

## NOTES & COMMENTS

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# Dowry Deaths (bride burning) in India and Abetment of Suicide: A Socio-Legal Appraisal

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### 1. Introduction

Dowry system as a social problem has acquired grave dimensions in recent years and all attempts for a legal solution have not produced the desired result. Over the past few years, the cases of bride burning have registered a sharp increase through-out India, everyday, almost every six hours, somewhere at some place in India,<sup>1</sup> a young married woman is being burnt alive or beaten to death or being pushed the commit suicide.<sup>2</sup> The gravity of the situation may also be judged from the fact that the National Commission of the Women has recommended for the scrapping of the dowry Prohibition Act. It only shows that the reality of the situation is beyond the legislative and enforcement activities. According to data compiled by the National Crime Records Bureau (NCRB) of India, a total of 2,276 female suicides due to dowry disputes were reported in 2006 that is six a day on an average, while the figure was 2,305 in 2005. In 2004, at least 2,585 such cases were registered across the country.<sup>3</sup> On an average one Indian woman commits suicide every four hours over a dowry dispute, as per official data, despite a series of laws to empower them.<sup>4</sup>

Dowry has been referred and may defined as “unilateral transfer of resources from

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<sup>1</sup> Anita Pratap, *Women killed by greed and oppression*, TIME, Sept. 11, 1995.

<sup>2</sup> The National Commission for women in India in one of its year reports (2000).

<sup>3</sup> Shuriah Niazi, *State of Dowry Deaths* (Jul. 15, 2008), available at <http://www.bologi.com/wfs6/2008/wfs1107.htm> (last visited on Aug. 25, 2008).

<sup>4</sup> *Dowry Death Every 4 hrs in India*, available at <http://www.zeenews.com/articles.asp?aid=414869&sid=LIF> (last visited on Aug. 18, 2008).

the bride's family at marriage to the groom's family for inviting her to their home permanently and that dowry is, therefore, a compensatory payment to the family which agrees to shelter her hypothetically for the rest of her life.<sup>5</sup>

The dowry custom continues to rule society. In majority of Indian families the boy has inheritance rights while the girl is given a hefty sum at the time of her marriage<sup>6</sup> in lieu of the Government regulated equal rights for girls in parental property. The evil of the dowry system has spread its tentacles in almost all parts of the country and almost in every section of society.<sup>7</sup> There are several reasons for the prevalence of the dowry system, but the main one is that it is a necessary precondition for marriage. "No dowry, no marriage," is a widespread fear.<sup>8</sup> There has also been an emergence of a feudal mindset with a materialistic attitude in a new globalized economy. The price tag for the groom is now bigger and bolder. The emergence of an affluent middle class, the torchbearer of social change in modern India, is the main factor for the perpetuation of the dowry system.<sup>9</sup> It is difficult for families with daughters who are highly educated to arrange marriages because the girls are required to have even more educated husbands and there is shortage of eligible educated grooms. The daughter's parents are ready to pay a handsome amount as dowry and they run behind the eligible educated grooms.<sup>10</sup>

Most marriages are arranged by families, and a man who does not marry for love, he can marry for other considerations such as possessions. For this man and his family, a woman becomes the ticket to his shortcut richness through the system of dowry. There are a number of things people desire to have in their own houses but cannot afford; they use the opportunity of a son's marriage to get them.<sup>11</sup>

On the other hand it is the duty of the father of the bride to find a suitable bridegroom for his daughter. The cast system, limited number of bread earning and educated bridegrooms; lack of education and earning potential of brides and greed of the bridegroom or his family to enrich by marriage have contributed the ancient system in to a present practice.<sup>12</sup>

<sup>5</sup> RANI JETHMALANI (ed.), *KALI'S YUG: EMPOWERMENT, LAW AND DOWRY DEATHS* (Har-Anand Publications 1995).

<sup>6</sup> Sita Kapadia, *A tribute to Mahatma Gandhi: His views on women and social change*, Souvenir of the First International Conference on Dowry and Bride-Burning in India, Harvard Law School, Sept. 30, Oct. 1 & 2, 1995.

<sup>7</sup> Edward A. Gargan, *For Many Brides in India, a Dowry Buys Death*, N.Y. TIMES, Dec. 30, 1993.

