



2. Dowry and the Law in India, with Focus on notable cases filed under Section 498A

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Abstract

Torture has been a constant companion for women since ancient times. Although women's rights have been the subject of much debate and legislation, none of these measures have gone far enough to guarantee woman total safety. When it comes to crimes committed against women, the list is long and ever-growing, with no end in sight for the most heinous of them. We mostly focus on the "Dowry System" or "Dowry Deaths" here. While it's true that this issue has been around for a while, it's also true that no one has yet come up with a satisfactory solution, and the situation is just becoming worse for every family. The Indian Parliament has passed laws on any and all topics that have come before it. One such law, the "Dowry Prohibition Act, 1961," addresses the practice of dowry. However, the problem persists despite numerous amendments, such as Section 498A and Section 304 B of the Indian Penal Code and Sections 113A and 113B in the Indian Evidence Act. These changes were necessary due to the rising number of dowry-related deaths and bridal suicides at the time. Additionally, a domestic violence act was enforced, which included a provision for dowry tortures. To help shed light on this topic and provide a better understanding of the dowry system as it is now in use, the article discusses prominent incidents.

Keywords: Dowry System, Dowry Deaths, Judiciary, Legislation, Indian Penal Code.



1. Introduction

There are deep historical origins to the usage of dowry. The terrible Dowry System is still very much a part of our culture, even though it is illegal to ask for dowry before, during, or after a marriage in our society. Like other cancers, the dowry sickness is rapidly expanding; so, it is imperative that we do something about this monstrosity without delay. India is now addressing a number of social concerns, the most serious of which is dowry. The practice of parents transferring monetary and other valuables to their daughters upon her marriage is known as dowry.¹ After a marriage takes place, the bride's family would often provide monetary or material gifts to the groom's family as a dowry. It could also contain monetary gifts, jewellery, electronics, furniture, tableware, silverware, and other home goods that help the newlyweds start their life together, including a car.

A dowry is a payment that is provided to the family of the groom by the family of the bride at the time of the marriage when the bride is being married. You have the option of giving this gift in the form of either money or property. In contrast to the related concepts of wedding price and dower, the concept of dowry is distinct from these other concepts. As opposed to the bride price or bride service, which is a payment made by the groom or his family to the bride or her family, the dowry is the wealth that is transferred from the bride or her family to the groom or his family.² The bride price or bride service is a term that is used to describe the payment that is made. In a similar spirit, the term "dower" refers to the property that the groom delivers to the bride at the time of their marriage and that the wife continues to hold and have power over after the marriage. This property comes from the groom's inheritance.

Depending on the language that is spoken, the word "dowry" can be rendered in a variety of different ways. In the language of Hindi, it is referred to as "dahej," in Urdu and Arabic, it is called "jehaz," in Bengali, it is called "joutuk," in Mandarin, it is called "jiazhuang," in Turkish, it is called "ceyiz," in French, it is called "dot," in Nepali, it is called "daijo," and so on. In the course of the "Kanyadaan" ritual, the father of the bride customarily presents the father of the groom with a variety of riches, including gold, money, and other items. On the other side, the bride at a "Sridhan" wedding is often the recipient of gifts and decorations from her own family

¹ Sonia Dalmia and Pareena Lawrence, "The Institution of Dowry in India: Why it continues to prevail" 38(2) *The Journal of Developing Areas* 77 (2005).

² Priya R Banerjee, "Dowry in 21st Century India: The Socio-cultural face of exploitation" 15(1) *Sage Journals* 75 (2013).



instead of the groom. A dowry is anything of value that a lady offers to her new husband at the time of their wedding. It can be anything from jewellery to jewellery. What is known as the bride price is the amount of money or other commodities that are given to the family members of the bridegroom as part of the celebrations surrounding the wedding. Gifts such as money, jewellery, electronics, furniture, linens, tableware, cutlery, and cooking utensils are typically exchanged between the bride and groom during the festivities surrounding their wedding. This time-honored practice has come a long way from being a manifestation of the love that parents have for their daughters to being a significant social danger.³

