

**DOWRY: A PATRIARCHAL MENACE**

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**ABSTRACT**

*Although the laws in the field of dowry death evolved parallelly, but the startling contradictions in the interpretations is perpetuating this evil. While one works as the watchdog for the rights of the women, the other considers the law as a tool of oppression. This paper portrays the current Indian scenario regarding the usage of the statute in question and the implications of false cases due to lack of clarity in the law. The false claims by a few result in victimization of the male and their families defeating the object of the law in its entirety. The study of inflation of crime against women underneath the head of dowry death is supported by the statistics of 2016<sup>2</sup>. The authors seek to raise it as a gender equality issue but also highlight the gravity of this offence in connection with right to life under Indian Constitution. The paper further attempts to analyze various factors causing Dowry Death like prevalent ideologies, socio-economic structure, lacunas in the law, lack of standardized procedures and low rate of conviction of the guilty in the light of judicial pronouncements. The discussion extends to inclusion of consequences of the aforesaid menace, for instance, marriage squeeze, sex determination of the child and female foeticide. The paper is concluded with multiple suggestions/recommendations for the elimination of the evil practice of dowry and dowry deaths.*

**Key Words:** *Dowry deaths, usage, male victimization, gender equality, right to life, gravity, challenges, factors, consequences, suggestions.*

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1. National Crime Records Bureau Ministry of Home Affairs, Statistics, Crime in India, 2016 (Jan. 18, 2019, 10:33 PM), <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/Crime%20Statistics%20-%202016.pdf>

## **OBJECTIVE OF THE RESEARCH**

The objective of the paper is to study:

- The causation and impact of dowry death on the society.
- The connection between dowry deaths as a gross violation of human rights specially focusing on Article 21 of Indian Constitution.
- Dowry death in light of gender equality and gender justice.
- Vexatious lawsuits exploiting lacunas of laws.
- State's failure to condemn the above.

## **RESEARCH METHODOLOGY**

The methodology adopted is analytical, comparative and descriptive in nature. For the completion of research, primary and secondary sources of information are utilized to collect data.

## **CHAPTERIZATION**

The research paper is divided into the following six chapters. Chapter I introduces dowry death. Chapter II lays the foundation by listing the causes and consequences of the menace. Chapter III marks the importance of dowry death in the sphere of human rights with global and domestic outlook. Chapter IV underlines the crucial issue of increasing misuse of dowry related provisions and inefficiency of the state. Chapter V is the conclusion while Chapter VI enumerates suggestions/recommendations to curb dowry death.

## **RESEARCH QUESTIONS**

1. Why dowry death is still prevalent after enactment of ample statutes and legislations?
  - a. How the factors of dowry death pose themselves as a tool for oppression of women?
  - b. How does the menace of dowry death impact the society?
  
2. Dowry Death As A Significant Offense Against Women
  - a. Whether dowry death infringes the basic principles of Human Rights globally?

- b. Whether dowry death deprives an individual of his right to life in India?
  - c. Whether the practice of dowry death aids in the inflation of gender inequality?
3. Lacunas In Law And Inefficiency Of State
- a. How 498-A of IPC acts as catalyst in offence of dowry death?
  - b. How does the state fails to take measures against this menace?

### **PREAMBLE**

*“Any young man, who makes dowry a condition to marriage, discredits his education and his country and dishonors womanhood.”*

-Mahatma Gandhi

It is alarming to see the rise in dowry deaths<sup>3</sup> despite the increase in stringency<sup>4</sup> of the laws. The easiest and cheapest method to execute dowry deaths is bride burning, leaving no evidence<sup>5</sup> and showing higher mortality rate. Both, giving and receiving of dowry<sup>6</sup> has existed since Early Vedic ages. This uncurbed offence not only violates the fundamental rights of the victims but also domestic laws and various international covenants. Ample of reasons are responsible for this menace leading to consequences like bride burning, infringement of fundamental rights and non-compliance of fundamental duties. Section 498-A of IPC aims at deterring the commission of the offence of dowry death but as seen in the light of judicial pronouncements, frivolous complaints and misuse of this provision creates conflicting views where amendment or abrogation of law is pleaded instead.

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<sup>3</sup> Dowry Prohibition Act, 1961 S.2 (2013).

<sup>4</sup> Alamgir Sani v. State of Assam, AIR 2108 (SC: 2003). The Court stringently applies the laws and stated that presumption of dowry does not disappear only because the accused is acquitted under the charges of section 302 IPC.

<sup>5</sup> Balwant Singh v. Punjab, AIR 1504 (SC: 2005).

<sup>6</sup> S. Gopal Reddy v. State of Andhra Pradesh, 4 SCC 596 (SC: 1996). The Hon'ble Court stated that even the demand of dowry is sufficient to constitute an offence by the accused. The court went ahead to include proposed marriages which failed to take place due to the non-fulfilment of demand of dowry within this definition. Accord Arjun Dhondiba Kamble v. State of Maharashtra, AIHC 273 (Bom: 1995). The Court described dowry as a security for marriage from the bride's family to the groom or his family and/or relatives.

## 1. PREVALANCE OF DOWRY DEATH: CAUSES AND CONSEQUENCES

### a. Factors Of Dowry Death As A Tool Of Oppression

Due to the continuous, sharp escalations in dowry demands, it has resulted in treating a female as a burden and led to devaluation of the status of women. Under section 2<sup>7</sup> and section 3<sup>8</sup> of the Dowry Prohibition Act, 1961, the practice of dowry is mentioned as the gifting of commodities from one party to another. The evil has been spreading like an epidemic because the punishment under the Act<sup>9</sup> has been fuzzy with not much effect. While section 113 B of the Indian Evidence Act<sup>10</sup> discusses presumptions of dowry deaths to help the women, but in most cases the accused are not even dealt as a convicted person and that is a lacunae in the law.

