

# BURNISHED LAW JOURNAL

*JATIN SHIVDASANI*

*BBA.LLB(H)*

## PREVALENCE OF DOWRY SYSTEM IN INDIA AND REQUIREMENT FOR ITS IMMEDIATE ERADICATION

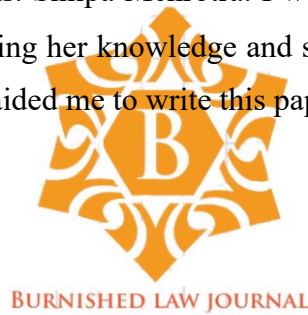
### Table of Contents

Acknowledgement .....	
Abstract.....	1
Introduction.....	2
Growth of Dowry System in India.....	2
Status of Woman in Ancient India.....	3
Growth of Dowry deaths in India.....	3
Legal services provided by the law to the victims .....	4
Indian Penal Code.....	5
Indian Evidence Act, 1872.....	8
Dowry Prohibition Act, 1961.....	9
Misuse and loopholes of existing laws .....	10
Possible solutions to get rid of the loopholes and avoid misuse .....	13
Conclusion.....	14
Bibliography .....	16

## Acknowledgement

---

This Research Paper is authored keeping in mind the best of interest of society and for the better understanding of the laws and rights of people which can be read and understood by a layman and be able to understand and avail the basic human rights. The paper is written and crafted under well-nourished knowledgeable guidance and paramount moral support of Ms. Shilpa Mehrotra. I would like to convey and extend to her my gratitude for showering her knowledge and support upon me throughout its production, which helped and aided me to write this paper.



## Abstract

---

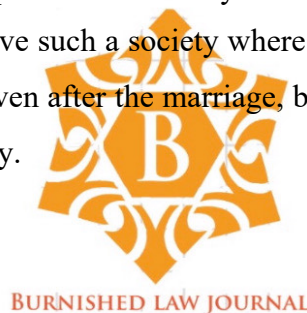
Dowry Death is one of the foremost hideous or gruesome and burning issues in India. There are Laws and Acts that are enacted and incorporated by the system of the country; also there are campaigns and awareness programs initiated by the Governmental and Non-Governmental Organisations against the Dowry Deaths and Dowry System in India, but in spite the presence of such initiatives the statistics on dowry-related deaths have only increased within the country. Despite the rapid increase of the middle-class society and youth population, steps towards modernization, enormous privileged economic development, better education system, etc., there are still certain grey areas where the country continues to be lacking the expansion and one among such issues is that of the prevalent Dowry System and related Deaths, which continues to rise with time.

There is the Dowry Prohibition Act, 1961 which is enacted, and additionally the laws are made more strict namely, Section 304 B (dowry death) and Section 498 A (cruelty by husband or his relatives) are integrated into the Indian Penal Code (I.P.C.) and also Section 113 B (presumption as to dowry death) are made a part of the Indian Evidence Act (I.E.A.) to eradicate or at least stunt the growth of the cases of this heinous act of dowry system and its related deaths. This research paper has attempted to explore and evaluate legal provisions which are adopted by the Indian Legal System to reduce the nuisance of Dowry Deaths, highlight its loopholes and along-with it, to spotlight the available remedies so that the genuinely aggrieved party can get justice.

Keywords: - Dowry Death; Dowry Prohibition Act, 1961; Dowry System; Government; Section 113-B of I.E.A.; Section 302-B of I.P.C.; Section 498-A of I.P.C.

## Introduction

The hazard of the Dowry system has become a serious and unethical social stigma in Modern India even-though, the society and the population claim themselves to be literate and educated. This is leading to repression, brutality, and physical & emotional cruelty towards women, further; it also causes serious financial and emotional stress to the wife's parents and family members, conflicts in the marriage, and in husband's home. We have such a society where it is a crime to demand Dowry either during the marriage or even after the marriage, but this dreadful issue of Dowry System still exists in our society.