2. Historical evolution of the concept of Dowry

The practice of dowry is an age-old tradition that is documented in some of the earliest publications, and its origins likely before any recorded evidence of it. In certain regions, particularly in portions of Asia, Northern Africa, and the Balkans, the tradition of dowries persists, wherein the provision of a dowry is anticipated and required as a prerequisite for accepting a marriage proposal.⁴ Acts of violence, such as killings and acid assaults, occasionally occur against women in several Asian nations due to disputes over dowry. The practice of dowry is prevalent in societies characterised by strong patrilineal kinship systems and the expectation that women will live with or in close proximity to their husband's family (patrilocality). Dowries have extensive historical roots in Europe, South Asia, Africa, and several other regions throughout the globe.

2.1 Dowry under Vedic times

Women were respected during the Vedic period, and they were given about the same amount of freedom and standing as men. These chances for learning and growing were the same for both young men and young women. The beginning of marriage was a holy ceremony that brought two minds together in an unbreakable, eternal bond. The couple's situation stayed the same. The bride's situation was looked up to by the family. It was thought that she was an important and necessary family member, without whom life would not have come to an end.

³ Padma Srinivasan and Gary R Lee, "The dowry system in Northern India: Women's attitudes and social change" 66(5) *Journal of Marriage and Family* 1114 (2004).

⁴ Ursula Sharma, 14 *Women and Property* (1st Edn, Routledge, 1984).



The practice of dowry evolved in tandem with the spread of marriage as a social institution in India. Marriage was considered a holy rite throughout the Vedic period.⁵ Because women were considered property in some ancient Indian societies, the right to request or demand money from the bridegroom's family at the moment of marriage really belonged to the bride's father, not the groom's. The family's opinion was that the bridegroom should not be entitled to any further money or contribution as he had taken their daughter as his bride and denied them the benefit of her services.

2.2 Medieval Time

Although the inception and genesis of the tradition of dowry that was prevalent in India had been lost in antiquity, there were still few evidence signs to infer that it was performed even before 300 B.C. among elite castes of society such as the Brahmins and Kshatriyas. This was the case despite the fact that the custom had been lost in antiquity. But it was unknown if it was brought along with the invading army and mass weddings of Alexander the Great, or whether it had been practiced even before those times. It was not known whether it was introduced together with such things. During the first stage of the relationship, the land was typically offered as dowry. The death of the great emperor Ashoka marked the beginning of an age in which Buddhist law exerted a significant impact on a significant portion of India. This was the beginning of the establishment of Buddhism culture in India. According to Buddhist law, women were granted rights in the property, and they even had the ability to possess the land. As a result, the likelihood of women donating and receiving dowries was significantly reduced.

Mediaeval India was commonly referred to be the 'Dark Age' for women. After their invasion of India, the Muslim invaders introduced a distinct culture. In the mediaeval era, the Kshatriyas, who held power, along with other influential castes/classes, engaged in the practice of exchanging valuable assets, both movable and immovable, as dowries for their daughters. This was done to enhance their social standing and impress others with their opulence.

2.3 The Post-Independence Era

⁵ Gaurav Chiplunkar and Jeffrey Weaver, "Marriage markets and the rise of dowry in India" 164 *Journal of Development Economics* 45 (2023).



The advent of English education in India elevated young men who held lucrative positions in civil service and professions to the rank of the most desirable unmarried individuals.⁶ Parents of male children may be inclined to recoup the expenses incurred on their son's education and career by requesting a substantial dowry from the vulnerable parents of female children. Indian parents constantly face the societal and ethical burden of arranging early weddings for their daughters, regardless of their financial situation.

The dowry practice has managed to transcend religion and caste boundaries, affecting even individuals who were not previously involved in it. The 1975 report of the Committee on the Status of Women in India highlighted that the tradition of dowry had spread throughout the whole country. Except for the majority of Muslim populations, the Parsees, and a few highland tribes that still practise the custom of bride price, the dowry system appears to have pervaded most regions of the country.⁷ The form and substance of dowry exhibit significant diversity, reflecting the geographical, communal, and caste differences in its implementation. Indeed, it is possible that there exist several distinct households within the society, characterised by social divisions such as class and caste, where the practice of dowry is absent.

