
PRESUMPTION CLAUSE UNDER IPC 304B: DOES IT ACT AS A CRUELTY TO THE MAN

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ABSTRACT

Dowry has been an age-old evil that has been prevalent in India. So has associated crimes related to it. Dowry death is one such example of a crime, associated with the evil of dowry. Now the presumption clause under Section 304B IPC states that if the death of the wife happens within 7 years of marriage, owing to abnormal circumstances, and it is shown that that “soon before” her death she had been subjected to cruelty by her husband or any other relative of the husband, in relation to demand for dowry, such husband or relative shall be deemed to cause her death.

There exists, anomalies in corresponding sections of the Indian Penal Code, which has been discussed in the course of the paper. This paper promotes a rich understanding to the concept of dowry death and laws in relation to that. Though there has been international exposure on the same issue, the problem of dowry crimes shows no signs of stopping. This paper further throws light on the offence of husband or relative of husband of a woman subjecting her to cruelty per se covered under Section 498A IPC, vis-à-vis Section 304B of IPC, in relation to dowry death and how it affects the conviction of the accused in such a scenario.

It also highlights certain proposed amendments to the set provisions or guidelines as pointed out by the Supreme Court, in curbing such menace, and how the following shall be met.

Keywords: dowry, dowry death, cruelty

Introduction

The first national legislation to deal with the problem of dowry is the Dowry Prohibition Act 1961 with the main motive to prohibit the heavy demand in dowry; government introduced the Dowry Prohibition Act on 1st July 1961. Unfortunately, the dowry system is still widespread in India despite the provision in the Dowry Prohibition Act 1961. According to section 3 of the Dowry Prohibition Act 1961¹, the Act prohibits the demand, payment or acceptance of a dowry, as consideration for the marriage, where dowry defined as a gift demanded or given as a precondition for a marriage. So, asking or giving of dowry is punishable by an imprisonment of up to six months, a fine of up to fifteen thousand rupees or the amount of dowry, whichever is more, or imprisonment up to five years. It replaced several parts of anti-dowry legislation which had been enacted by various Indian states.

However, in accordance with section 3 of this Act, both the giver and receiver are pursued to rom potential harassment by the husband and his relatives. The first national legislation to deal with the problem of dowry is the Dowry Prohibition Act 1961, with the main motive to prohibit the heavy demand in dowry; government introduced the Dowry Prohibition Act on 1st July 1961.

Dowry Death and Suicide

“Dowry death”, is explained as when the death of a woman is caused by any burns or happens otherwise in such normal circumstances within seven years of her marriage and it is shown that soon before her death she had been subjected to cruelty by her husband, or any relative of her husband in connection with the demand of the dowry. The Dowry Prohibition Act, goes to the utmost limit of creating a criminal offence, of giving or taking a dowry as a consideration for marriage. The statute is aimed at eradicating corruption and commercialization of the concept of dowry. Hence, the definition under the Act, was therefore, molded to the peculiar object of nipping the evil in the bud.

The giving or taking of property or a valuable security, must have some connection with the marriage of the parties and a relation between the giving and taking of property, or valuable

¹ Wcd.nic.in. 2021. *Dowry Prohibition Act, 1961* | Ministry of Women & Child Development. [online] Available at: <<https://wcd.nic.in/act/dowry-prohibition-act-1961>> [Accessed 2 November 2021].

security is very important. In the case of *Kunju Moideen v Sayed Mohammad*², the amount paid by Mohammad in connection to his daughter's marriage, to the future bridegroom for the purpose of purchasing a property, would not amount to act of: dowry", under Section 2 of the Dowry Prohibition Act, 1961.

A majority of the rural and semi-urban cause of domestic violence against women in our country is based solely on the need of dowry. The want of dowry exists among all strata of the society. With the passage of time, dowry has become a customary part of the Indian society, and the dowry was demanded as their right to marry a woman. Soon when the groom's family did not get enough dowry, they harassed the bride, especially in certain parts of India.