<sup>8</sup> Julia Leslie, *Dowry, Dowry Deaths' and Violence Against Women*, ch.II, in WERNER MENSKEI, *SOUTH ASIANS AND THE DOWRY PROBLEM 22-24* (Trentham Books 1999).

<sup>9</sup> RINKI BHATTACHARYA, *BEHIND CLOSED DOORS: DOMESTIC VIOLENCE IN INDIA* (SAGE 2004).  
See also Azad India Foundation, available at <http://azadindia.org/social-issues/dowry-system-in-india.html> (last visited on Aug. 11, 2008).

<sup>10</sup> Madhu Kishwar, *Gandhi and Women*, MANUSHI (1995).

<sup>11</sup> RANJANA KUMARI, *BRIDES ARE NOT FOR BURNING* 136, 138 (Radiant Publishers 1989).

<sup>12</sup> KALPANA KANNABIRAN (ed.), *THE VIOLENCE OF NORMAL TIMES* 77 (WOMEN UNLIMITED 2005).

The root cause of bride burning, as well as other forms of domestic violence against women, lies in their subordination and their frequent powerlessness within their husbands' family following marriage. Thus, cases of bride burning can and do occur without dowry being the causal factor, although dowry is possibly the single largest cause. Dowry commonly refers to the material gifts given to the bride by her family, usually at the time of the wedding.<sup>13</sup> Scholars, such as M. N. Srinivas, make a distinction between the ancient custom of dowry as *dakshina* or *dana* (voluntary and often token gifts) and the contemporary practice of dowry.<sup>14</sup> Nowadays dowry refers to material objects demanded (as opposed to voluntarily given) by the bridegroom's family, and often involves significant amounts of cash, property, household objects, and jewellery. In its current form, dowry is regarded, by those who demand it, as a reflection of the social status of the bridegroom's family. Thus, the more eligible the prospective bridegroom (eligibility being perceived as the social standing, the wealth, the educational and career-related achievements, and so forth, of himself and his family) the larger the dowry that his family has the right to demand and receive. Geraldine Forbes,<sup>15</sup> and other scholars also point out that, in relatively recent times, growing consumerism and the increasing tendency to equate social status with material objects has made it attractive for prospective bridegrooms and their families to use the dowry as a means of enriching themselves at the time of marriage by demanding expensive presents from the parents of the prospective bride.<sup>16</sup> The desire for continuing to benefit materially from the parents of the bride can take the form of pressuring the bride and her family for more dowry even after marriage.

Incidentally, the relatively low social value of girls in Indian society (manifest, for example, in the very recent custom, within some segments of Indian society, of aborting female fetuses)<sup>17</sup> is connected to the financial pressures encountered by their families through the custom of dowry.<sup>18</sup> There are few more motivations which could also motivate the dowry system such as:

- Aspiration to marry in the High and Rich family.
- Pressure of the caste system.
- Social Custom.
- Marriage system.
- False notion of social status and
- Vicious Circle.

<sup>13</sup> *An Essay about Bride Burning in India*, 25 JOURNAL OF BURN CARE & REHABILITATION 165, 170.

<sup>14</sup> M. N. SRINIVAS, *CASTE IN MODERN INDIA* (Asia Publishing House 1962).

<sup>15</sup> G. FORBES, *WOMEN IN MODERN INDIA: THE NEW CAMBRIDGE HISTORY OF INDIA* ch. IV.2 (Cambridge 1996).

<sup>16</sup> Leslie, *supra* note 8, at 23.

<sup>17</sup> John F. Burns, *India Fights Abortion of Female Fetuses*, N.Y. TIMES, AUG. 27, 1994.