## Growth of Dowry System in India

Dowry started as a voluntary gift to the daughter and her husband in ancient times which has turned into a conditional dowry in modern times. There is no mention of dowry in any ancient literature or texts and the marriage ceremony was considered one of the most important rituals and one of the main ceremonies in a person's life. During the Vedic period, marriage was considered as a holy bond that was blessed by the Gods and Goddesses themselves. Some basic rules are mentioned that are supposed to be followed during this ceremony but there is still no mention of Dowry.

Authors of literature dedicated towards the writing concerned with dowry system growth in India show that within the past the Daughters weren't having any rights of inheritance and were denied of this right, only the son's had the proper of inheritance and eventually, only the sons inherited their father's property. During this scenario,

the parents of the daughter during the time of her marriage out of sheer love and affection accustomed gift some a part of their money and jewelry to her, which have started and triggered the Dowry System in the country.

## **Status of Woman in Ancient India**

According to the analysis given by <sup>1</sup>Veena Talwar Oldenburg in her book, it's mentioned that the written account left by the British Bureaucrats during the British Colonial rule of India and consistent with the non-public remarks from women of India, including the author's remarks on dowry system, it is inferred that the idea of dowry was directly to blame for the status of the ladies in society and mentioned that the dowry system actually meant to profit the woman, which during the British era converted into a system and landed up harming the very woman who was imagined to have the benefit of that.

## **Growth of Dowry deaths in India**

Dowry death can be defined as the unnatural death of the wife that happened due to the demand for dowry by her husband and/or relatives. Dowry can consist of anything of value from jewelry to property, and failure to deliver such assets generally results in constant harassment of the wife by the husband or his relatives, sometimes leading to death. Women are either killed by their husbands for not meeting their demand or they commit suicide due to the constant humiliation faced by them over non-fulfillment of such dowry.

Dowry death, murder-suicide, and bride burning are symptoms of peculiar social malady and are an unfortunate development of our social set-up.

It is almost a matter of regular occurrence that not only married women are harassed, humiliated, tortured, beaten and forced to commit suicide, to leave her husband and family, etc., but thousands are even burnt to death because the demand for the dowry by the in laws or their husbands remains unfulfilled by the parents of the bride.

---

<sup>1</sup> Dowry Murder: The Imperial Origins of a Cultural Crime. by Veena Talwar Oldenburg



As stated by the statistics given in the NCRB Report, 2016<sup>2</sup>, the whole variety of reported cases associated with Dowry Deaths within the year 2016 was 7,621 and also, the combined number of reported cases associated with cruelty by the husband or his relatives to the wife within the year 2016 were 1, 10,378. Our country holds the highest number of Dowry Death cases in the world.

Another alarming issue is that of exploitation of the existing laws that are laid down by the law to protect women, by the wife or her family themselves to blackmail the husband and his relatives which also needs to be dealt with swiftly.

### **Legal services provided by the law to the victims**

Due to the increased number of dowry deaths and dowry related cases, there have been several resorts incorporated into our legal system to help and support the victims. We have The Indian Penal Code (I.P.C.), The Indian Evidence Act (I.E.A.), Criminal Procedure Code (Cr.P.C.), and The Dowry Prohibition Act (D.P.A.), to protect the women from being subjected to Dowry Deaths or Cruelty arising out of disputes related to dowry.