According to Section 2 of the pronounced Act, it is clear that dowry is a property which the woman brings to her husband at marriage and includes the land, valuable securities given directly or indirectly at the time of marriage.

Cruelty relating to dowry

There has been a shameful lineage followed in our country, where the women are subjected towards the whims and caprices of the man, particularly in the case of a husband and wife. So much so, that the woman is forced to the limits of physical and mental cruelty.

The legislative intent of Section 498 A can be invoked by a married woman against the husband or his relatives for cruelty. Such a section was added with the intention to protect women from dowry harassment, domestic violence and as an end to offences of cruelty by husbands, or in laws of wife, providing punishment to the husband or his relative causing cruelty to his wife.

Section 498 A talks about four types of cruelty:

- i) A conduct of a woman that is likely to drive her to commit suicide.
- ii) Any such conduct that is likely to cause serious injury to to the life, limb, or the health of a woman.
- iii) Harassment with the aim of forcing the woman or her relatives to give a share of property.

² Indiankanoon.org. 2021. *Kunju Moideen vs Sayed Mohammed on 30 May, 1985*. [online] Available at: <<https://indiankanoon.org/docfragment/1343113/?formInput=dowry%20prohibition%20act%20doctypes%3A%20kerala>> [Accessed 3 November 2021].

- iv) The reason of harassment might also include whether the woman or her relatives are incapable to yield the demand for more money.

The Supreme Court, through the enunciation of various case laws, gave the ruling that the consequences that forced a woman to take such aggravated measures as that of committing suicide or causing a grave injury to her life, limb, or health, whether mental or physical health of the woman is necessary to be established beyond reasonable doubt, in order to file a suit of 498A IPC.

It must be remembered by us that since crimes are generally committed in the privacy of residential houses and in secrecy, independent and the direct evidence is not easy to access. The legislature has introduced Section 113 B for this very reason, trying to weigh more on the side of the prosecution by permitting a presumption to be raised and the foundational facts are put forward, regarding dowry deaths, take place within seven years of marriage. Now, if the issue at hand is whether a person is guilty of dowry death of a woman and the evidence discloses any such torture or harassment, that had been induced to her, or in connection to the same just prior to her death, such a subjection of cruelty, the court, if not proved otherwise shall presume under Section 113 B of the Indian Evidence Act³, the court shall presume that the same person had caused the dowry death.

Section 113 B raises an egotism of guilt against any person who has been proved to have subjected to the deceased woman, soon before her death, to cruelty or harassment, in connection with a dowry.

Steps to Be Taken for Curbing the Menace of Dowry

Inheritance of equal social rights are a major issue and lacuna when it comes to the perspective of women. Some of the suggestive measures that can be charted out:

- 1) Giving equal right of inheritance to women candidly.
- 2) Media should carry a legal aid campaign so as to spread awareness amongst these women about their legal rights.
- 3) There have been legislations passed by the government, like the Dowry Prohibition Act, 1961, but there has been no sufficient action taken on the same.

³ Indiankanoon.org. 2021. *Section 113B in The Indian Evidence Act, 1872*. [online] Available at: <<https://indiankanoon.org/doc/1906/>> [Accessed 4 November 2021].

- 4) There should be appointment of dowry prohibition officers whose responsibility would be to take appropriate steps for enforcing the provision of the Act. Forming a separate cadre for the same might help in this regard.
- 5) Efforts should be made for the speedy setting up of family courts to deal with issues of injustice against women and settlement of the dowry cases. An important thing in this regard being, the police must conduct the investigation in a specified and brief time period, so that the case cannot be tampered with.
- 6) Anti-dowry cells have been set up in individual states, which have a round the clock service being carried on by them.
- 7) An upheaval of a social revolutionary movement from the grassroot level.
- 8) Self-help groups, NGOs, and other social organisations must take measures to educate the illiterate masses.