<sup>18</sup> Vibhuti Patel, *Sex-Determination and Sex-Preselection Tests in India: Recent Techniques in Femicide*, N.D

The pressure to provide a dowry is also felt by female children themselves. In Kanpur (UP) three sisters were reported to have committed suicide in order to spare their parents the humiliation of not being able to provide a dowry, without which they could not get married<sup>19</sup> It is well known that birth of daughter is not a happy event. Giving a birth of daughter means additional burden of expenses of her marriage and endless expenses thereafter.<sup>20</sup> The birth of a boy is an occasion for rejoicing women who give birth to a son gets special favours from the husband and in laws of some communities.<sup>21</sup>

Dissatisfaction over dowry may find expression through acts of hostility ranging from verbal abuse to actual violence to bride burning.<sup>22</sup> It is the most extreme violence against newly married women. This system is more rigid in the northern region consisting of Bihar, Uttar Pradesh, Rajasthan, Haryana, Delhi, Madhya Pradesh states specially in hindi speaking belt of India,<sup>23</sup> but we can not assume that non hindi speaking provinces had no causality of dowry.

## 2. Historical and Socio-Legal Concept of Dowry

Although it is not clear when the practice of dowry began in India but it is very ancient. The system of dowry was found widely practiced in Indian society in the early days. In ancient times, dowry was the part of the ritual of Kanyadanam (Kanya means daughter and Danam means gift)<sup>24</sup>, particularly in upper class marriage in the ancient and the medieval period. In the British and modern period it engulfed the entire society.<sup>25</sup> It was a gift offered willingly in the medieval period and now turned into an evil system. A reason for the origin of dowry could perhaps be that the groom and his family had to take up the 'onerous' responsibility of supporting the bride for the rest of her life.<sup>26</sup>

Father in order to marry his daughter had to pay hefty wealth demanded by groom's family. Though it was practiced in the aristocratic and royal families; it engulfed the society in alarming way. It started in the ancient religious customs of "Var Dakshina" (

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<sup>19</sup> Integrated Human Development Services Foundation (IHDSF) 9 (Feb. 15-18, 1988).

<sup>20</sup> Leslie, *supra* note 8, ch. II, at 23.

<sup>21</sup> M.N. SRINIVAS, S. SESHAIHAH AND V.S. PARTHASARATHY, DIMENSIONS OF SOCIAL CHANGE IN INDIA 218 (Allied Publishers 1977).

<sup>22</sup> ILSA JOURNAL OF INTERNATIONAL LAW 110 (1992).

<sup>23</sup> Shingh Kamayani, *The Dowry System and Women in India*, INSTITUTE OF ASIAN CULTURAL STUDIES (2004), available at <http://subsite.icu.ac.jp/cgs/article/0408008e.html> (visited on Aug. 25, 2008).

<sup>24</sup> Srinivas, Seshaiyah & Parthasarathy, *supra* note 21, at 211.

<sup>25</sup> ALAKA MALWADE BASU, CULTURE, THE STATUS OF WOMEN, AND DEMOGRAPHIC BEHAVIOUR: ILLUSTRATED WITH THE CASE OF INDIA (Oxford 1992).

<sup>26</sup> *Supra* note 5.

groom's gift offered willingly)<sup>27</sup> and the duty of the father of the bride to send her bedecked her with costly ornaments and clothes. It was thus customary for the parents and her relations to give gifts out of love and affection.<sup>28</sup> At that time it was believed that this was to be used as a nucleus of the married couple's matrimonial estate and the father of the bridegroom would not use it or kept it for his own purposes or profit from the sale of the bridegroom.<sup>29</sup>

In the ancient 'Mitakshara' system<sup>30</sup> (Hindu ancient universal rules governing human life)<sup>31</sup> female's were denied any share in the immovable property of a deceased Hindu because in order to avoid partition of land and the society was mainly agricultural and that is why the system of 'Var Dakshina' (groom's gift) and giving ornaments etc to the bride was adopted.<sup>32</sup> The father manager of a joint hindu family had special power to make a gift of a small portion of immovable joint family's property out of affection to this daughter. The property given to a female before, or at the time of or after her marriage was known as Stridhan (woman's property) and strengthened the idea that she was an affectionate as member of her family of her birth as sons.<sup>33</sup> The groom family normally gives many justifications for dowry such as (1) Most men think it is their right to demand dowry for the expenses they will incur in looking after the bride;<sup>34</sup> (2) Parents of the groom expect dowry to reimburse the expense of their son's education;<sup>35</sup> (3) Dowry is a status symbol. Men who do not accept dowry are sometimes criticised not only by the society but also their own family members;<sup>36</sup> (4) Marriage with dowry is considered more prestigious and is recommended for the higher castes.<sup>37</sup>