3. The current Dowry system and Dowry deaths

Despite the implementation of many measures to outlaw dowry and its transaction, the practice of giving and receiving dowry persists in our culture, as it is still seen as a matter of social status. Although the Act outlawing dowry in India is not biased against any gender, the majority of cases involving dowry demands are initiated by the groom's family. Occasionally, the groom's family makes dowry requests that are excessively unreasonable and repetitive, resulting in the bride's guardians being unable to meet them. The outcome is that the young woman residing in the marital residence is subjected to torment and degradation in order to coerce her parents and relatives into meeting their demands. When the requests are not satisfied for whatever reason, the girl in her marital house may be subjected to burning, beating, or strangulation, ultimately leading to her death.

Previously, instances of married women's deaths were disregarded as "suicide" or "accident". In Hyderabad, a progressive women's movement initiated a campaign against dowry killings

⁶ Linda Stone and Caroline James, "Dowry, bride-burning, and female power in India" 18(2) *Women's Studies International Forum* 125 (1995).

⁷ Rajni Palriwala, "Reaffirming the Anti-Dowry Struggle" 24(17) *Economic and Political Weekly* 943 (1989).



in 1975. The campaign was suspended under the state of emergency declared by the current Prime Minister. The movement regained its courage only after the emergency was lifted and a new movement was initiated in Delhi by Mahila Dakshata Samiti. This movement aimed to address the violence inflicted upon married women in exchange for dowry, which often resulted in the woman being burned alive or coerced into suicide.

In the past, cases of married women's deaths were dismissed as either "suicide" or "accident". A campaign against dowry murders was launched in Hyderabad in 1975 by a progressive women's organisation. The campaign was halted due to the state of emergency proclaimed by the incumbent Prime Minister. The movement recovered its fortitude only after the state of emergency was ended, and a new movement was begun in Delhi by Mahila Dakshata Samiti. The objective of this movement was to confront the brutality suffered by married women due to dowry, frequently leading to their immolation or forced suicide.

However, despite the fact that the government and the courts have made several efforts to outlaw the crime of dowry and the violence that is linked with it, it still occurs on occasion in our culture. An annual study from the National Crime Record Bureau indicates that India has the greatest number of dowry-related deaths of any country in the world.

4. Notable cases under section 498A

Since its inception, the Supreme Court has always placed a high value on evidence when it comes to establishing a person's guilt. *Amalendu Pal @ Jhantu v. State of West Bengal*⁸ was a case involving an extramarital affair that occurred between a husband and his wife. The husband wanted his wife to allow him to continue his contact with other women and marry her, but she refused to do so. As a direct consequence of this, the spouse began to assault her both physically and emotionally. In spite of the fact that he had refused to marry the lady with whom he had a connection, the husband obtained the accessory, which indicated that they had a marital link. This was the motivating factor that led the legally wedded wife to take her own life.⁹ The accused were penalised for the offence under sections 306 and 498-A of the Indian Penal Code by the Calcutta high court; thus, the accused filed an appeal with the Supreme Court in order to seek justice. It was determined by the Supreme Court that there was no

⁸ *Amalendu Pal @ Jhantu v. State of West Bengal*, 2010 (1) SCC 707.

⁹ Dr Vidya Vasantrya Dhere and Dr Ujwala Bendale, "Critical Evaluation of the case Rajesh Sharma and Others v. State of UP and another, AIR 2017 SC 3869, under section 498 of Indian Penal Code" 24(6) *IJPR* 18182 (2020).



evidence to indicate that the husband assisted the dead in committing suicide. As a result, the husband was ruled not guilty under section 306 of the Indian Penal Code. However, he was found guilty under section 498A of the Indian Penal Code since it was proven that he harassed his wife and demanded dowry.