Emergence of Dowry in the Indian Society

The ancient marriage rites were associated with Kanyadan, during the Vedic period. It is laid down in the Dharamshastara⁴, that Kanyadan is a prosperous act and shall not be complete, till the bridegroom gives a dakshina. Thereby, Kanyadan got associated with “vardakshina”, which are cash or gifts in kind by the parents or the guardian of the bride to the bridegroom. The “vardakshina”⁵, is offered out of affection and does not constitute any kind of compulsion or act as a precondition for marriage. It’s a voluntary practice without any compulsion from either side. In the course of time, the voluntary element in dowry has disappeared and the binding nature of the practice has taken over. What originally, was supposed to be a token *dakshina*, for the bridegroom, has now been blown up to the extent so far as tagging it as “dowry.”

Dated long back in history, prior to the independence of India, the Sindh Government then passed an enactment known as the Sind Deti Leti Act, 1939⁶ with a view to deal effectively to deal with the negatives of the dowry system but the enactment so passed had neither any impact, nor could it create the desired effect.

In the last decade or more, the evils of dowry system had taken a stringent form in all parts of

⁴ Yogapedia.com. 2021. *What is Dharmasastra? - Definition from Yogapedia*. [online] Available at: <<https://www.yogapedia.com/definition/5420/dharmasastra>> [Accessed 5 November 2021].

⁵ Jstor.org. 2021. *THE DOWRY PROHIBITION LAW on JSTOR*. [online] Available at: <<https://www.jstor.org/stable/43953016>> [Accessed 7 November 2021].

⁶ The Fact Factor. 2021. *Sind Deti-Leti Act Archives - The Fact Factor*. [online] Available at: <<https://thefactfactor.com/tag/sind-deti-leti-act/>> [Accessed 7 November 2021].

India amongst all cultures at large. In a cohesive decision in eradicating this scum from the society, 'The Bihar Dowry Restraint Act, 1950',⁷ and the 'Andhra Pradesh Dowry Prohibition Act, 1958'⁸ failed to achieve the proposed objectives for which they were legislated for.

The term "dowry", for the sense of the expression contemplated by the Act, is in demand for some property or valuable securities which have a very coherent bond with the marriage. But in a case, where the demand of property or the valuable security is not in ties with the marriage in question in such a case, the same would not amount to dowry.

There have been scenarios were due to non-fulfilment of demand of money from the wife's family, the father-in-law of the wife has inflicted torture and threatened her to leave this marriage, it was held that the particular amount being demanded in connection with the marriage was also a part of the dowry though demanded after the marriage.

Dowry and Central Government Staff

The staff cadre working under the Central Government have been barred from giving or accepting dowry. The rule prohibiting the taking or giving of dowry, pertaining to the Central Government staff, had been incorporated in the Central Civil Services (Conduct Rules, 1976)⁹, in February 1976. No government shall entertain giving or taking of demand for dowry, from guardians of a bride, either directly or indirectly. Any, gross negligence or violation of the rule shall be a sufficient cause for taking disciplinary action against any government servant.

Penalty for Demanding Dowry

Under the realms of the Dowry Prohibition Act, 1961, if any person directly or indirectly demands dowry, from the parents or other relatives or guardian of a bride or a bridegroom, he shall be imprisoned with a term not less than six months or even a fine extended to the tune of 10,000 rupees.

If the court pronounces a sentence for less than six months, such special reasons must be laid

⁷ The Fact Factor. 2021. *Bihar Dowry Prohibition Act Archives - The Fact Factor*. [online] Available at: <<https://thefactfactor.com/tag/bihar-dowry-prohibition-act/>> [Accessed 10 November 2021].

⁸ Legitquest.com. 2021. *Andhra Pradesh Dowry Prohibition Act, 1958, India-legitquest*. [online] Available at: <<https://www.legitquest.com/act/andhra-pradesh-dowry-prohibition-act-1958/5227#:~:text=Whoever%20gives%20or%20takes%20dowry,thousand%20rupees%20or%20with%20both.>> [Accessed 12 November 2021].