The Parliament showed its concern on the dowry system by the Dowry Prohibition Act

- 27 BHUPENDRANATH DUTTA, BHARATIYA SAMAJ PADDHATI (available only in Bengali) vol. 3 (Nababharat Publication 1984).
- 28 Padma Srinivasan; Gary R. Lee, *The dowry system in Northern India: Women's Attitudes and Social Change*, 66 JOURNAL OF MARRIAGE AND FAMILY 1108, 1117.
- 29 MONIKA BAK, CURSED DOWRY 145 (Vantage Press Dec. 1999).
- 30 JUSTICE M. RAMA JOIS, LEGAL AND CONSTITUTIONAL HISTORY OF INDIA: ANCIENT, JUDICIAL AND CONSTITUTIONAL SYSTEM 46-47 (Universal Law Publishing 2004).
- 31 The Mitakshara is a legal treatise on inheritance, written by Vijnaneshwara a scholar in the Western Chalukya court in the 12th century. It became one of the most influential texts in Hindu law, and its principles regarding property distribution, property rights, and succession are still in practice across most of India. See SURYANATH U. KAMAT, A CONCISE HISTORY OF KARNATAKA FROM PRE-HISTORIC TIMES TO THE PRESENT (Jupiter Books 2001).
- 32 M. N. SRINIVAS, SOME REFLECTIONS ON DOWRY 37 (Oxford 1984).
- 33 Ludwik Sternbach, *Hindu Woman's Right to Property: Past and Present*, JOURNAL OF THE AMERICAN ORIENTAL SOCIETY 94 (1962).
- 34 M. N. SRINIVAS, SOCIAL CHANGE IN MODERN INDIA 67-70 (Orient Longman India 2000).
- 35 *Id.* at 72.
- 36 Partha Banerjee, *A Matter of Extreme Cruelty: Bride Burning and Dowry Deaths in India*, 1 INJUSTICE STUDIES (1997).
- 37 Leslie, *supra* note 8, at 24-25.

in 1961 which came into force on May 20, 1961. In fact, the increasing number of dowry deaths led to the constitution of a joint committee of both houses of Indian Parliament which proposed certain amendments in 1983 and was intensively amended in 1984 and 1986 and the amendment Acts became effective on October 2, 1985<sup>38</sup> and Nov. 19, 1986<sup>39</sup> respectively. Then, there is also the Protection of Women from Domestic Violence Act, 2005, whose Section 5 defines domestic violence as those acts that harass, harm, injure or endanger the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security.

### 3. Legislative Changes: Anti-Dowry Laws

Before examining the question whether the amended Act has acquired more effectiveness than the original Act, certain important changes made by the Amendment Act, 1984 and 1986 are to be noted. The Criminal Law (Second Amendment) Act, 1983<sup>40</sup> has also made changes in the Indian Penal Code, the Criminal Procedure Code and the Evidence Act.

#### *The Dowry Prohibition Act, 1961*

Section 2 defines 'Dowry' which means any property or valuable security given or agreed to be given either directly or indirectly:

- (a) by one party to the marriage to the other party of the marriage or
- (b) by the parents of either party to the marriage or by any person to either party to the marriage or to any other person,

At or before or any time after the marriage in connection with the marriage of the said parties. The original Section 2 of the Act, 1961 used the phrase as a 'consideration' of marriage which has been replaced by the words 'in connection with the marriage' because the Joint Committee felt that this will make the definition wider. The punishment for giving or taking dowry has also been increased in Section 3 of the act. "Section 3 : Penalty for giving or taking dowry :"

(1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which

<sup>38</sup> Act. No. 63 of 1984 (w.e.f. Oct. 2, 1985).

<sup>39</sup> Act. No. 43 of 1986 (w.e.f. Nov. 19, 1986).