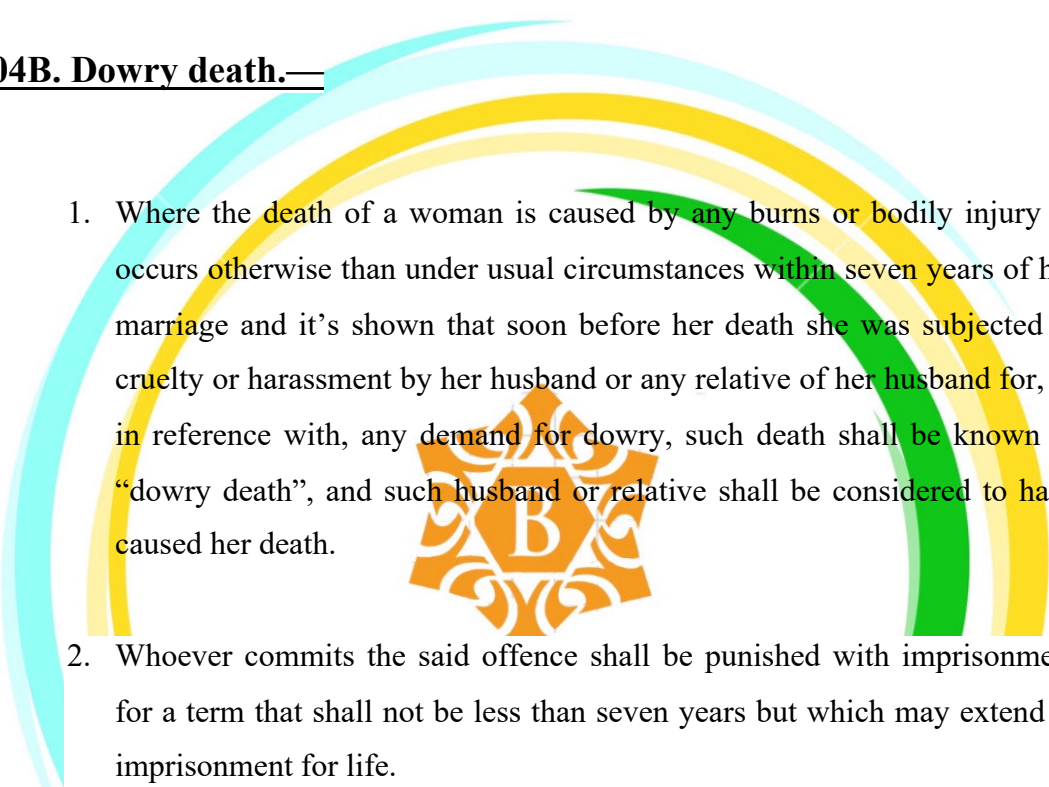
---

<sup>2</sup> Crime in India, 2016 - National Crime Records Bureau, Ministry of Home Affairs, New Delhi, India.

## Indian Penal Code

---

### 304B. Dowry death.—

- 
1. Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under usual circumstances within seven years of her marriage and it's shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in reference with, any demand for dowry, such death shall be known as “dowry death”, and such husband or relative shall be considered to have caused her death.
  2. Whoever commits the said offence shall be punished with imprisonment for a term that shall not be less than seven years but which may extend to imprisonment for life.

Ingredients of **Section 304 – B** of I.P.C. are as follows:

1. When the death of a woman is caused due to abnormal and suspicious circumstances or by burns or other bodily injuries.
2. When the death of a woman occurs within 7 years of marriage.
3. When the death is caused within relation to demand for dowry.
4. The cruelty or harassment should have been inflicted out to the woman ‘soon before her death.’
5. It is a Cognizable, Non – Bailable, Non – Compoundable offense.

In *Venugopal v State of Karnataka*<sup>3</sup>, the husband was held liable under section 304B, I.P.C, for creating a situation under which the wife committed suicide within two years of marriage. The constant demand for dowry usually leads to ill-treatment of the wife compelling her to take extreme steps.

In *Hans Raj v State of Punjab*<sup>4</sup>, the Supreme court held that the term 'normal circumstances' means not a natural death. Sunita Kumari committed suicide under abnormal circumstances within 7 years of marriage. The accused were charged under section 304B, 306 and 498A and were sentenced to rigorous imprisonment.

If the wife dies within 7 years of the wedding and if there's no demand for dowry and there was no ill-treatment further from the side of husband and his family, then the husband and his family cannot be held liable and charged under section 304 – B of the I.P.C., held by the Hon'ble Supreme Court within the case of *Meka Ramaswamy v. Dasari Mohan and others*.<sup>5</sup>

In *Prahallad Budek v. State of Orissa*<sup>6</sup>, it was decided that there should be a live link between the death of the woman along with the harassment and cruelty faced by her in respect to demand of dowry, and if there is no such link then the offense of Section 304 – B of I.P.C. can't be established against the husband or husband's relatives. Also, a similar judgment was stated in the case of *Baldev Singh v. State of Punjab*<sup>7</sup>, and it was also said that the time gap shouldn't be much between the cruelty and harassment and the death of the woman.