In the case of *Rajendran and Others v. State Assistant Commissioner of Police Law and Order*,¹⁰ the evidence demonstrated that the lady had been subjected to torture; however, there was no proof of an offence related to dowry. As a result, the accused was found not guilty under Section 304B of the Indian Penal Code, but was sanctioned under Section 498A of the Indian Penal Code. In both of these sections, the demand of dowry is one of the essential components. In the case that was discussed before, there was no crime that was related to dowry; yet, the accused was sentenced under section 498A of the Indian Penal Code and acquitted under section 304B of the same code. According to the Indian Penal Code, section 498A, harassment to compel a woman to satisfy an unlawful demand is considered to be a violation of the law. However, if the demand was not mentioned, then the section does not apply.

Additionally, the Supreme Court had taken stringent action against the husband who attempted to seek safety in the shelter of a deathbed declaration that did not inspire the Court's trust. In the case of *Surinder Kumar and Others v. State of Haryana*,¹¹ the court did not accept the testimony of the dying statement on the grounds that it was impossible for the woman who was on her deathbed to have made a dictation of such type, and the doctor did not mention her state of mind either. Given the fact that the spouse was there beside the physician, it is quite probable that his presence must have had an effect on her testimony.

The appellant was found guilty of cruelty to the deceased, but the Supreme Court in *Pyare Lal v. State of Haryana*¹² acquitted him of the charge of cruelty under section 304B of the Indian Penal Code, reasoning that the acts of cruelty did not have any connection to the demand for dowry. The appellant was punished under section 498A of the Indian Penal Code. As mentioned before, Usha Rani and Pyare Lal were married and lived together in Panipat. The dispute began when her father relocated to the same area and purchased a store and two

¹⁰ *Rajendran and Others v. State Assistant Commissioner of Police Law and Order*, AIR 2004 SC 855.

¹¹ *Surinder Kumar and Others v. State of Haryana*, 2010 AIR SCW 494.

¹² *Pyare Lal v. State of Haryana*, AIR 1999 SC 1563.



residences. After her father declined his request for a house and store, the deceased's spouse sought Rs. 10,000, of which Rs. 5,000 was paid. Along with their one-month-old infant, the husband forcibly removed the dead from the house. She began residing with her father. She went to live with her husband after reaching an agreement with him. His parents wanted their son and daughter-in-law to live apart after a few months of persecution began. They moved into a leased property as a result. She expressed her dissatisfaction with living with him and begged her father to let her return home to be with him following the birth of their second kid. She took her own life by swallowing pesticide. Sections 498A and 304B of the Indian Penal Code led to his conviction by the Trial Court. The death was ruled by the above court to have been caused by the inability to have a second child under these conditions, not by the demand for dowry. As a result, the accused was exempt from punishment under section 304B of the Indian Penal Code, but he was sentenced to three and a half years under section 498A.

From 1991 to 2000, the Hon'ble Supreme Court of India addressed cases involving sections 498A and 304B of the Indian Penal Code, during which time it made numerous observations about the importance and legality of dying declarations. This was due to the clear and strong relationship between the two sections. The Supreme Court of India also recognised the vulnerability of section 498A of the Indian Penal Code, which might be used to ensnare unaware spouse relations, and so it increased the requirements for proof of guilt under the section.

The Supreme Court of India, in the case of *Sushil Kumar Sharma v. Union of India and Others*,¹³ made the observation that the fact that there is room for section 498A of the Indian Penal Code to be abused does not necessarily mean that the provision is unconstitutional or beyond the authority of the Parliament. This was a very significant case.

Similarly, in the case of *Kishangiri Mangalgiri Goswami v. State of Gujarat*,¹⁴ the Supreme Court of India, while examining sections 306 and 498A of the Indian Penal Code, made the observation that the act of assisting someone in ending their life would infer that the individual was being provoked to do so, rather than merely being cruel. The court noted that the provisions were exclusive portions, and that even if a person was found not guilty of the allegation of aiding and abetting suicide, they might still be held accountable for cruelty. The deceased took

¹³ *Sushil Kumar Sharma v. Union of India and Others*, AIR 2005 SC 3100.