The act does not bar the practice of giving gifts; hence the affectionate giving of gifts in marriage from parents of the bride is not covered under the ambit of 'dowry'.<sup>11</sup> The effect of dowry is cropping up numerous and unsolvable post-marital disputes between the couple. The social and cultural factors further affect the practice of dowry.<sup>12</sup> The existing gender roles today, place men in domination and control, whereas women take the backseat of oppression. It is observed that Indian women are brought up in a traditional atmosphere where their minds are shaped in a way that they cannot think to leave their matrimonial houses and it is their duty to serve their husbands. Due to the patriarchal attitudes of the society the status of women has been unchanged and the discrimination against womanhood has been at stake.<sup>13</sup> It has been deduced that higher the education of the groom, higher the price of the dowry.<sup>14</sup> The crippling fact that higher the

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<sup>7</sup> Dowry Prohibition Act, 1961 S.2 (2013).

<sup>8</sup> Dowry Prohibition Act, 1961 S.3 (2013).

<sup>9</sup> Dowry Prohibition Act, 1961 S.4 (2013).

<sup>10</sup> Indian Evidence Act, 1872 S. 113 (2013).

<sup>11</sup> Vinod Kumar Sethi v. State of Punjab, AIR 372 (P&H: 1982).

<sup>12</sup> Sharad Birdichand Sarda v. State of Maharashtra, AIR 1622 (SC: 1984). The Court stated that cultural and sociological factors propagate the violent behaviour.

<sup>13</sup> Justice VRK Iyer, The Majesty Of Judiciary (2013).

<sup>14</sup> Manuela Mota & Sara Falcao Casaca, Women Status in India: Gender Asymmetries Education And The Dowry System, Gender Relations And The Dowry System In India- The Case Of Hyderabad (Feb 2, 2019, 2:01 PM), <https://cesa.rc.iseg.ulisboa.pt/images/files/wp143.pdf>

dowry, more is the bargaining power that a woman gains in order to enjoy basic rights in the household.<sup>15</sup>

Factors like poverty, acute consumerism and greed drives families to extract dowry propagating dowry deaths. The brides are reduced to mere machineries of accumulating wealth resulting in gross violation of their human rights. For the most of the women even with the existence of socio-economic rights, that is aptly granted by the Constitution it still leads to the perpetuation of oppression due to inaccessibility of these rights.

### **b. Consequences of Dowry Death and Its Impact On Society**

One of the major consequences is the concept of 'marriage squeeze'. It has been argued by many scholars; the nation's gender ratio imbalance has been notoriously tilted towards the less of females as compared to the males. The obvious consequences of the dowry death is the shortage of the brides and that it will also encourage many of the other certain crimes such as sexual abuse and use of violence against women. Also, if dowry demand is not accepted and a certain, unsolvable disagreement is reached, the marriage gets obstructed. Further, the need to give a huge dowry for the marriage of a girl child, families practices the offense of female infanticide. This again disturbs the gender ratio of the society resulting in marriage squeeze and therefore forming a vicious circle. Other consequence of dowry death is the gross violation of rights that are enumerated in the Indian Constitution and national covenants which the authors discuss in their next issue. Dowry Death further causes a substantially higher negative impact on the social welfare of the women.<sup>16</sup>

## **2. DOWRY DEATH- A SIGNIFICANT OFFENSE AGAINST WOMEN**

### **a. Infringement of Human Rights: Global Perspective**

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<sup>15</sup> Id.

<sup>16</sup> Tonushree Jaggi, The Economics of Dowry: Causes And Effects of an Indian Tradition, 5 University Avenue Undergraduate Journal of Economics (23<sup>rd</sup> Feb, 2019, 11:00 PM), <https://pdfs.semanticscholar.org/2c76/9a488a7c8d2b8b214e1ea31ff30c3f75533.pdf>.

United Nations (UN) plays a supreme role in fortifying rights of human worth<sup>17</sup> and one of its aspects is uplifting women, ceasing the torture and cruelty on the subject of dowry. Although there have been a lot of significant covenants and declarations, harmful traditional and customary practices that are discriminatory against women<sup>18</sup> still prevail. States adhering to the international laws sought the shelter of their customary, religious practices and difference in culture<sup>19</sup> as a justification for their actions. Article 7<sup>20</sup> of ICCPR<sup>21</sup> and Article 5 of UDHR,<sup>22</sup> states that no individual should be tortured or treated with cruelty.<sup>23</sup> In the crime of dowry, there is intention of the husband and in-laws for inflicting some kind of mental/physical suffering like physical beating<sup>24</sup> or burnt alive<sup>25</sup> for acquiring dowry from the bride. India should take necessary measures like making stricter laws which women should enjoy under the Covenant and sanctions should be enforced for torture.<sup>26</sup> Article 12(1) of the ICESCR<sup>27</sup> recognizes the mental and physical health of an individual. The deaths and threat to life due to dowry is an ultimatum to the health of the women. India propagates equal rights in marriage<sup>28</sup> but the collusion leads to crime of dowry deaths.<sup>29</sup>

### **b. Dowry Death And Deprivation Of Right To Life In India**

While there is no strict rule of international law that calls for treaties to have impact over domestic regulations, Article 6(1) of ICCPR<sup>30</sup> and Article 3 of UDHR<sup>31</sup> calls for right to life. The right belongs to every individual and states have to apply this right inclusively, and not

<sup>17</sup> VRK Iyer, LAW AND LIFE (1979). J. Krishna Iyer states in his treatise that the fight is not for woman's status, but for human worth.