**Section 498A** of the IPC deals with husband or relatives of husband of a woman subjecting her to cruelty—Whoever, being the husband or the relative of the husband of a woman, subjects her to cruelty shall be punished with imprisonment for a term which may extend to three years and the convicted person shall also be liable to fine.

---

<sup>3</sup> Venugopal vs. State of Karnataka (29.07.1998 - SC) : MANU/SC/0478/1998

<sup>4</sup> Hans Raj vs. State of Punjab and Ors. (26.10.1984 - SC) : MANU/SC/0273/1984

<sup>5</sup> Meka Ramaswamy vs. Dasari Mohan and Ors. (08.01.1998 - SC) : MANU/SC/0042/1998

<sup>6</sup> Prahallad Budek vs. State of Orissa (13.12.2007 - ORIHC) : MANU/OR/0427/2007

<sup>7</sup> Baldev Singh vs. State of Punjab (04.08.2008 - SC) : MANU/SC/7907/2008



Section 304B, I.P.C and section 498A, I.P.C have been added in the Indian Penal Code to punish dowry-related crimes. These provisions are not mutually exclusive, however, the scope of two different sections are different-

- Section 304B deals with the punishment related to dowry death. It is punishable when such death occurs within seven years of the marriage; under section 498A however, there is no time limitation of seven years provided, and the husband or his relative would be liable for inflicting cruelty upon the woman, any time after the marriage.
- Under section 498A, I.P.C cruelty as it is, is punishable; although, if such cruelty or harassment results in the death of a married woman, it will also imply section 304B of the Indian Penal Code.
- Under section 304B, I.P.C punishment may extend up to imprisonment for life with a minimum sentence of seven years of imprisonment; whereas under section 498A, I.P.C, punishment may extend up to three years of imprisonment along with a fine only. 'Cruelty' is essential in both offenses.
- Section 304B, I.P.C, has no explanation about the meaning of 'cruelty' whereas the Explanation clause of section 498A, I.P.C, gives the meaning of 'cruelty'
- Due to the common background of these offenses, the meaning of cruelty under section 304B, I.P.C, will be the same as given in the Explanation clause to section 498A. Thus, due to this common background, a person charged under Section 304B, I.P.C can also be charged under section 498A, I.P.C for a reduced sentence, if such a case is made out. If the case is made under both the sections, convictions would be made under both. Separate sentences need to be awarded.

## Indian Evidence Act, 1872

---

Section 113 – B of the I.E.A. deals with Presumption to dowry death.

When the question raised is whether a person has committed the dowry death of a woman and it is proved that ‘soon before her death’ such woman has suffered harassment or cruelty by the said person in relation to demand for dowry, the Court shall presume that such person had caused the dowry death.

In *Kamlesh Panjiyar v. State of Bihar*<sup>8</sup>, the court said that if there’s a joint reading of both section 113 – B of the I.E.A. and section 304 – B of the I.P.C, then there need to be some piece of evidence submitted before the court claiming that there have been cruelty and harassment to the wife from the side of husband or husband’s relatives in order to punish the accused in the matter of dowry death.

BURNISHED LAW JOURNAL

However, in the case of *Sham Lal v. State of Haryana*<sup>9</sup>, it was held that the husband cannot be convicted under section 304 – B of the I.P.C. and also section 113 – B of the I.E.A. cannot be raised if there’s no evidence that the harassment or cruelty was inflicted upon the woman ‘soon before’ her death.

Similarly in *Harjit Singh v. State of Punjab*<sup>10</sup>, the court held that there was no evidence showing that the poison consumed by the wife was the outcome of some cruelty or harassment inflicted by the husband and so the husband was acquitted under section 304 – B of the I.P.C. and therefore, the provisions of section 113 – B of the I.E.A. could not be held against him.

---

<sup>8</sup> (2005) 2 SCC 388; 2005 SCC (Cri) 511; AIR 2005 SC 785; MANU/SC/0076/2005

<sup>9</sup> (1997) 9 SCC 759; 1997 SCC (Cri) 759; AIR 1997 SC 1873; MANU/SC/0438/1997

<sup>10</sup> (2006) 1 SCC 463; (2006) 1 SCC (Cri) 417; AIR 2006 SC 680; MANU/SC/2287/2005

## Dowry Prohibition Act, 1961

---

The main objective of this bill is to prohibit the evil practice of giving and taking of dowry and to provide relief to the dowry victims in our country. It contains a total of 10 sections.