<sup>40</sup> Act. No. 46 of 1983 (w.e.f. Dec. 25, 1983).

shall not less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry whichever is more.<sup>41</sup>

(2) Now imprisonment for the term not less than six months extended up to two years and fine up to rupees ten thousand for demanding dowry Section 4 of the Act.<sup>42</sup> Originally the punishment was imprisonment up to six months or fine up to rupees five thousand only. The section 8 of the Act makes the offence under this Act (non-bail able and non-compoundable).<sup>43</sup> Burden of proof has been sifted to the person who is charged under Section 3 or 4. The Section 8 A<sup>44</sup> provides:

“Where any person is prosecuted for taking or abetting the taking of any dowry under Section 3, or the demanding of dowry under Section 4, the burden of providing that he had not committed an offence under those sections shall be on him.”

### *The Indian Penal Code*

A new Chapter XXA has been added and a new offence of cruelty by husband or by relatives of husband' has been added in Section in 98 A. Thus:

“Whoever, being the husband or the relative of the husband of a woman, subjects such women to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.”

Dowry Prohibition (Amendment) Act, 1961 inserted a new Section 304-B in order to punish dowry death. The section runs thus “Section 304-B Dowry Death”:

(1) Whenever the death of a women is caused by any burns or occurs otherwise than under normal circumstances within seven years of marriage and it is shown that soon after her death she was subjected to cruelty or harassment by her husband or any relative of her husband for or, in connection with, any demand for dowry such deed shall be called dowry death, and such husband or relative shall be deemed to have caused her death.

(2) Whoever commits dowry death shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

<sup>41</sup> Ins. by Act 63 of 1984.

<sup>42</sup> *Id.*

<sup>43</sup> Subs by Act 43 of 1986.

<sup>44</sup> Ins by Act 43 of 1986.

### *The Code of Criminal Procedure, 1973*

Insertion of new Section 198A- After Section 198, the following section is inserted which runs as:

“Section 198 A- Prosecution of offences under Section 491 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 facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by the father, mother, brother, sister or by her father’s or mother’s brother or sister or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.”

### *The Indian Evidence Act, 1982*

A new Section 113A<sup>45</sup> has been inserted after Section 113. The Section 113 A runs thus:

“Section 113 A- Presumption as the abetment of suicide by a married women- 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 for the date of her marriage and that her husband or such relative or her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.”

Again a new Section 113 B after section 113 A had been inserted.<sup>46</sup> The new section runs as under:

“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 had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

As noted the outset where the death of a woman is caused by burns or bodily injury occurs otherwise than under normal circumstances within seven years of her marriage and evidence reveal that soon before her death she was subjected to cruelty or harassment by her husband or any of his relative for or in connection with any demand for dowry, such death is described as dowry death under Section 304-B for which the punishment extends to punishment for life but not less than imprisonment of seven years.

<sup>45</sup> The Criminal Law (2nd Amendment) Act, 1983 (Act No. 46 of 1983).

<sup>46</sup> The Dowry Prohibition (Amendment) Act, 1986 (Act No. 43 of 1986).



## 4. Judicial Trend

*"The Supreme Court of India has held that seeking financial assistance from in-laws by the son-in-law to meet urgent domestic expenses will not amount to a demand for dowry warranting criminal prosecution." The Supreme Court Bench set aside a judgment of the Bombay High Court confirming the trial court's order convicting and sentencing a man to seven years' rigorous imprisonment in an alleged dowry death case.*<sup>47</sup> (The Hindu National Daily, Jan 08, 2007)

In the instant case, *Appasaheb versus State of Maharashtra, 2007 (1) SCALE 50*, (the important issue of offences related to dowry) Appasaheb was convicted for the death of his wife of seven years, Bhimabai, after she consumed poison. A case was registered against him and his mother under IPC Sections 498A (cruelty against woman for dowry), 304-B (dowry death) read with 34 (common intention) and 306 (abetment of suicide). Though the accused were acquitted for the offence of cruelty and abetment, the husband was convicted on the charge of dowry death. Allowing the appeal, the Supreme Court Bench quashed the conviction and said the statement of the mother of the deceased did not state that the cause for ill treatment was a demand for money and consequent beating.