<sup>18</sup> The Convention on the Elimination of all Forms of Discrimination against Women, G.A. Res. 34/180 art. 5 (1981).

<sup>19</sup> E. Brems, Human Rights: Universality and Diversity, The Hague, 2001; A. D. Renteln, International Human Rights: Universalism versus Relativism, Newbury Park, 1990.

<sup>20</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) art. 7 (1976).

<sup>21</sup> Minority Schools in Albania case, ICGJ 314 (PCIJ: 1935)

<sup>22</sup> Universal Declaration of Human Rights, G.A. 217 A (III) art. 5 (1948)

<sup>23</sup> Declaration of Elimination of Violence against Women, A/RES/48/104 art. 4 (1993)

<sup>24</sup> S. Gopal Reddy v. State of Andhra Pradesh, AIR 2184 (SC: 1996)

<sup>25</sup> State (Delhi Admn.) v. Laxman Kumar, AIR 250 (SC:1986)

<sup>26</sup> Women's Discrimination Convention, A/RES/34/180 art. 4 (1979).

<sup>27</sup> International Covenant on Economic, Social and Cultural Rights, G.A. Res 2200A (XXI) art. 12(1) (1966).

<sup>28</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) art. 23 (1976).

<sup>29</sup> The Convention on the Elimination of all Forms of Discrimination against Women, G.A. Res. 34/180 art. 16 (1981).

<sup>30</sup> International Covenant on Civil and Political Rights, G.A. Res 2200, 21 U.N. GAOR Supp. No. 16, 52, UN Doc. A/6316 art. 6(1) (1966)

<sup>31</sup> The Universal Declaration of Human Rights, GA. Res. 217 (III), U.N. Doc. A/810 art. 3 (1948)

exclusively<sup>32</sup>. Right to life has always been interpreted with greatest possible protection. Dowry deaths are arbitrary and illegal killings; they are not just impermissible under Indian law but are also criminalized. ICCPR and ECHR<sup>33</sup> protect the right to life in case the government negates it through its agents. But is it a violation of Article 6(1) if a state fails to prevent an individual killing another? Ramcharan<sup>34</sup> argues that the theory of right to life is to prohibit deprivation of life<sup>35</sup> unless it is by due procedure of law<sup>36</sup> and therefore the state should make the act of deliberate killing of an individual by another an offence. The consensus reached during drafting was that this right is not limited against the state but also covers state's duty to protect right of a person against arbitrary deprivation of life by another.<sup>37</sup> This is cardinal in Indian scenario because dowry deaths are committed by the husbands and/or in-laws and relatives i.e., private actors; thus, they fall within the category of prohibition under Article 6(1). Further, under article 2(1)<sup>38</sup> India should take positive steps to prevent infringement of right to life which includes deaths in dowry disputes without any discrimination<sup>39</sup>. As per article 2(2),<sup>40</sup> states have to follow certain procedures to recognize rights under ICCPR, for example incorporating them in their domestic laws. Article 2(3)<sup>41</sup> makes it an obligation of the state to provide remedies in case of violation, highlighting the gravity of arbitrary deprivation of life

India has imbibed right to life under Article 21 of its constitution<sup>42</sup> which is not to be interpreted restrictively.<sup>43</sup> The inhibition against arbitrary deprivation of life extends to all the facets making life enjoyable.<sup>44</sup> If deprived from right to life, other human rights are meaningless.<sup>45</sup> The

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<sup>32</sup> Id.

<sup>33</sup>European Convention for the Protection of Human Rights and Fundamental Freedoms, 218 U.N.T.S. 221. (1950)

<sup>34</sup>B.G. Ramcharan, The Right To Life In International Law, 19 (B.G. Ramcharan ed.,1985).

<sup>35</sup> Id. As per the law, under Article 6(1), the protection is for the right to life and not life itself.

<sup>36</sup> See The Universal Declaration of Human Rights, GA. Res. 217 (III), U.N. Doc. A/810 art. 3 (1948). See also Indian Const. part III, art. 21.

<sup>37</sup> Id. At 7

<sup>38</sup>International Covenant on Civil and Political Rights, G.A. Res 2200, 21 U.N. GAOR Supp. No. 16, 52, UN Doc. A/6316 art. 2(1) (1966).

<sup>39</sup> Ramcharan, supra, 17.

<sup>40</sup>International Covenant on Civil and Political Rights, G.A. Res 2200, 21 U.N. GAOR Supp. No. 16, 52, UN Doc. A/6316 art. 2(2) (1966).

<sup>41</sup>International Covenant on Civil and Political Rights, G.A. Res 2200, 21 U.N. GAOR Supp. No. 16, 52, UN Doc. A/6316 art. 2(3) (1966).

<sup>42</sup> Indian Const. part III, art. 21.

<sup>43</sup> Ramcharan, supra, 5.

<sup>44</sup>Munn v. Illinois, 94 US 113 (1877); Francis Coralie v. Delhi, AIR 746, 753 (SC: 1981).

