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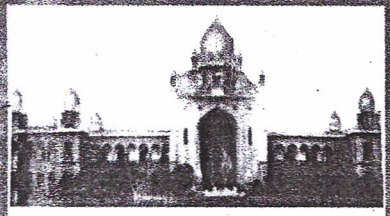

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NOTABLE POINTS

* If the circumstances proved are consistent with the innocence of the accused, then the accused is entitled to the benefit of doubt. ..... (SC) 24
* "Liberty" generally means the prevention of restraints and providing such opportunities the denial of which would result in frustration and ultimately disorder. ..... (SC) 69
* Respect for life, liberty and property is not merely a norm or a policy of the State but an essential requirement of any civilized society. (SC) 69

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THE CONCEPT OF 'DOWRY' AND 'DOWRY DEATH' – A STUDY IN THE LIGHT OF SUPREME COURT DECISION IN ASHOK KUMAR'S CASE*

By

Dr. Mukund Sarda**

1. In order to curb the evil practice of 'Dowry' which has caused untold misery including death, the Dowry Prohibition Act, 1961 was enacted Despite the Act being in force for nearly fifty years, the evil practice is still continued and several cases of 'Dowry' death occur every frequently. It has been of great concern to social activists, legislatures, executive and judiciary in tacking the growing wide-spread evil of 'Dowry'.

2. The Dowry Prohibition Act, 1961 as amended in 1984 and 1986 defines[1] Dowry thus:

> "Dowry" means any property or valuable security[1A] given or agreed to be given either directly or indirectly-
>
> (a) By one party to a marriage to the other party to the marriage; or
>
> (b) By the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person at or before (or any time after the marriage)[2] (in connection with the marriage of the said[3] parties) but does not include) dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies. From the above definition, it becomes explicit that 'property' or 'valuable security'[4] may be given at any time, either before or after the marriage and such giving should be in connection with the marriage. The Courts had the occasion to consider certain payments made and held the view that they do not come under the purview of 'Dowry' and they may be stated thus:
>
> (i) Customary payments such as ceremonies or at the time of birth[5];
>
> (ii) A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or purchase of some essential thing required for business such as purchase of manure cannot be termed as Dowry[6] (since it is not in connection with any demand for 'Dowry').

3. In order to deal with 'Dowry' 'death' an amendment is made by inserting Section 304-B in IPC

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* *Ashok Kumar v. State of Haryana:* 2010 (3) ALT (Crl.) 178 (SC) = 2010 (7) SCJ 274 = 2010 (7) SCJ 274.

** Professor, Principal and Dean, Faculty of law, Bhartiya Vidya Peet University, New Law College, Pune.

1. Section 2 of the Dowry Prohibition Act, hereinafter referred to as the 'Act' throughout this study.

1A. It denotes a document which is or purports to be a document 'whereby any legal right is created, extended, transferred, extinguished' or released or whereby any person acknowledges that he is under liability or has not a certain legal right.

2. Added by the Amending Act 63 of 1984 which came into force from 2-10-1985.

3. Added by the Amending Act 43 of 1986 which came into force from 19-11-1986.

4. The expression 'valuable security' as defined by Section 30 of the Indian Penal Code Section 30 states.

5. *Ram Singh v. State of Haryana:* AIR 2008 SC 1294.

6. *Chemicals and Fibres of India Ltd., v. Union of India:* AIR 1997 SC 558.

Section 304-B[7] reads thus:-

(i) "Where the death of a woman is caused by any burns on bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relatives of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death" and such husband or relative shall be deemed to have caused her death.

(ii) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years which may extend to imprisonment for life"

4. The Supreme Court in Ashok Kumar's case (supra para 9) stated that two essential ingredients apart from others are (1) death of the woman is caused by any burns of bodily injury or occurs otherwise than under normal circumstances and (2) woman is subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand for 'dowry'.

5. The third ingredient as enumerated in Section 304-B IPC is that the death occurring within seven years of marriage.

6. The 'deemed fiction' introduces a rebuttable presumption and it is open to the husband or his relatives to rebut it by contrary evidence[8]. There should be reasonable, if not direct, nexus between her death and the dowry related cruelty or harassment inflicted on her[9].....Ther must be the existence of proximate lin between the acts of cruelty along with th demand of dowry and the death of th victim.....And in the absence of an specific period, the concept or reasonabl period would be applicable[10]. If 'basi ingredients of Section 304-B IPC are prove the Court will presume by deemed fiction c law, that the husband or the relatives, ha caused her death as stated in *Ashok Kumar* case"[11]. If the concept 'soon before the death is not attracted, it would not amount t 'dowry death,[12] as well as if there is no c relation between giving or taking of th property with the marriage of parties[13]. It i not necessary for a witness to make statement in consonance with the wordin of the section of a Statute[14], it is enough if th evidence brought out on record satisfies th ingredient of Section 304-B IPC.