### *Short Recital of the Case*

At the time of the marriage of Bhimabai to Appasaheb, a sum of Rs 5,000 and some gold ornaments were given to the family of the bridegroom. After her marriage, Bhimabai was treated well for around six months. Thereafter, Appasaheb and his mother Kadubai started asking Bhimabai to bring Rs 1,000-1,200 from her parents to meet the household expenses and to buy manure. Whenever Bhimabai went to her parents' home she used to tell them that her husband and her mother-in-law were harassing her and would occasionally even beat her. Bhimabai's father and relatives went to Appasaheb's house and tried to persuade them not to ill-treat Bhimabai. Subsequently, Bhimabai was treated well for about four months. Then the harassment began all over again. A few days before the festival of Nag Panchami, Bhimabai visited her parents' home and complained that her husband and mother-in-law were not giving her adequate food, clothing and footwear. She also said that her husband had asked her to return with Rs 1,000-1,200 to meet the household expenses and the cost of buying manure.

On the evening of September 15, 1991, Bhimabai's father Tukaram was told that his

<sup>47</sup> Legal Correspondent, *Seeking money from in-laws need not be dowry demand*, HINDU NATIONAL DAILY, Jan. 8, 2007, available at <http://www.hindu.com/2007/01/08/stories/200701019001100.htm> (last visited on Aug. 25, 2008).

daughter was unwell. Tukaram and his relatives immediately went to the in-laws' house. There they saw Bhimabai lying dead with froth coming out of her mouth, indicating that she may have consumed poison. The police lodged a report of accidental death and the body was sent for post-mortem.

On September 16, 1991, Tukaram lodged a First Information Report (FIR) on the incident. A case of dowry death (Section 304 B of the Indian Penal Code [IPC]), abetment to suicide (Section 306 of the IPC) and cruelty to a woman by her husband or his relatives (Section 498 A of the IPC) was registered against Appasaheb and his mother Kadubai.

Following an investigation, a charge sheet was submitted against the husband and mother-in-law. The sessions judge framed charges for dowry death, abetment to suicide, and subjecting a woman to cruelty. The prosecution examined six witnesses and placed documentary material to establish the case. The sessions judge convicted the husband and mother-in-law for dowry death, under Section 304 B of the IPC, and sentenced them to seven years' rigorous imprisonment. However, the judge acquitted them of the charges of abetment to suicide and cruelty to a woman, under Sections 306 and 498 A of the IPC, respectively.

Appasaheb and the mother-in-law's appeal against a conviction for dowry death was dismissed by the Bombay High Court in February 2005. Following the dismissal, the matter reached the Supreme Court on an appeal filed by the husband and mother-in-law against the conviction for dowry death.

### *A Critical Study of Judgment of the Apex Court*

The Supreme Court noted that the post-mortem report did not find any sign of external or internal injury; it stated that the cause of death was insecticide poisoning. The court examined the evidence of the father and mother. It noted that the mother had deposed that Bhimabai had complained of ill-treatment by her husband and mother-in-law, accompanied by demands for money from the parental home. That on the last visit before her death, on the occasion of Nag Panchami, Bhimabai complained again of ill-treatment and beatings for not bringing money from her parents. The court noted that the father had said that his daughter had complained of harassment due to "domestic reasons". That the mother had said that her daughter was being ill-treated for not fulfilling the demand for money to meet household expenses and the cost of buying manure, etc.

The judgment observes that the mother's statement to the police, recorded on September 16, 1991, did not mention that the cause for ill-treatment was "a demand for money and consequent beating." However, Bhimabai's mother deposed before the

session's court that she had clearly told the police that the ill-treatment was due to non-fulfillment of the demand for money. The Supreme Court judgment observes that the accused are from a humble background and could not have exerted any kind of influence on the police to omit the statement.

After the above observations, the Supreme Court accepts the statements of the mother and father of the deceased Bhimabai and observes that the "utmost which can be said is that the appellant No 1 had asked his wife Bhimabai to bring money for meeting domestic expenses and for purchasing manure." The judgment goes on to examine the ingredients of the offence of a dowry death. It notes that the death of a woman should have been caused by burns or bodily injury, or occurred otherwise than under normal circumstances and that she should have been subjected to cruelty or harassment in connection with a demand for dowry.

Thereafter, the judgment examines the Dowry Prohibition Act 1961 and observes that the giving or taking of property, directly or indirectly, should have a connection with the marriage of the parties for it to constitute "dowry." The court notes that the provision for dowry death is a penal provision and therefore the definition of dowry should be construed narrowly. The judgment further declares that the principle of interpretation to be followed is that if an Act is passed with reference to a particular trade, business or transaction, then the words in the legislation should be construed as having the same meaning as generally understood in that trade, business or transaction.