⁹ Dopt.gov.in. 2021. [online] Available at: <https://dopt.gov.in/sites/default/files/CCS_Conduct_Rules_1964_Updated_27Feb15_0.pdf> [Accessed 12 November 2021].

in the judgment.

Right of Court

The Section 7 of the Dowry Prohibition Act, 1961¹⁰ provides for who should take cognizance for offences committed.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973:

- 1) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try an offence under this Act;
- 2) No court shall take cognizance of an offence under this Act, except upon-
Its own knowledge or police report of the facts, which constitute such an offence.
A complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any recognized welfare institution.
- 3) The Metropolitan Magistrate or a Judicial Magistrate, of the first class to pass any sentence authorized by this Act, on any person convicted for any offence under this Act.

Such Act provides for appointment of Dowry Prohibition officers, lays down their jurisdiction and their duties and power of the Central government to make rules for carrying out this Act.

Now, most states have made their own respective amendments to this Act, to effectively face the local situation. There has been incidents of harassment, torture, abetted suicide, and dowry deaths and still continue to happen. Lack of primary education, economic non- independence of women and girls, have elevated the count of perpetrators to this crime.

The Dowry Prohibition Act, 1961 have been amended over time, but however this law in particular has not practically sufficed the purpose to a larger extent as it intended to, as these criminals are hardly booked and the conviction rates of dowry offenders are not even the bare minimum.

Cruelty And Dowry Death

Can Conviction under Section 304 B of IPC sustain without any charges under Section 498A?

¹⁰ Indiankanoon.org. 2021. *Section 7 in the Dowry Prohibition Act, 1961*. [online] Available at: <<https://indiankanoon.org/doc/209280/>> [Accessed 13 November 2021].

The charges under offences Section 304B of IPC, and Section 498 A¹¹ are not held mutually inclusive to each other. They are two different offences. It is true that the element of cruelty, needs to be proved beyond reasonable doubt in both the sections. Section 498 A attaches itself to the meaning of the word “cruelty”. In Section 304 B, there is no meaning of such term associated with “cruelty.”

But keeping in mind, the background of such offences, the meaning of the term “cruelty” and “harassment” is the same as explained under Section 498 A, under which “cruelty”, by itself relates to an offence. There has been a prescribed time of 7 years, within which the crime of dowry death must be committed to attract charges of the offence. However, in case of Section 498A, there is no fixed time of occurrence of perpetration. However, if charges against the accused are established, there shall be conviction regarding both the offences.

In the case of *Gurmeet Singh V State of Punjab*¹², the wife (deceased), had been subjected to cruelty and torture, after being shifted to her matrimonial abode. She was inflicted pain by the mother-in-law, the father-in-law, the appellant husband for increased demand in dowry, where the appellant wanted a gold chain.

Again, after a few days a new car was demanded by the husband and his family. This demand was not met by the wife’s family. So, on 8/8/2008, the wife had consumed poison and had to be admitted to a hospital immediately. The complainant came to know that his daughter was unconscious, and later on the same day she died.

The trial court on 3/9/2009, convicted the appellant-husband, father-in-law, mother-in-law, for an offence under Section 304B, and each were convicted for 7 years each, and a fine of Rs 5,000 each. On non-compliance of such payment, they would be convicted for 8 years, that is a year extra.

The matter went for an appeal to the High Court of Punjab and Haryana, and then to the Supreme Court.

Arguments were brought forth by the defence, claiming the deceased had been suffering from depression from a prolonged period of time accruing to the poor health of her mother, but no

¹¹ Indiankanoon.org. 2021. *Section 498A in The Indian Penal Code*. [online] Available at: <<https://indiankanoon.org/doc/538436/>> [Accessed 14 November 2021].

¹² Indiankanoon.org. 2021. *Gurmeet Singh vs The State Of Punjab on 28 May, 2021*. [online] Available at: <<https://indiankanoon.org/doc/133037111/>> [Accessed 14 November 2021].

evidence supporting such claims were presented by the defence.