7. A careful perusal of Section 304-B reveal certain deficiencies which render the sectio ineffective in tackling the cases of dowr death. They may be stated thus:

(1) The demand for dowry may b through many sources such a intermediaries, common famil friends and others and it ma necessary to deal with such cases a well. It is often found that purohit and others who successfully arrang the marriages, often-play the role o brokers and they persuade th parties to perform pre-marri agreements relating to dowry Further, the expression, "subjecte

7. Section Dowry Prohibition (Amendment) Act, 1986.
8. *Section for details Kaliya Perumal v. State of Tamil Nadu:* AIR 2003 SC 3828.
9. *Tarsema Singh v. State of Punjab:* AIR 2009 S 1454.
10. *Yashoda v. State of Madhya Pradesh*: AIR 20 SC 1411.
11. (Supra 17).
12. Supra 19 relying on Tarsema Singh.
13. *Appa Saheb v. State of Maharashtra* : AIR 20 SC 763.
14. *Devi Lal v. State of Rajasthan:* 2007 (3) AL (Crl.) 366 (SC) = AIR 2008 SC 332.

to cruelty or harassment by her husband or any relatives of the husband" provide a safety valve to them to engage anti-social elements to cause the injuries in their absence, to make it appear to be a case of an outside criminal, and that they have nothing to do with it, as is found in many cases, when the woman is alone in the house, the woman is subjected even to death by those who commit robbery, theft, rape etc.,

(2) The 'seven year period' also renders the section ineffective, as the family members give the most respectable treatment to the woman, even call her as the 'Graha Lakshmi' to give an impression to the woman as well as to the outside World that they treat their daughter-in-law as daughters and once the period of (7) years is over, inflict successive injuries or acts of cruelty by almost all relatives of the husband, to escape criminal liability and try to erase any evidence that exists in such acts;

(3) Section304-B IPC needs an amendment to cover acts beyond (7) years Statutory limit.

(4) Further the minimum sentence of 7 years or imprisonment for life is not enough. Since offences and punishment must be proportionate, "or death" be added to Sec. 304-B(2), which may extend to imprisonment for ' life or death". Death sentences should be awarded in cases of inhuman acts of severest cruelty inflicted on woman.

8. In tackling dowry menace, social activists often suggest 'social boycott' of the families who indulge in dowry practice and known for causing suffering to woman who enters as 'daughter-in-law" in their family. They should resolve that no one will give either a boy or girl in marriage to such a family. This social boycott may not be effective in all cases, as the party may move out of the place and settle elsewhere and get married adopting dubious practices. Hence, the law should be able to make further changes in the Dowry Prohibition Act. The following changes are suggested:

(1) The Act should make a provision for an authority such as Marriage Regulatory and Dowry Prohibition' authority. This authority must have powers to fix a ceiling on marriage expenditure such as the one that exists in Election law. The ceiling on expenditure should be fixed, taking into consideration the financial capacity of both parties or their parents. At a certain period in the legal history of this Country, a ceiling on entertaining guests etc., like Guest control order was effectively enforced. This has not only brought economy in expenditure in the functions but also avoided wastage of food. It is often found in marriage lunches or dinner more than 50% of food is wasted and thrown in the containers specially kept for throwing waste materials.

(2) The ceiling so fixed must be borne equally by both parties;

(3) Presentations and others offerings should be strictly banned and must not be allowed inside the marriage halls;

(4) All marriages must require licensing by the authority as in the case of use of loud-speakers or processions;

(5) The authority shall be assisted by the Police of the jurisdiction concerned, in enforcing these provisions;

(6) All invitees to the marriage should be relatives and selected close friends and a specified number shall be fixed as was the case of Guest Control Orders (of 1976);

(7) Any dowry given or taken in marriage shall be seized and such property etc., shall be disposed of in accordance with the rules to be made for the purpose.

9. The suggestions made appear to be rather revolutionary and also offending the sentiments of the parties like the privacy rights. However, in the larger interest of protecting the woman of this Country from dowry tortures including death, there appears to be no better alternative.

A NOTE ON SECTION 26 AND 27 OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLANCE ACT – TWO KNOTTY PROVISIONS*

By

S.R. Sanku**

The present Seminar today on the most gripping and moving subject of Domestic Violence is timely. Ever since the enactment of the Act 43 of 2005, came into being the Country has been witnessing an enormous response in the shape of cases in the law courts, paving the way for flooding litigation over and above the cases under Sec. 498-A IPC, that has its own lion's share in the realm of Criminal Cases.

2. With the authoritative pronouncement of a Division Bench of our Hon'ble High Court, to which His Lordship Justice K.C. Bhanu is a party, in the case of *Afzalunnisa Begum v. State of A.P.* 2009 (2) ALT (Crl.) 204 (DB)(A.P.) a very ticklish issue came to be decided holding that a D.V.C. is maintainable against the women folks also. His Lordship Justice G. Bhavani Prasad in a case reported in 2009 (3) ALT (Crl.) 222 (A.P.) held that, principals of natural justice deserve to be extended while implementing the order in D.V.C. without straight away sentencing the respondents. His Lordship Mr. Justice K.C. Bhanu declared in a case reported in 2010 (1) ALT (Crl.) 105 (A.P.) that the Ac retrospective and remedial in nature. These refreshing Judgments, are indicative of our Hon'ble High Court of A.P. being the forerunner of the Country in declaring sound principles of Law. It is quite apposite to quote the very brand new Judgment of the Supreme Court in the case of *D. Velusamy v. D. Patchaiammal* reported in (2010) 2 Law ISC 174, wherein the Supreme Court while dealing with Section 125 Cr.P.C. and the provisions of the Domestic Violence Act, held that relationship in the nature of being a mistress is not a living relationship. Further holding that, spending weekends together or a one night stand would not make it a domestic relationship. Supreme Court holds that relationship be in the nature of marriage which is akin to a common law marriage.

3. Now, coming to the core-issue Section 26 of the Act reads as follows:

"26. Relief in other suits and legal proceedings.
(1) Any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

* Seminar on Domestic Violance Act Held on 13-11-2010 at Narsapur, West Godavari District, Under the Auspices of the Bar Council of the State of Andhra Pradesh, and the Bar Association of Narsapur in the August Presence of her Lordship Justice G. Rohini, Mr. Justice K.C. Bhanu and Mr. Justice G. Bhavani Prasad, Judges, High Court of Andhra Pradesh, Hyderabad.

** Advocate, High Court of A.P.