It is understood that the word “Dowry” may be a social evil, but because it may be seen in section 6 of the Act which says “Dowry to be for the advantage of the wife or her heirs”, here we must always understand that Dowry is just a sum of property (whether it's money or the other property) given by her parents or her parents' family out of sheer love and affection to safeguard the social and financial interest of a girl and which isn't social evil. In-fact the social evil is that the “demand” of dowry by the husband or his family, faced by the wife and her family.

The original text of the D.P Act was heavily condemned to be ineffective in curbing the practice of dowry. As a result, the Act underwent subsequent amendments. In 1984, it had been modified to specify that any gifts given to the bride or the groom while the marriage is happening are allowed.

Offenses under the Act have now been made cognizable and a police officer can arrest the suspect of demanding dowry without a warrant and initiate criminal proceedings against the wrongdoer.

In the case of *Sabitri Dei and others v. Sarat Chandra Rout and others*<sup>11</sup>, the apex court repealed the order given by the competent Sessions Court and convicted the husband and his relative under Section 498–A and Section 304–B of the I.P.C. and enforce Section 4 of the D.P Act, 1961. Similarly, within the case of *Premananda Sahoo v. State of Orissa*<sup>12</sup>, the criminal appeal was directed against the judgment given by competent Sessions Court.

---

<sup>11</sup> (1996) 3 SCC 301; MANU/SC/1117/1996

<sup>12</sup> (2008) 41 OCR 558; MANU/OR/0785/2008

Within the landmark judgment of *Suresh Kumar Singh v. State of U.P.*<sup>13</sup>, the apex court held that the proof of demand of dowry as argued by the prosecution shouldn't be too old from the death of the lady. The relation of dowry demand and also the death of the victim should be established to enforce the expression of “soon before her death” and impose the D.P Act, 1961.

## **Misuse and loopholes of existing laws**

---

### **Unclear statutory language**

The foremost problem is the vagueness of the statutory language making it ineffective to stop the practice of demanding or giving dowries. As originally decided by the courts, dowries will include money and property given during the wedding. But, it didn't specify anything about the gifts given after the wedding. The definition of dowry needs to expand so that families cannot evade the rules against dowry.



BURNISHED LAW JOURNAL

### **Cultural attitude against women**

Cultural attitude might be one of the main reasons why the disease of dowry hasn't left our country completely. From childhood, a woman is taught that she will get married to the man that her family chooses and will have to win over the family in which she marries into. Her maternal family shuns her and she is then compelled to make her space in her new family. Hindu religious texts reinforce this theme, instructing women to remain devoted to their husbands no matter what their husbands do to them. Breaking off marriages or accusing her in-laws of anything is considered as a disgrace and thus, no woman resorts to this measure and chooses to suffer in silence. Due to these norms, parents also rarely help the newly wedded bride. This helplessness generally increases the risk of dowry-related deaths in the country.

---

<sup>13</sup> (2009) 17 SCC 243; (2011) 1 SCC (Cri) 989; MANU/SC/0953/2009



### **Non-enforcement of existing laws**

Equally responsible for the ineffective stoppage of dowry deaths is the non-enforcement of the existing laws in the country. Although the Ministry of Home Affairs has issued specific instructions to cops on a way to investigate dowry deaths, the police rarely follow these guidelines and often fail to analyze properly. Instead, police often dismiss such crimes as family disputes and report them as "kitchen accidents." Less than one-tenth of apparent dowry-related deaths are literally investigated. Even if the investigations are carried out, they are generally left incomplete. Police officers generally fail to take proper photographs or scan the scene for fingerprints. Cases are based on statements by the relatives and if there are any witnesses, they are usually silenced. An immense amount of corruption amongst the police force is mainly the reason for such botched investigations and prosecutorial delays.

There have been many instances where police has been bribed by husbands and in-laws in exchange for agreeing to tamper with the investigation. It's also very common for police to conspire with the accused to dismiss cases as suicides or accidents. This dismissal may even involve altering the woman's death bed confession, which is commonly the sole evidence of any malicious act done by the husband or in-laws. Such interference by the police may effectively prevent a fair judgement.