¹⁴ *Kishangiri Mangalgiri Goswami v. State of Gujarat*, (2009) 4 SCC 52.



her own life as a result of being subjected to mental and physical abuse, as well as being demanding money from her husband and her in-laws. The accused person was given a term of jail as well as a fine by the Session Judge. A sentence that had been handed down by the Session Court was upheld by the High Court. According to the Supreme Court, the letter that was written by the deceased person did not have a signature from her and did not make reference to a specific individual. The simple fact that the widow was subjected to harsh treatment is not sufficient to indicate that the dead was aided in committing suicide. There was no evidence to prove that the deceased was subjected to such severe harassment that encouraged her to take her own life. It was reported that the prosecution had been found guilty under section 498A of the Indian Penal Code as well as section 3 of the Domestic Violence Act.

The court found the accused guilty of the crime of cruel behaviour for demanding dowry in the case of *Chhotan Sao and Others v. State of Bihar*.¹⁵ However, the accused was found not guilty under section 304B of the Indian Penal Code since it was not possible to show that the death was not natural. The public prosecutor was punished by the court for the fact that they had gathered inadequate evidence, which led to the accused defendant being found not guilty.

An extramarital affair is not considered a criminal crime unless it is proven beyond a reasonable doubt. Not every situation in which a husband fails to complete his marital duty owing to developing an intimate relationship with another woman would be considered as cruelty. The Trial Court exonerated the husband based on section 304B of the Indian Penal Code. He was found guilty by the Session Court for violating Section 498A of the Indian Penal Code. The High Court upheld the conviction under section 498A of the Indian Penal Code, sentencing him to two years of hard imprisonment and a fine of Rs. 2,500. Additionally, he was convicted under section 306 of the Indian Penal Code and sentenced to five years of rigorous imprisonment and a payment of Rs. 5,000. He filed an appeal to the Supreme Court arguing that engaging in extramarital affairs should not be considered a valid reason for punishment under section 498A of the Indian Penal Code. Furthermore, he claimed that it cannot be held responsible for inciting his wife to attempt suicide. The State's counsel contended that the extramarital affair had profoundly distressed the deceased, ultimately leading her to take her own life. The Court noted that the deceased's letter to her father indicated that she exhibited excessive possessiveness towards her husband. She interpreted his regular friendship with his

¹⁵ *Chhotan Sao and Others v. State of Bihar*, (2014) 4 SCC 54.



buddy as an affair, which led to her committing herself owing to feelings of insecurity in their relationship. The Court nullified the conviction and released the spouse.

In *Rajesh Sharma and Ors. v. State of U.P and Ors.*,¹⁶ in a directive issued by the Supreme Court, it was determined that Family Welfare Committees should be established in order to collect information and carry out investigations at the sub-divisional level. Furthermore, any action taken against the accused should be delayed until such investigations have been completed.

The Court issued following directions:

- a. The District Legal Services Authorities should establish at least one Family Welfare Committee in each and every district, with the ideal number of committee members being three. It is possible for the District and Sessions Judge of the district, who is also the Chairman of the District Legal Services Authority, to conduct periodic reviews of the committees' constitutions and the way in which they operate. These reviews should take place at least once per year.¹⁷
- b. It is possible for the Committees to be made up of paralegal volunteers, social professionals, retired individuals, spouses of working officers, and other people who are deemed appropriate and willing to serve.
- c. Any and all complaints for violations of Section 498A that are received by the police or the Magistrate must be reported to and investigated by the aforementioned committee. It is possible for such a committee to engage in conversation with the parties in person, over the phone, or through any other method of contact, including electronic communication.
- d. The report of such a committee is delivered to the Authority that is responsible for receiving the complaint at the latest within one month having passed after the day that the complaint was received. It is possible that the committee will present a concise report that includes both its view and the factual components of the situation. No arrest should typically be affected until the committee's report is received, as this is the

¹⁶ *Rajesh Sharma and Ors. v. State of U.P and Ors.*, 2017 SCC Online SC 821.

¹⁷ *Preeti Gupta v. State of Jharkhand*, (2010) 7 SCC 667.



standard procedure.¹⁸ It is then possible for the Investigating Officer or the Magistrate to take into consideration the report based on its relative merits.