The prima facie conditions to bring upon a charge of dowry death had been satisfied here. The wife had died within 7 years of marriage, not due to normal circumstances, had been satisfied here. It was also noticed that the groom's family had been consistently demanding dowry, and this was also a cause for her unhappiness.

In the light of such above circumstances, the Supreme Court, after assessing the relevant materials, evidence presented and testimonies collected, held that the Trial Court and the High Court was correct in convicting the accused-appellant under Section 304 B of IPC¹³, as there was failure in discharging burden under Section 113B of the Indian Evidence Act.

Section 113 B of the Indian Evidence Act, 1872¹⁴ clearly states that if a woman dies in relation with any demand for dowry and it was proved that soon before her death she was subjected to cruelty or harassment by any person, then such person shall be held guilty for the crime of dowry death.

It was held that a conviction under Section 304B, can be sustained without any charges under Section 498 A of IPC. They might have a common linkage, but a common linkage is not an absolute requisite to establish a claim of Section 498 A, in a case associated with Section 304 B.

However, Section 498 A in its definition talks about relative, and in this case the Court has analyzed the word 'relative', where a relative is a person who is a relative by blood, adoption or marriage. Others will not fall under the category of relatives and will not be held liable under Section 304 B, leading to framing of charges under Section 304B, which are independent of charges under Section 498A.

Legislative Efforts to Curtail Dowry

The failure of the Dowry Prohibition Act, 1961 gave rise to a brand-new legislature, the Criminal Law (Second Amendment) Act, 1983. In order to address not only the issues of dowry crimes, but also issues related to cruelty of married women by their in-laws, amendments were

¹³ Indiankanoon.org. 2021. *Section 304B in The Indian Penal Code*. [online] Available at: <<https://indiankanoon.org/doc/653797/>> [Accessed 16 November 2021].

¹⁴ Indiankanoon.org. 2021. *Section 113 in The Indian Evidence Act, 1872*. [online] Available at: <<https://indiankanoon.org/doc/462524/>> [Accessed 17 November 2021].

made in the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act.

Section 498A of IPC, talks about cruelty against married woman by husband or relatives. In any event the willful act or conduct ought to be the proximate cause in order to bring home the charge under Section 498 A, and not de hors the same. The legislative intent is clear enough to a particular reference to explanation(b) of Section 498 A of IPC, that there has to be a series of acts to induce the act of harassment.

Now, acquittal of a charge under Section 306, though not by itself is a ground for acquittal of charge under S 498 A, but some cogent evidence, is required to effectuate the charge of Section 498A as well, without which the said charge cannot be maintained, as held in the case of *Girdhar Shankar Tawade v State of Maharashtra* AIR 2002 SC 2078¹⁵.

The Dowry Prohibition Act, had been an effort of our legislature to put the menace of dowry to a stop. But still women were seen as economic liabilities that needed to be driven off from the parents. The unnecessary costs and expenses involved in a marriage, are considered as a prestige for the bride's family. Gifts are exchanged between both the parties, with free will. However, in any case if an element of coercion gets induced in the same, then it becomes anti-social and illegal.

We all agree, that the situation needs to alter for the better. But how shall it? Firstly, in my view, economic independence along with access to higher education to girls residing in every economic and social division of the society, must be ensured and delivered.

There is a need of alteration in socio-cultural outlook towards women by men in general, and give them an equal footing in terms of worth and dignity as a human being. Marriage must be held as a sacrament institution, and not as a deal to maximize profits for the groom.

The Clause of Presumption

The very concept of "dowry death" and "dowry murder" was commonly used around 1977-78., when investigations had revealed deaths of married women, which for many years had been given the garb of accidents or suicides by the police, often women in such cases being subjected to physical and mental cruelty by their husbands and in-laws in reason for want of

¹⁵ 2021. [online] Available at: <<https://www.casemine.com/judgement/in/5609adb2e4b0149711412017>> [Accessed 18 November 2021].

dowry. Hence, came the much-accepted term – “dowry deaths”, transitioning from “wife murderers” or “abetted suicides”.