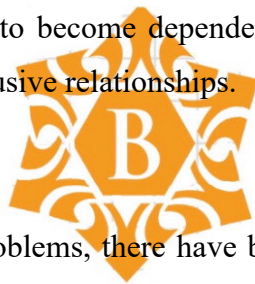
The judiciary also plays a small part in delaying dowry-related cases. Hearings of such cases are usually delayed for months, sometimes also years as it is given very low priority. Crucial shreds of evidence such as suicide notes or deathbed confessions are also suppressed sometimes by the courts based on a technicality.



## **Economic discrimination**

Ownership laws of both real and personal property are one of the main reasons that women face economic discrimination in our country. Women have little control over the land they acquire. Under Hindu family law, there is a clear distinction between ancestral and self-acquired property, and under these inheritance laws, women are prohibited from leading households or inherit ancestral property. Although, in theory, the Hindu Succession Act gives an equal inheritance to women, married women are rarely given a share in their parental property. Islamic personal laws also specify the inheritance of both the son and daughter in the property. It mentions that the daughter's share will always be one half of the share of the son because it is considered that the son will be the person responsible to take care of his old parents.

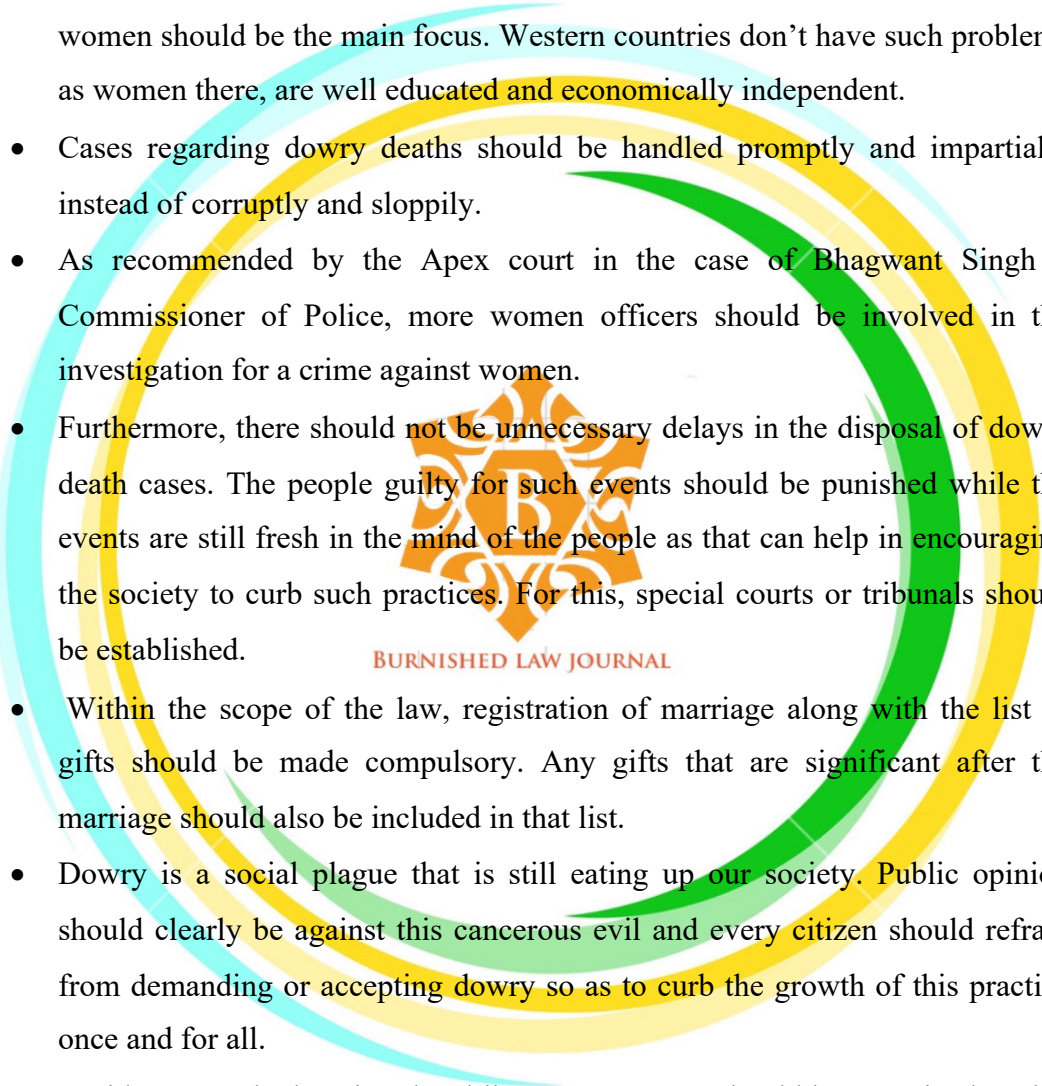
Unequal opportunity in the working sector is another drawback that stunts women's progress in society. There are no laws that guarantee equal employment opportunities for women which compel them to become dependent on their husbands and due to this; they are forced to stay in abusive relationships.