<sup>45</sup> Ramcharan, supra, 2.

expression 'personal liberty' under article 21 also has liberal interpretation and includes variety of rights that together constitute personal liberty of a person. As per commonly held view, Article 21 can be invoked only against the state.<sup>46</sup> But there are instances where it was applicable against private persons as the language of the article is not restricted to state and should be widely interpreted.<sup>47</sup> Therefore, dowry deaths are arbitrary deprivation of life and violates article 21,<sup>48</sup> constituting an offense of murder<sup>49</sup>. This right revolves around the concept of 'dignified life'<sup>50</sup> which is inexhaustible in range and scope. Dignity and honour are women's inalienable rights<sup>51</sup> as part of her right to decent right<sup>52</sup>. Due to dowry demand, a woman is blackmailed and tortured making it impossible for her to enjoy her life or live it with dignity<sup>53</sup>. This shows that the dowry death is one of the most inhuman crimes that shocks the collective conscience of the society<sup>54</sup> and gravely deprive the most basic and fundamental right to life in Indian scenario from both national and international perspectives.

### **c. Dowry Death and Inflation of Gender Inequality**

Gender Inequality connotes a disproportion between men and women in the field of socio-economical, political and legal aspects.<sup>55</sup> The principle of 'gender equality' has always been uplifted by Indian Constitution<sup>56</sup> through its fundamental rights<sup>57</sup> and fundamental duties. Each individual irrespective of their sex should be treated equally without discrimination<sup>58</sup> placing

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<sup>46</sup>Vidya Verma v. Shiv Narain Verma, AIR 108 (SC: 1956).

<sup>47</sup>M.C. Mehta v. Union of India, AIR 1086 (SC:1987); Bodhisattwa Gautam v. Subhra Chakraborty, AIR 922 (SC: 1996 ); 'X' v. Hospital 'Z', 8 SCC 296 (SC: 1998).

<sup>48</sup>Mohd. Sukur Ali v. State of Assam, AIR 1222 (SC: 2011). The Court laid down that Article 21 is the heart and soul of fundamental rights.

<sup>49</sup>State of Punjab v. Amarjit Singh, AIR 2013 (SC: 1988); Panakanti Sampath Rao v. State of A.P., 9 SCC 658 (SC: 2006); State of U.P. v. Ashok Kumar Srivastava, AIR 840 (SC: 1992).

<sup>50</sup>Maneka Gandhi v. Union of India, AIR 597 (SC: 1978); P Rathinam v. Union of India, AIR 1844 (SC: 1994).

<sup>51</sup>See The Universal Declaration of Human Rights, GA. Res. 217 (III), U.N. Doc. A/810 art. 3 (1948).

<sup>52</sup>See International Covenant on Civil and Political Rights, G.A. Res 2200, 21 U.N. GAOR Supp. No. 16, 52, UN Doc. A/6316 art. 2(3) (1966).

<sup>53</sup>Sakhi v. Union of India, AIR 3566, 3582 (SC: 2004). The Court laid down guidelines for sensitizing judges towards victims of women's honour and dignity.

<sup>54</sup> Machhi Singh v. State of Punjab, 3 SCC 470,487(SC:1983).

<sup>55</sup> Priti Jha & Niti Nagar, A Study of Gender Inequality in India, The International Journal of Indian Psychology 47 (2015).

<sup>56</sup> Indian Const.. part III, art. 14.

<sup>57</sup> Vishaka v. State of Rajasthan, AIR 3011 (SC: 1997). The Court held that there should be gender equality in the workplace. Accord Minority Schools in Albania case, ICGJ 314 (PCIJ: 1935). The Court states that there should not be any discrimination in the facet of equality of any kind.

<sup>58</sup> Indian Const. part III, art. 15, 15(1), 15(2). Accord Vasantha R. v. Union of India, 843 IILLJ (Mad: 2001).

them equal in the eyes of the law.<sup>59</sup> Dowry has always been seen as a monetary value or a bride price<sup>60</sup> which is offered as a security for the wife, degrading her value in the society. The gender inequality has led to a male dominated society<sup>61</sup> compromising gender justice.<sup>62</sup> The fear of both the families getting punished for the act of giving and taking dowry, silences the women and most of the cases go unreported. Women face deprivation in the economic sector where they are not given equal promotion and opportunities with lower salary as compared to men. This leads to women staying forcefully in abusive relationships due to the lack of proper economic factors as mentioned above, hence leading to dowry deaths.<sup>63</sup>

### 3. LACUNAS IN LAW AND INEFFICIENCY OF THE STATE

#### a. Misuse of Section 498-A, IPC

Section 498A of IPC<sup>64</sup> deals with cruelty against women by the husband, in-laws/ relatives. Dowry is a continuous offense<sup>65</sup> i.e., it takes place before, during and after marriage.<sup>66</sup> The Section is enacted with the motive to combat dowry death but it does not provide for falsely implicating husbands for achieving oblique motives. The Supreme Court laid down the principle of “soon before death” dictating the proximity of cruelty and the death of the person.<sup>67</sup> It also

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<sup>59</sup> Md. Abdul Azeez Asad and ors. v. State of Andhra Pradesh and ors., AIR 389 (A.P: 2005).

<sup>60</sup> Priya R. Banerjee, Dowry in 21<sup>st</sup> Century India: The Sociocultural Face of Exploitation, Trauma, Violence, & Abuse, 15 SAGE Journals (Feb. 22, 2019, 7:10 PM), <https://journals.sagepub.com/doi/abs/10.1177/1524838013496334>.

<sup>61</sup> Binod Paswan v. State of Bihar, 2004 C RI. L. J. 4927. High court reversed the case and acquitted the accused despite cruelty and murder of wife.

<sup>62</sup> Arvind Singh v. State of Bihar, AIR 2124 (SC: 2001). The Court stated that absence of dying declaration for the accusation of bride burning acquitted the accused. The accused should have been punished and this is in contradiction of gender justice; Mohd. Dowlath v.State CRI L.J. 457 (A.P: 2004); Rajendran v. State, CRI. L.J. 4156 (A.P: 2004).