Presumption of death of wife, can only be raised against the husband or any other family member of his, when the harassment caused or ill-treatment met with the wife in her matrimonial abode, can be proved beyond reasonable doubt, which led her to take an adverse step, like that of committing a suicide.

In the case of *Shanti v State of Haryana*¹⁶, where the death of the wife took place within 7 years of marriage, the in-laws of the deceased did not inform the deceased’s parents, but cremated her.

The prosecution had succeeded in establishing that the accused persons inflicted cruelty on the wife. The death could not be said to be natural, as it attracted presumption under Section 113 B, of the Indian Evidence Act. The Supreme Court, held that in order to attract such liability, the cruelty or harassment has to be met to the victim just prior to the victim’s death. In this case, there had been a dispute between the husband and the wife regarding the payment of dowry. She was sent back to her parents’ home, and was brought back to her matrimonial abode after a ‘panchayat’, resolved the differences. This incident happened 10-15 days before the unnatural death of the wife. However, it could not be proved that she was subjected to harassment or cruelty by her in-laws, during the time frame she stayed in her paternal house, and her death.

The Supreme Court, was of the view that the presumption of dowry death under Section 113B of the Indian Evidence Act, could not be brought in such a case.

Section 113 B reads,

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.

¹⁶ LII / Legal Information Institute. 2021. *Shanti v. State of Haryana*. [online] Available at: <https://www.law.cornell.edu/women-and-justice/resource/shanti_v_state_of_haryana> [Accessed 20 November 2021].

The words “soon before”,¹⁷ is a relative term and it would depend on the circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of “soon before”, the occurrence. The expression “soon before” normally shall imply that interval shall not be much between the concerned cruelty or harassment and the demise in question. There must exist a proximate and a live link between the effect of cruelty based on dowry demand and concerned death. However, if the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, then it would be of no consequence.

Such presumption under section 113 B of the Indian Evidence Act, which is non-retrospective in nature, will attract if the prosecution is able to establish circumstances set out in IPC Section 304 B, as held in the case of *State of Karnataka V MV Manjunath Gowda*¹⁸.

Police – Law enforcement

The menace of Dowry Death, has been a social curse, being a poignant issue in our society. There has been growing organised movements by women welfare organisations, police and public servants and judiciary, which has involved severe and disproportionate punishment for dowry death offenders. The Indian government along with judicial activism of courts, makes substantiated co-operative law to protect the life and dignity of women and serve justice to the victim of such cruelty by the husband and his relatives. Corrective measures need to be framed to make good or reduce the social stigma of dowry death. But, prima facie, there is a need for public empathy and support and dedication to put an end to the profane greed of such demand.

A battalion of female police personnel must be inducted on the ground in order to keep a check on the ground situation of dowry deaths, harassment or cruelty, and keep a tab on the unnatural deaths of women. In the virtue of proper police investigation, investigation cannot be done below the rank of an Assistant Commissioner of Police (ACP)¹⁹. The current imposition of 10 years in prison must be raised, coupled with an increase in amount of fine to be paid.

¹⁷ Indiantkanoon.org. 2021. *soon before her death*. [online] Available at: <<https://indiantkanoon.org/search/?formInput=soon%20before%20her%20death>> [Accessed 20 November 2021].

¹⁸ Indiantkanoon.org. 2021. *State Of Karnataka vs M.V. Manjunathgowda & Anr on 7 January, 2003*. [online] Available at: <<https://indiantkanoon.org/doc/1604934/>> [Accessed 22 November 2021].

¹⁹.. www.javatpoint.com. 2021. *ACP Full Form - javatpoint*. [online] Available at: <<https://www.javatpoint.com/acp-full-form>> [Accessed 22 November 2021].