Besides the above-mentioned problems, there have been instances of misuse of laws by women themselves. There is an honest number of cases of false acquisitions and gross misuse of those rights. In many cases where demands of the wife aren't being fulfilled, and so as to harass the husband and his family, or if the wedding is strained thanks to the other extraneous reasons, they lodge a false complaint with the closest station and also the husband and/or his family are instantly arrested without investigations. There have also been cases of suicide by the husband or his relatives during the course of their trial thanks to the embarrassment they face due to these false allegations.

## Possible solutions to get rid of the loopholes and avoid misuse

---

- 
- A good level of education along with the economic independence of the women should be the main focus. Western countries don't have such problems as women there, are well educated and economically independent.
  - Cases regarding dowry deaths should be handled promptly and impartially instead of corruptly and sloppily.
  - As recommended by the Apex court in the case of Bhagwant Singh v Commissioner of Police, more women officers should be involved in the investigation for a crime against women.
  - Furthermore, there should not be unnecessary delays in the disposal of dowry death cases. The people guilty for such events should be punished while the events are still fresh in the mind of the people as that can help in encouraging the society to curb such practices. For this, special courts or tribunals should be established.
  - Within the scope of the law, registration of marriage along with the list of gifts should be made compulsory. Any gifts that are significant after the marriage should also be included in that list.
  - Dowry is a social plague that is still eating up our society. Public opinion should clearly be against this cancerous evil and every citizen should refrain from demanding or accepting dowry so as to curb the growth of this practice once and for all.
  - Besides general education, legal literacy programs should be organized so that every woman is well aware of their civil and legal rights.

Thus, a good level of education, vigorous investigation of such cases, and swift justice to the victims as well as proper punishment to the culprits is essential to make this social evil extinct.



