Shanti v State of Haryana 51, the Hon’ble Apex Court has held that Section 304B and 498A are not mutually exclusive. They deal with two distinct offences. A person charged and acquitted under Section 304B can be convicted under Section 498A without charge being framed, if such case is made. But from the point of view of practice and procedure and to avoid technical defects, it is advisable in such cases to frame charges under both the Sections. If the case is established against the accused he can be convicted under both the Sections but no separate sentence need be awarded under Section 498A in view

51 AIR 1991(1) SCC 371.
of substantive sentence being awarded for major offence under Section 304B.

H. **Attempt to Commit Offence of Dowry Death**

In case of *Satvir Singh v. State of Punjab* the Apex Court discussed at length whether the attempt to commit offence as provided by Section 511 of Indian Penal Code could be applied to dowry death cases punishable under Section 304B, I.P.C. Section 511, I.P.C. provides that whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence shall, where no express provisions made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment of life, or as the case may be, one-half of the longest term of imprisonment provided for the offence or with such fine as is provided for the offence or with both.

---