<sup>63</sup> Indian Const. part III, art 16. It states that equal opportunities should be given at work irrespective of gender. Accord Indian Const. part IV, Art.39(a), art.51 (a) (e), art.243 D (3), art.243 D (4), art. 243 T (3), art.243 T (4). These articles list down the fundamental duties which should be required to change into fundamental duties for the effective curbing of gender inequality.

<sup>64</sup> Indian Penal Code, 1860, S. 498 (2017).

<sup>65</sup> Onkar Nath Mishra v. State (NCT of Delhi), 2 SCC 561 (SC: 2008). The Court stated that for the conviction under this section, the ingredients like performance of marriage, wife being subjected to cruelty by her husband or relatives should be fulfilled; Arun Vyas v. Anita Vyas, 4 SCC 690 (SC: 1999); S. Gopal Reddy v. State of Maharastra, 4 SCC 596 (SC: 1996).

<sup>66</sup> Sheetal Shekari & Adam Storeygard, Domestic Violence and Dowry Death, Dowry deaths: smoothening in response to climate variability in India (Feb.24,2019, 7:49 P.M), file:///C:/Users/Roopkatha%20Roy/Downloads/virpap407%20(1).pdf

<sup>67</sup> Balwant Singh v. State of Punjab, AIR 1504 (SC: 2005).

upheld the rule of proximity between the cruelty based on dowry and the concerned death.<sup>68</sup> The absence of the definition of “husband” necessarily includes a person who has committed marriage and is cohabiting with a woman.<sup>69</sup>

The simplest way to misuse this provision is to get the husband arrested along with in-laws/relatives<sup>70</sup>. It is difficult to define cruelty as it is subjective, what constitutes cruelty to one person may not be cruelty to the other<sup>71</sup>. It can also be stated that when the violence is caused to the women it is not always physical assault but also other forms of aggravated assault. Cruelty can be either physical cruelty or that of a mental one. The intensity of cruelty is at its peak when people in relationships are not being able to sustain themselves.<sup>72</sup> With the ample of the cases that in come from of the courts it has been witnessed that the majority of them result in the acquittal, it can be concluded that the section is being clearly misused. In many instances it is seen that the complaints are not bona fide and thus it has unleashed a fear of legal terrorism. Supreme Court laid down a few guidelines<sup>73</sup> as stated under Section 41 of CrPC<sup>74</sup> regarding the arrest of the accused which needs to be fulfilled.

#### **b. State’s Failure To Take Measures**

State fails to implement reasonable measures in preventing, punishing and investigating dowry deaths and this complicity leads a private act of citizens into an act of the nation as a whole. In spite of enactment of positive laws, the inaction of government and its agents is the reason behind the failure of taking measures to combat this issue

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<sup>68</sup> Kaliyaperumal v. State of Tamil Nadu, 9 SCC 157 (SC: 2004).

<sup>69</sup> Reema Aggarwal v. Anupam, 3 SCC 199 ( SC : 2004).

<sup>70</sup> A Hashika & M Kannappan, Review of Literature, A Critical Study on Misuse of Section 498 A (Feb 25, 2019, 3:31 AM), <http://www.acadpubl.eu/hub/>.

<sup>71</sup> G.V. Siddaramesh v. State of Karnataka, 3 SCC 152 (SC: 2010).

<sup>72</sup> V Bhagat Vs D Bhagat, 1 SCC 337 (SC: 1994).

<sup>73</sup> Arnesh Kumar v. State of Bihar 8 SCC 273 (SC: 2014).

<sup>74</sup> The Code of Criminal Procedure, 1973 S. 41 (2017). Accord Social Action Forum for Manav Adhikar v. Union of India, SCC 1501(SC: 2018) ; Rajesh Sharma v. State of U.P., SCC 821 (SC: 2017). The Court laid down guidelines to prevent misuse of section 498-A such as appointment of a designated officer for investigation, the option for mediation.

### Failure To Investigate

There are specific investigation guidelines for dowry deaths as laid down by India's Ministry of Home Affairs<sup>75</sup> but their systematic disregard and ignorance by the police makes them purposeless. In majority of cases, dowry deaths are reported as kitchen accidents<sup>76</sup> and the police fail to collect objective and physical evidence. The investigation is delayed and mainly based on statements by the relatives and forensic evidence is lost with time. These incomplete investigations in turn lead the judges to dispose dowry death cases with no conviction due to lack of evidence. Further the tampering of evidence by the police and medical officers is another reason enabling acquittal of accused<sup>77</sup> in dowry disputes.

### Failure To Prosecute And Convict

To begin with, the reported cases of dowry death are very less. The failure on part of the prosecution to record charges due to disregard for the seriousness of this crime<sup>78</sup> is a lack of reasonable measure. Though the insufficient evidence presented by the police to the judiciary is the reason behind wrong acquittals, even the judiciary's delay in proceeding with these cases and ignorance to acknowledge it as a national problem<sup>79</sup> is one of the many factors resulting in state's failure. The role of courts is even greater in such circumstances where lacunae in evidence (giving benefit of doubt)<sup>80</sup> exists along with procedural technicalities but courts fail to consider vital factors in a case without even a proper discussion.<sup>81</sup> The citizens of the country will only take the offense seriously when their legal system does and hence, inability of the Indian judiciary to do so on the subject of dowry death is contributes to state's lack of reasonable measure to take measure under the circumstances.

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<sup>75</sup>S.K Ghosh, Women In Changing Society, 420 (1984).

<sup>76</sup>Government of India, Two Hundred And Second Report On Proposal To Amend Section 304-B Of Indian Penal Code, Law Commission Of India (Feb. 23, 2019, 10:33 PM), <http://lawcommissionofindia.nic.in/reports/report202.pdf>.