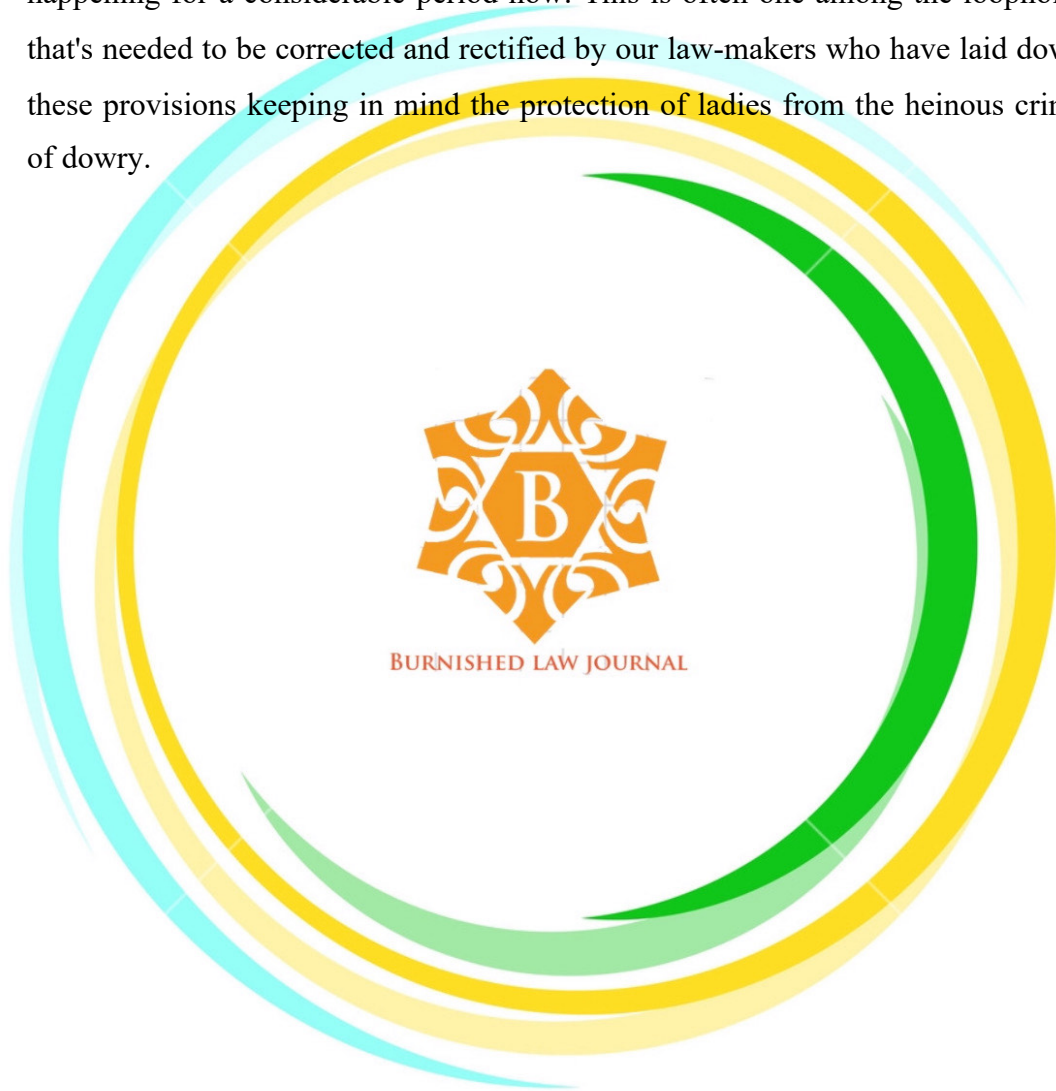
## **Conclusion**

---

It can now be inferred that the Govt. of India in conjunction with the guidance of the Judicial Body of the country is reasonably successful in laying down most reasonable, co-operative, supportive provisions and laws to shield the interest, life and dignity of women and supply justice to victim's sufferings from harassment, cruelty and dowry deaths. Still, certain stringent corrective measures have to be adopted to eradicate or at least curb this notorious issue of dowry demand from

our country but most significantly, it requires public will and commitment to shun aloof from this social and materialistic evil greed for dowry.

To supply justice to women and to shield them from dowry harassment in their best interest, many laws have been established but there are cases of misuse of these laws and provisions which were provided to assist and protect them. These provisions and rights are exploited in a very malicious manner and it's been happening for a considerable period now. This is often one among the loopholes that's needed to be corrected and rectified by our law-makers who have laid down these provisions keeping in mind the protection of ladies from the heinous crime of dowry.



## **Bibliography**

---

### **Websites Referred**

- <http://www.legalservicesindia.com/>
- <https://www.hitxp.com/articles/history/origin-dowry-system-bride-woman-india-british/>
- <https://pulitzercenter.org/projects/dowry-system-india-trend-changing>

### **Legal Engines Referred**

- SCC Online
- Manupatra
- Lexis Nexis
- Indian Kanoon



BURNISHED LAW JOURNAL

### **Books Referred**

- The Indian Penal Code, 1860
- The Indian Evidence Act, 1872
- Dowry Prohibition Act, 1961
- Code of Criminal Procedure, 1973
- Dowry Murder: The Imperial Origins of a Cultural Crime. by Veena Talwar Oldenburg
- Crime in India, 2016 – NCRB, Ministry of Home Affairs.