Proposal to amend Section 304B of the Indian Penal Code

The Law Commission in its 91st Report took up the question of “Dowry Deaths and Law Reforms”²⁰, in a Suo moto cognisance. The laws in place are sanction of the Law Commission of India’s tireless reforms. Commonly, the facts of a case of dowry death, for that matter any offence prima facie, which satisfies and contends the legal particulars of the offence, which is already mentioned in the criminal law statutes, let’s say, murder in the situation of dowry death, the law applicable, can be used to book a perpetrator under such a case.

Recent Guidelines Issued by Supreme Court regarding Dowry Cases

- 1) Section 304 B of the Indian Penal Code, must be interpreted keeping in mind upholding the purpose of the legislature to restrict the social evil of dowry and dowry death.
- 2) The Prosecution has to establish the presence of sufficient requisite factors for constituting the crime as mentioned in IPC Section 304 B. If such facts are challenged, the burden of disproving the presumption of casualty, under Section 113B acts against the accused.
- 3) The words, “soon before”, as written in IPC section 304 B, cannot be interpreted as “just before”. The burden of proving an imminent and live link to such death, lies on the prosecution, where it needs to be proved that cruelty or harassment had been inflicted by her husband or his relatives, on the wife just prior to her death.
- 4) Nowhere in Section 304B of IPC has been a classification of death, as homicidal, suicidal, or accidental. The reason for such non- classification is primarily due to the fact that death had happened, “otherwise than under normal circumstances”, which can, in cases be, homicidal, accidental or suicidal.

²⁰ Indiankanoon.org. 2021. *202Nd Report On Proposal To Amend Section 304Bof The Indian Penal Code*. [online] Available at: <<https://indiankanoon.org/doc/16856996/?type=print>> [Accessed 23 November 2021].

- 5) Judges, Prosecution and Defence, need to be very attentive as to the self-effacing, and violent nature of Section 304 B IPC read with Section 13B of the Indian Evidence Act, during pendency of trial.
- 6) Trial Courts often record statements under Section 313 CrPc, which gives the Court power to examine the accused, in a very non-formal way, without questioning the accused to his defense. It has to be noted that examination of an accused, under Section 313 CrPc, shall not be treated as a formalistic approach, as based on the basic tenet of impartiality to any one party to a trial.

The said facet of law includes the embedded principle of natural justice, which is, “*Audi Alteram Partem*”²¹, which lets the cited, to present his or her reasoning, as to the entrapped materials contented against him. This, places the courts in a situation, to act responsibly and impartially, rendering justice with no misjudgement whatsoever.

- 7) It is the duty of the Court, to put impending circumstances against the accused, and ask for his or her answer to the same. The counsel of the accused must prepare the defence, with care and intelligence, keeping in mind the aberration of Section 304B read with Section 113B of the Indian Evidence Act.
- 8) It allows for acquittal of charges under the said Act, if prosecution fails to prove guilt of the accused, beyond reasonable doubt. Section 232 of CrPc, states, “If, after taking evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of Acquittal.
- 9) If acquittal does not take place, then accused shall be called upon to enter on his defence and adduce any evidence he may have in support thereof under Section 233 CrPc. This is a precious right that has been granted to the accused.

²¹ Sewell & Kettle. 2021. *Audi alteram partem - law definition* • Sewell & Kettle Lawyers. [online] Available at: <<https://sklawyers.com.au/dictionary/audi-alteram-partem/>> [Accessed 24 November 2021].

- 10) In case of sentencing of the guilty, the Judge in the matter, shall follow the said and written guidelines of the Apex Court.

CONCLUSION

The Supreme Court clearly enunciated in the judgement of *K. Prema S Rao V Yadla Srinivasa Rao*, AIR 2003 SC 11, (para 27)²² that, the Legislature by making amends in the Indian Penal Code, and the Indian Evidence Act, has made the penal legislations more stringent as to those dealing with crimes and injustice against married women. Such stringent laws, shall have a restrictive effect on the perpetrators only if they are practised to their fullest potential in the courts so as to achieve the purpose of the legislature in question. There also lies an impending need on the law enforcement bodies, and be more sympathetic and resonating to the demands of the situation that arises out of dowry deaths.