<sup>77</sup>Angela K. Carlson-Whitey, Comment, Dowry Death: A Violation of the Right to Life Under Article Six of the International Covenant on Civil and Political Rights, 17 PUGET SOUND L. Rav. 637, 653 (1994).

<sup>78</sup>State Delhi (Administration) v. Laxman Kumar, A.I.R. 250 (SC: 1986).

<sup>79</sup>State of Punjab v. Gurmit Singh, AIR 1393 (SC: 1996). The Court recognized the role of judges in sensitizing towards the problems of womanhood.

<sup>80</sup>Kailash Kaur v. State of Punjab, 2 SCC 631 (SC: 1887).

<sup>81</sup>Kundula Bale Subrahmanyam v. State of A.P., 2 SCC 684 (SC: 1993).

The study of the issue of state's failure to take reasonable measures is supported by the statistics, 2016 of National Crime Record Bureau<sup>82</sup> which are attached as Annexures I A-II B. The following can be observed from the statistics below:

Annexure I A-The cases pending under the head 'Dowry Death' were 4220 while cases reported were 7621 which shows us that not even half of the cases were disposed by the police. Due to the inefficiency by the police of proper investigation, insufficient evidence has been found although the cases have been found to be true. We can also see that there have been 254 false cases out of 11841 cases. Cases filed under the Dowry Prohibition act, have 3 cases not investigated at all in 2016.

Annexure I B- Out of the 88.7 % charge sheets filed, 32.7% which is 3874 cases are yet pending. Cases under Dowry Prohibition Act, out of 8455 charge sheets filed for Dowry Death, 5557 cases are pending, conclusively portraying the pending cases to have a higher rate than disposal rate.

Annexure II A- 37056 cases of Dowry Death have been pending since the previous year out of which only 7067 cases have been sent for trial, deriving a rate of 99.81 cases not being sent for trial. Similarly results are shown in the cases filed under Dowry Prohibition Act, 1961.

Annexure II B- There has been more acquittal cases (3026 cases) than that of conviction cases (1325 cases). Under the Dowry Prohibition Act, out of 34785 cases pending at the end of the year, only 3337 cases are disposed. Here, it can be observed, that there is a fault of judiciary for the higher acquittal rate.

Hence, we can deduce that the state has miserably failed to play a parent role for the investigation, prosecution and conviction for the crime of Dowry Death.

## **CONCLUSION**

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1. <sup>82</sup> National Crime Records Bureau Ministry of Home Affairs, Statistics, Crime in India, 2016 (Jan. 18, 2019, 10:33 PM), <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/Crime%20Statistics%20-%202016.pdf>.

The evil practice of dowry death is triggered by multiple factors having roots in inferior status of women and prevalent gender roles in Indian culture leading to profound consequences. The impact extends to national and international sphere. The menace of dowry is not incurable but the current lack of effective and adequate machinery in India makes it a monumental issue. A comprehensive approach is required where both governmental and nongovernmental organizations strive to halt the problem. The criminal justice system should be reformed and government should encourage participation of women in economic institutions to achieve greater realization of Right to life. The dissemination of information and awareness of this unacceptable social practice should be enhanced at all levels-regional to global. These diverse, deep rooted barriers needs to be critically examined for the full enjoyment of basic rights by Indian women otherwise it is highly unlikely that any of the above remedies will solely work. Though there are sufficient legislations to eradicate the evil yet a check is necessary to avoid misuse of legal backlogs.

### **RECOMMENDATIONS**

1. The glorification of matrimonial advertisements in daily newspapers used as a lucrative means for arranged marriages by the parents which is perpetuating the evil practice and it should be condemned in all its totality.
2. The ambiguity from the dowry definition should be removed regarding post marriage dowry demands, expected and small gifts. It should be laid down in clearer terms so that the Indian households don't be creative in labeling and characterizing dowry.
3. The punishment for dowry should be increased and changed from seven to ten years, the reason being that dowry death victims in majority of the cases undergo torture, suffering and pain for a long and continuous period of time.
4. Sensitization of the police and establishment of special machinery at the initiative of the judiciary for speedy investigations is required.
5. The Section 498A which was provided to women as an umbrella to report the crimes of cruelty is seemed to be highly misused and hence an amendments should be introduced to punish the women who falsely implicate the husbands/in-laws and/or relatives.