- e. A designated Investigating Officer of the region is the only person who is authorised to conduct an investigation into complaints filed under Section 498A and any charges that are linked to it. It is possible to make such designations during the next month, beginning today. It is possible that the designated officer will be needed to participate in training for a period of time that is not less than one week, depending on what is decided to be acceptable. From today forth, the training may be finished within a period of four months;
- f. The District Judge or a designated senior judicial official selected by the District Judge shall have the authority to group together any cases that are related between the parties that are occurring as a result of marriage conflicts. This will allow the Court, to whom all such cases are committed, to have a more comprehensive perspective on the situation; and
- g. It is possible that the trial court may offer an exemption from the need that all family members, and especially those who live outside the area, make a physical presence. Additionally, the court should allow for the appearance of family members by video conference without negatively impacting the progression of the trial.

5. Conclusion

Looking back at the instances from 1987 to 1990, it can be said that the idea of cruelty under section 498A of the Indian Penal Code was handled with caution by the Hon'ble Supreme Court since it was still in its early stages. After reviewing both parts of the IPC, the Supreme Court concluded that they do not conflict with one another. In determining guilt under section 498A of the Indian Penal Code, the Court emphasised the significance of direct evidence above circumstantial evidence.¹⁹

Over the course of a decade (1991–1999), the Hon'ble Supreme Court of India recognised the indisputable relationship between sections 498A and 304B of the Indian Penal Code, and as a result, it made numerous observations about the merit and legality of dying declarations in cases involving these sections. The Supreme Court of India also recognised the vulnerability

¹⁸ KD Gaur, *The poor victim of uses and abuses of criminal law and process in India* 27 (IBR, 2000).

¹⁹ R Jaganmohan Rao, "Dowry System in India-A Socio-legal approach to the problem" 15(4) *JILI* 618 (1973).



of section 498A of the Indian Penal Code, which might be used to ensnare unaware spouse relations, and so it increased the requirements for proof of guilt under the section. The Court issued a warning that subordinate courts should bear in mind when finding guilt by inference or speculation.²⁰

Circumstantial evidence that is tangible, complete, and indisputable was allowed by the Hon'ble Apex Court to show guilt under section 498A of the Indian Penal Code from 2000 to 2009. The court further made it plain that section 498A of the Indian Penal Code only applies to egregiously cruel crimes and not to all wrongdoing. Because cruelty is a subjective issue, its definition has broadened with each case that has gone before the court, and its determination has had to be case-by-case. At the same time, the Court has established specific requirements that indirect evidence must meet in order to be utilised to support the prosecution's case, acknowledging its significance. Even actions that did not occur recently might be considered cruel under section 498A of the Indian Penal Code, as the Supreme Court pointed out in a nuanced but significant distinction between sections 304B and 498A. The Supreme Court felt it necessary to highlight the importance of the veracity of deathbed declarations after a growing number of cases were decided based on them alone. Cases such as *Rajesh Sharma v. State of U.P. and Others* (2017)²¹ and *Arnesh Kumar v. State of Bihar* (2014)²² established extensive rules.

There were several shifts in popular understanding of cruelty and its punishment under section 498A of the Indian Penal Code between 2010 and 2018. The Supreme Court, in a number of instances, issued instructions and cautions to authorities dealing with the cases due to the increase in spurious lawsuits filed in an effort to ensnare unwary family. As a result of the Court's observation that some cases made it to the highest level of Indian law due to impulsive, angry decisions, the Court issued a reminder to lower courts to exercise caution when considering cases involving section 498A of the Indian Penal Code. In order to investigate instances under section 498A of the Indian Penal Code, which is a prerequisite for arrest, a strong demand was made for the establishment of Family Welfare Committees. Additionally, the command instructed the police to conduct investigations prior to making any arrests.

²⁰ VD Kulshreshtha, *Landmarks in Indian Legal and Constitutional History* 45 (8th Edn, Eastern Book, 1989).

²¹ *Rajesh Sharma and Ors. v. State of U.P and Ors*, 2017 SCC Online SC 821.

²² *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.



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