In the case of *Baijnath & Others v. State of Madhya Pradesh*²³, Supreme Court propounded that,

“One of the essential ingredients of dowry death under Section 304B of the Penal Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the court will presume that the accused has committed the offence of dowry death under Section 113B of the Indian Evidence Act”.

The law is straightforward in its aim to put an end to the prevailing injustice being perpetrated on women for the sake of dowry. It must be kept in mind, that cases of such nature, can easily occur inside closed doors. They are private acts, and such direct evidence of the incriminating crime is nor easily accessible. That is the backbone of Section 113 B of the Indian Evidence Act, 1872 which tries to build a foundational case for the prosecution if certain alleged facts can be grounded and such an occurrence happened within 7 years of marriage.

²² Indiankanoon.org. 2021. *K. Prema S. Rao And Anr vs Yadla Srinivasa Rao And Ors on 25 October, 2002*. [online] Available at: <<https://indiankanoon.org/doc/1250057/>> [Accessed 26 November 2021].

²³ Indiankanoon.org. 2021. *Baijnath And Ors vs State Of M P on 18 November, 2016*. [online] Available at: <<https://indiankanoon.org/doc/73277952/>> [Accessed 26 November 2021].

The Court, after much deliberations, has affixed 7 years to be a considerable period of time after the marriage of a man and a woman, for as they must have settled down by then (case law). If the contention is proved, with the help of strong evidence that a woman, just prior to her death, had been subjected to cruelty or harassment for, or in relation with want of dowry, by the husband or by any relative of the latter, in such a case, the burden of guilt shall fall on the accused person/persons, if not proved otherwise, according to Section 113 B of the Indian Evidence Act, 1872.

It is of significant importance, that the judicial interpretation of Section 304 B of IPC, must be made more lucid, keeping the aim of the legislation intact. Absurd interpretations should not blur decisions. The presence of an imminent and live link is something that should be stressed upon while determining a case of such facts and circumstances. The Court must prove circumstances contrary to the favour of the accused, and look for his answer. As per the principle of “*audi alteram partem*”, the accused should be given a fair chance at speaking his or her mind.

In the case of *Sushil Kumar Sharma V Union of India, 2005*²⁴, the Supreme Court rightly pointed out that the possible abuse of a statute, otherwise valid, does not add a notion of invalidity thereof, pointing at Section 498 A of IPC. The Supreme Court dismissed the petition, which was filed under article 32 of the Constitution of India, 1950, praying the following:

- 1) To declare Section 498 A of IPC, 1860 as ultra vires to the Constitution.
- 2) To ensure stringent action is taken against misusers of Section 498A, whenever the court concludes that such allegations were frivolous and unfounded, only having the intent to harass the husband, in-laws and relatives.
- 3) To direct an investigation by the Central Bureau of Investigation (CBI), in matters where petitioner was portrayed as the perpetrator of the crime.

²⁴ Jus Dicere. 2021. *Sushil Kumar Sharma v. Union of India & Ors - Jus Dicere*. [online] Available at: <<https://www.jusdicere.in/sushil-kumar-sharma-v-union-of-india-ors/>> [Accessed 28 November 2021].

In certain situations, the man is positioned disadvantageously. But in my limited opinion, the presumption clause under Section 304B shall only prove to be a disdain to the man. In the mentioned case laws, there has been one significant commonality. That being “presence of an imminent and live link”²⁵ between the harassment and torture caused to the wife for the want of dowry and her death. If such can be proved at trial, then charges against the perpetrators are legitimate. Otherwise, it does amount to cruelty against the husband.

²⁵ Indiankanoon.org. 2021. *Smt. Beila Devi & Another vs State Of U.P. on 19 February, 2016*. [online] Available at: <<https://indiankanoon.org/doc/45491269/>> [Accessed 28 November 2021].