ANNEXURE I A

**TABLE 3A.5**  
**Police Disposal of Crime Against Women Cases (Crime Head-wise) - 2016**

S. No.	Crime Head	Cases Pending Investigation from Previous Year	Cases Reported During the Year	Total Cases for Investigation (Col.3+4)	Cases With-drawn by Govt	Cases Transferred to other PS/Magistrate	Cases Not Investigated U/S 157(1) (b) of Cr.PC	Final Report		
								True but insufficient Evidence	False	Mistake of Fact
1	2	3	4	5	6	7	8	9	10	11
<b>IPC Cases</b>										
1	Dowry Deaths	4220	7621	11841	0	13	0	558	254	66
2	Abetment of Suicides of Women	2228	4466	6694	1	4	0	124	157	34
3	Causing Miscarriage Without Womens Consent	26	462	488	0	0	0	79	34	1
4	Deaths Caused by Act Done with Intent to Cause Miscarriage	6	125	131	0	0	0	31	7	4
5	Acid Attack & Attempt to Acid Attack	80	206	286	0	0	0	21	9	3
6	Cruelty by Husband or his Relatives	51807	110378	162185	14	280	4	8308	6745	2958
7	Kidnapping & Abduction of Women	38949	64519	103468	8	75	1	13572	8623	10462
	7.1 Kidnaping & Abduction	11950	20251	32201	6	36	1	3261	2807	5857
	7.2 K & A in order to Murder	55	112	167	0	0	0	21	4	4
	7.3 Kidnapping for Ransom	119	82	201	0	0	0	5	10	7
	7.4 K & A of women to compel her for Marriage	20443	33732	54175	1	23	0	8828	3480	3151
	7.5 K & A of Women Other	6382	10342	16724	1	16	0	1457	2322	1443
8	Human Trafficking	432	659	1091	0	4	0	59	4	19
9	Rape	16124	38947	55071	6	129	2	1474	2839	249
	9.1 Rape	15405	36770	52175	5	129	2	1350	2421	239
	9.2 Gang Rape	697	2167	2864	1	0	0	124	418	10
	9.3 Custodial Rape	22	10	32	0	0	0	0	0	0
10	Attempt to Commit Rape	1803	5729	7532	0	6	0	644	503	29
11	Unnatural Offences	59	489	548	0	1	0	123	30	1
12	Assault on Women with Intent to Outrage her Modesty	30176	84746	114922	6	63	4	4487	4645	1088
	12.1 Assault on Women	17252	39543	56795	2	33	1	1808	2904	735
	12.2 Sexual Harassment	7472	27344	34816	4	16	3	1704	1053	183
	12.3 Assault on Women with Intent to Disrobe	2502	9737	12239	0	5	0	630	446	104
	12.4 Voyeurism	340	932	1272	0	1	0	47	27	3
	12.5 Stalking	2610	7190	9800	0	8	0	298	215	63
13	Insult to the modesty of women	4622	7305	11927	0	6	0	573	400	110
<b>SLL Cases</b>										
14	Dowry Prohibition Act, 1961	6090	9683	15773	0	59	3	1178	334	148
15	Immoral Traffic(Prevention) Act	1066	2214	3280	0	3	0	35	1	5

**TABLE 3A.5**  
**Police Disposal of Crime Against Women Cases (Crime Head-wise) - 2016 (Concluded)**

S. No.	Crime Head	Final Report		Cases in Which Charge-sheets were Submitted	Total Cases Disposed off by Police (Col. 7+8+ Col.13+ Col.14)	Cases Pending Investigation at the End of the Year (Col. 5 - (Col.6 + Col.15))	Charge-Sheeting Rate (Col.14/ Col.15) * 100	Pendency Percentage (Col.16/ (Col.5)) * 100
		Non Cognizable	Total (Col.9+ Col.10+ Col.11+ Col.12)					
		12	13					
<b>IPC Cases</b>								
1	Dowry Deaths	9	887	7067	7967	3874	88.7	32.7
2	Abetment of Suicides of Women	8	323	3872	4199	2494	92.2	37.3
3	Causing Miscarriage Without Womens Consent	0	114	268	382	106	70.2	21.7
4	Deaths Caused by Act Done with Intent to Cause Miscarriage	0	42	84	126	5	66.7	3.8
5	Acid Attack & Attempt to Acid Attack	0	33	163	196	90	83.2	31.5
6	Cruelty by Husband or his Relatives	135	18146	91810	110240	51931	83.3	32.0
7	Kidnapping & Abduction of Women	477	33134	29084	62294	41166	46.7	39.8
	7.1 Kidnaping & Abduction	180	12105	6183	18325	13870	33.7	43.1
	7.2 K & A in order to Murder	1	30	62	92	75	67.4	44.9
	7.3 Kidnapping for Ransom	1	23	63	86	115	73.3	57.2
	7.4 K & A of women to compel her for Marriage	147	15606	17668	33297	20877	53.1	38.5
	7.5 K & A of Women Other	148	5370	5108	10494	6229	48.7	37.3
8	Human Trafficking	0	82	576	662	429	87.0	39.3
9	Rape	66	4628	33628	38387	16678	87.6	30.3
	9.1 Rape	65	4075	31998	36204	15966	88.4	30.6
	9.2 Gang Rape	1	553	1604	2157	706	74.4	24.7
	9.3 Custodial Rape	0	0	26	26	6	100.0	18.8
10	Attempt to Commit Rape	18	1194	4290	5490	2042	78.1	27.1
11	Unnatural Offences	0	154	255	410	138	62.2	25.2
12	Assault on Women with Intent to Outrage her Modesty	198	10418	71638	82123	32793	87.2	28.5
	12.1 Assault on Women	125	5572	34156	39762	17031	85.9	30.0
	12.2 Sexual Harassment	55	2995	23416	26430	8382	88.6	24.1
	12.3 Assault on Women with Intent to Disrobe	10	1190	7524	8719	3520	86.3	28.8
	12.4 Voyeurism	1	78	743	822	450	90.4	35.4
	12.5 Stalking	7	583	5799	6390	3410	90.8	34.8
13	Insult to the Modesty of Women	23	1106	6336	7448	4479	85.1	37.6
<b>SLL Cases</b>								
14	Dowry Prohibition Act, 1961	39	1699	8455	10216	5557	82.8	35.2
15	Immoral Traffic(Prevention) Act	0	41	1921	1965	1315	97.8	40.1