Observing that "dowry is a fairly well-known social custom or practice in India," the judgment indicates that the definition of "dowry" should be construed as having a meaning that is generally understood. The judgment lays down that a "demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood."

Applying the law laid down to the facts of the present case, the judgment observes that the evidence adduced by the prosecution does not show any demand for 'dowry' being made, as money to meet domestic expenses and to purchase manure was asked for by the accused persons. The essential ingredient of a demand for dowry was held to be not established in the case, and the husband and mother-in-law were acquitted of the charge of dowry death. Noting that the trial court had acquitted the accused for the offences of abetment to suicide and cruelty to a woman by her husband or relatives, under Sections 306 and 498 A of the IPC respectively, and observing that the State had not filed any appeal against the acquittal, the Supreme Court refused to go into the question of culpability for the offences under these sections. The court directed the release forthwith of the husband and discharged the sureties and bonds of the mother-

in-law who was already on bail.

The Dowry Prohibition Act 1961 was brought in with the objective of prohibiting the evil practice of giving or taking dowry. It was felt that making the practice punishable would contribute to its eradication. The provisions of an enactment like the Dowry Prohibition Act 1961 and dowry death offences are to be interpreted by courts of law in the background of legislative intention.

Unfortunately, in the present case, the Supreme Court seems to have disregarded the entire context - the social evil to be tackled, the objective sought to be achieved, the continuing number of horrific cases of dowry death/suicide, and attempts at devising more effective provisions - and gone in for an interpretation totally at odds with the whole purpose of the legislation. Rather than looking at the enactment as social reform legislation, the judgment equates it with legislation in the area of any trade, business or transaction.

The law declared by the Supreme Court that money demanded on account of financial stringency, or to meet urgent domestic expenses or purchase manure is not dowry is binding on all courts in India till it is not reviewed by a larger bench of the apex court. This retrograde judgment has serious repercussions for ongoing and future dowry-related cases, as well as attempts to check the menace of dowry harassment, death and suicide.

The aforesaid judgment reflects how judicial scheme is non responsive in the matter of dowry but in a number of decisions the Supreme Court<sup>48</sup> has shown practical approach in dealing with bride burning cases, some cases are as follows: Brij Lal v. Prem Chand,<sup>49</sup> State (Delhi Admn.) v Laxman Kumar,<sup>50</sup> State of Punjab v. Iqbal Singh,<sup>51</sup> Kailash Kaur v. State of Punjab,<sup>52</sup> Santi v. State of Harayana,<sup>53</sup> Lachamadevi v. State of Rajasthan.<sup>54</sup>

On the question of punishment for dowry death, it is noted that it does in no way indicate that in case of dowry death, **death sentence** stands excluded. The answer was given by the Supreme Court.<sup>55</sup> "If there is proof the person having intentionally caused her death would attract Section 302 IPC." Further this is evident when we concentrate

<sup>48</sup> Supreme Court of India has explained in these terms, The legislative intent is clear to curb the number of dowry deaths, in State of Punjab v. Iqbal Singh, AIR 1991 SC 1532, 1537.

<sup>49</sup> AIR 1989 SC 1651, *See also*, Gurbachan Singh, AIR 1990 SC 209

<sup>50</sup> AIR 1986 SC 250 at 256.

<sup>51</sup> AIR 1991 SC 1522.

<sup>52</sup> AIR 1987 SC 1368. *See also* State of Punjab v. Amarjit Singh, AIR 1988 SC 2013.

<sup>53</sup> AIR 1991 SC 1226.

<sup>54</sup> AIR 1988 SC 1785.

<sup>55</sup> AIR 1991 SC 1532 at 1537.

upon certain presumptions prescribed under sub section (1) of Section 304- B. To writ in State (Delhi Adminstraton v. Lakshman Kumar<sup>56</sup> the Supreme court has observed that in case of bride burning specially covered in the definition of dowry death under Section 304-B) death sentence may not be improper. Then in Lichamadivi v. State of Rajsathan<sup>57</sup> referring to the above observation Justice Ojha and Shetty, of the Supreme Court state thus:

“We agree the persons who perpetrate such barbaric crime, without any human consideration must be given the extreme penalty.”

Nevertheless, the interpretation of the Act by the subordinate and High Court most of the time had not been up to the legislative intent. The various factors operating against effective implementation of the Act are as follows:

- Granting of bail to dowry offenders which enable them to compel with
- The hesitancy of independent and honest witness to come to the court;
- The lack of legal assistance to private complaints;
- Such crimes are generally committed in the privacy of residential homes, and in secrecy, independent and direct evidence is not easy to get;<sup>58</sup>
- The role of the police is crucial in cases of dowry-related violence. The investigative process, which includes FIR and the dying declaration, is extremely important. Acquittals have reportedly been obtained due to corrupt police and physicians who tamper with evidence.<sup>59</sup>
- Unfortunately, police department mostly being male-dominated is also sometimes influenced by its patriarchal values. Improper investigation and lack of proper approach often result in the offenders roaming free without any fear or punishment.

<sup>56</sup> AIR 1986 SC 250 at 256.

<sup>57</sup> AIR 1988 SC 1785 at 1788.

<sup>58</sup> ILSA, *supra* note 22, at 114.

<sup>59</sup> Human Rights in Developing Countries Yearbook 184 (1991).

## 5. Conclusion

It may safely be concluded that the Legislature has been quite responsible to the problem of dowry death, and more so when they happen to occur at the prime of the wedlock which could be seen at in the inserted provisions of Evidence Act by virtue of Section 113-A and 113-B the former dealing with the presumptions as to abetment of suicide by a married women bestowing its co-relationship with the parent provisions of the Penal Code in Section 306, the later making a presumption as to dowry death.<sup>60</sup>

But it is still a moot question whether deep rooted social evil in Indian society can be solved through legal measures at all. The evil system of dowry is continuously in practice and culturally approved and socially recognized. Earlier it was practiced only among Brahmins or upper castes; now dowry system has spread to all castes as well as other religions.<sup>61</sup> Around 50% of Indian population is not free from the practice of dowry even after 61 years of independence. Education and employment of the women has not helped them so far from the evil of dowry.

Therefore, it is submitted that the efforts at the societal level may be more fruitful; it includes the coming forward of the educated youth to combated against the evil and to deny the dowry at all cost. Women should be given more freedom in selecting their husband, increased education and employment opportunities can promote such attitudinal change. Attitudinal change in middle class society is very necessary because it is this class which is perpetuating this crime in the most blatant manner,<sup>62</sup> Female infanticide, Sati ( wife burning with dead body of husband in same pyre ), bride burning or all manifestations of this middle class immorality and greed. Some remedial measures are as follows:

- Reporting of cases: Dowry harassment or death cases should be reported without delay.
- Registration of cases: The delay in registering cases at the Police station and in the Medical examination at the hospitals should be drastically reduced, as it can be fatal.
- Court procedures: As far as possible, the culprit should not be granted bail as this gives him ample opportunities to destroy all evidence to threaten the witness.
- Community Action: Social boycott of families which have harassed bride for dowry is a string weapon to effect social change.

<sup>60</sup> Ashok Kumar v. State of Rajasthan, AIR 1990 SC 2134 at 2135.

<sup>61</sup> INDIA TODAY, Apr. 15, 1993, at 52.

<sup>62</sup> Leslie, *supra* note 8, at 24-26.

Dowry is publicly condemned but privately followed in practice. The belief that the evil of dowry which is deep rooted in the Indian society can be eradicated by just making laws is no more stands true. The first Prime Minister of India, Late Pandit Nehru, who played an active role in social engineering, had said that, ' Legislation alone cannot eradicate the deep rooted social problem.

The laws enacted to eradicate the evil system of dowry from the society should be supported and backed by the public opinion. If progressive legislations lacks the support of public opinion it is no more than a waste bundle of papers; As is case with the Indian Dowry Prohibition Act, 1961. Social legislations must be backed by the social awareness and must match the letter and spirit of law. As it is rightly said by Pluto, No law or ordinance is mightier than understanding.