ANNEXURE II A

**TABLE 3A.7**  
**Court Disposal of Crime Against Women Cases (Crime Head-wise) – 2016**

S. No.	Crime Head	Cases Pending Trial from the Previous Year	Cases Sent for Trial During the Year	Total Cases for Trial During the Year (Col.3+4)	No. of Cases Withdrawn by the Govt.	No. of Cases Disposed by Plea Bargaining	Cases Compounded
1	2	3	4	5	6	7	8
<b>IPC Cases</b>							
1	Dowry Deaths	37056	7067	44123	0	0	49
2	Abetment of Suicides of Women	9951	3872	13823	0	5	13
3	Causing Miscarriage Without Womens Consent	73	268	341	0	0	0
4	Deaths Caused by Act Done with Intent to Cause Miscarriage	16	84	100	0	0	0
5	Acid Attack & Attempt to Acid Attack	244	163	407	0	0	0
6	Cruelty by Husband or his Relatives	477875	91810	569685	10	653	8437
7	Kidnapping & Abduction of Women	110847	29084	139931	2	24	235
	7.1 Kidnaping & Abduction	25935	6183	32118	1	6	79
	7.2 Kidnaping & Abduction in order to Murder	206	62	268	0	0	0
	7.3 Kidnapping for Ransom	265	63	328	0	0	0
	7.4 Kidnapping & Abduction of Women to Compel her for Marriage	66229	17668	83897	0	6	132
	7.5 Kidnapping & Abduction of Women-Other *	18212	5108	23320	1	12	24
8	Human Trafficking	575	576	1151	0	0	0
9	Rape	118537	33628	152165	0	25	215
	9.1 Rape	115060	31998	147058	0	22	214
	9.2 Gang Rape	3245	1604	4849	0	3	1
	9.3 Custodial Rape	232	26	258	0	0	0
10	Attempt to Commit Rape	5880	4290	10170	0	5	9
11	Unnatural Offences	132	255	387	0	0	0
12	Assault on Women with Intent to Outrage her Modesty	251404	71638	323042	3	102	3938
	12.1 Assault on Women	180881	34156	215037	3	91	2808
	12.2 Sexual Harassment	50358	23416	73774	0	3	768
	12.3 Assault on Women with Intent to Disrobe	11305	7524	18829	0	6	186
	12.4 Voyeurism	1210	743	1953	0	0	44
	12.5 Stalking	7650	5799	13449	0	2	132
13	Insult to the Modesty of Women	30431	6336	36767	2	0	1322
<b>SLL Cases</b>							
14	Dowry Prohibition Act, 1961	29667	8455	38122	0	3	101
15	Immoral Traffic (Prevention) Act	6974	1921	8895	18	0	9

ANNEXURE II B

**TABLE 3A.7**  
**Court Disposal of Crime Against Women Cases (Crime Head-wise) – 2016 (Concluded)**

S. No.	Crime Head	Cases in Which Trials were Completed (Col.10+ Col.11)	Cases Convicted	Cases Acquitted or Discharged	Total Cases Disposed off by Courts (Col.6+Col.7 + Col.8+ Col.9)	Total Cases Pending Trial at the End of the Year (Col.5- Col.12)	Conviction Rate (Col.10/ Col.9) * 100	Pendency Percentage (Col.13/ Col.5) * 100
		9	10	11	12	13	14	15
<b>IPC Cases</b>								
1	Dowry Deaths	4351	1325	3026	4400	39723	30.5	90.0
2	Abetment of Suicides of Women	1523	212	1311	1541	12282	13.9	88.9
3	Causing Miscarriage Without Womens Consent	17	0	17	17	324	0.0	95.0
4	Deaths Caused by Act Done with Intent to Cause Miscarriage	2	0	2	2	98	0.0	98.0
6	Acid Attack & Attempt to Acid Attack	27	10	17	27	380	37.0	93.4
5	Cruelty by Husband or his Relatives	44681	5433	39248	53781	515904	12.2	90.6
7	Kidnapping & Abduction of Women	11720	2512	9208	11981	127950	21.4	91.4
7.1	Kidnaping & Abduction	2440	576	1864	2526	29592	23.6	92.1
7.2	Kidnaping & Abduction in order to Murder	6	3	3	6	262	50.0	97.8
7.3	Kidnapping for Ransom	9	1	8	9	319	11.1	97.3
7.4	Kidnapping & Abduction of Women to Compel her for Marriage	7576	1661	5915	7714	76183	21.9	90.8
7.5	Kidnapping & Abduction of Women-Other *	1689	271	1418	1726	21594	16.0	92.6
8	Human Trafficking	86	28	58	86	1065	32.6	92.5
9	Rape	18552	4739	13813	18792	133373	25.5	87.7
9.1	Rape	17807	4475	13332	18043	129015	25.1	87.7
9.2	Gang Rape	732	260	472	736	4113	35.5	84.8
9.3	Custodial Rape	13	4	9	13	245	30.8	95.0
10	Attempt to Commit Rape	1093	215	878	1107	9063	19.7	89.1
11	Unnatural Offences	23	7	16	23	364	30.4	94.1
12	Assault on Women with Intent to Outrage her Modesty	32115	7001	25114	36158	286884	21.8	88.8
12.1	Assault on Women	20491	3930	16561	23393	191644	19.2	89.1
12.2	Sexual Harassment	7665	2295	5370	8436	65338	29.9	88.6
12.3	Assault on Women with Intent to Disrobe	2230	364	1866	2422	16407	16.3	87.1
12.4	Voyeurism	195	34	161	239	1714	17.4	87.8
12.5	Stalking	1534	378	1156	1668	11781	24.6	87.6
13	Insult to the Modesty of Women	3629	735	2894	4953	31814	20.3	86.5
<b>SLL Cases</b>								
14	Dowry Prohibition Act, 1961	3233	494	2739	3337	34785	15.3	91.2
15	Immoral Traffic (Prevention) Act	854	329	525	881	8014	38.5	90.1