



WHETHER THE PLUGGING OF THE KEY LOOPHOLE “SOON BEFORE HER DEATH” IN SECTION 304B OF THE INDIAN PENAL CODE BY THE SUPREME COURT OF INDIA WILL HAVE AN IMPACT IN CURBING THE SOARING BRIDE BURNING CASES IN KERALA?

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1. INTRODUCTION

India has a spine-chilling trend that sees 20 women die every day as a consequence of cruelty over a dowry, either murdered or provoked to commit suicide.¹ As per data collected from the official website of Kerala Police, 73 Dowry Death [304 (B) IPC] cases and 15,484 cruelty by husband / relative cases were reported from the year 2016 – 2021 (Up to June). The brutal reality of this menace is not only limited to the rural areas but even the literate families who reside in the metropolitan areas like Delhi and Bangalore are torturing womens for not fulfilling their demands of cash and other valuable securities. Bengaluru, recorded 17 cases of harassment and deaths of brides on account of dowry, in January, 2020.²

1.1. Section 304B of the Indian Penal Code, 1860

¹ Rudrani Gupta, 20 Women Die A Day: Dowry Deaths Still A Threatening Reality In India?, SHETHEPEOPLE.TV (June 26, 2021), <https://www.shethepeople.tv/top-stories/opinion/dowry-deaths-reality-in-india-but-until-when/#>.

² Preeja Prasad, 17 dowry cases in 16 days of new year, THE NEW INDIAN EXPRESS (Jan, 17, 2020, 06:45 AM), <https://www.newindianexpress.com/cities/bengaluru/>

Section 304B provides that when a woman dies due to burns or bodily injury or under unnatural circumstances, within seven years of her marriage and it is proved that soon before her death she was subjected to cruelty or harassment by her husband or his relatives on account of any demand for dowry, such death shall be called ‘dowry death’ and the husband and his relatives shall be presumed to have caused her death.³ Definition of ‘dowry’ as per Section 2 of the Dowry Prohibition Act, 1961, states that any property given or agreed to be given either directly or indirectly: by one party to a marriage to the other party to the marriage; or by or to the parent of either party to a marriage or by or to any other person, before or any time after the wedding in relation to the wedding of said parties.⁴ Whoever commits this offence shall be punished with imprisonment for a term which shall not be less than seven years but may extend to imprisonment for life.⁵

1.2. A glimpse of the recent bride burning cases in Kerala.

India's Kerala state witnessed the unfortunate dowry deaths of four young married women. In June, 2021, 20-year-old Ms Vismaya Nair, an Ayurveda medicine student's burnt body was found whereas, two womens hanging bodies were also found.⁶ In another subsequent incident on 23rd June, a 24-year-old Archana succumbed to severe burn

2020/jan/17/17-dowry-cases-in-16-days-of-new-year-2090576.html

³ Indian Penal Code, 1860, § 340 B, No. 45, Acts of Parliament, 1860 (India).

⁴ Dowry Prohibition Act, 1961, § 2, No.28, Acts of Parliament, 1961 (India).

⁵ IPC, supra note 3.

⁶ THE STRAITS TIMES (JUN 28, 2021, 8:42 PM), <https://www.straitstimes.com/asia/south-asia/young->



injuries in her home in Thiruvananthapuram, as reported by *Mathrubhumi*.⁷ In another incident, Tasniya, 22, the mother who was two months pregnant and also had a two-year-old daughter was found hanging at her residence.⁸

This article will deal with the reasons why the loophole ‘soon before’ in Section 304 B, IPC is the cause of the menace in most such cases and the need for plugging the key loophole in the light of *Satbir Singh & Another vs. State of Haryana*. It will also provide some suggestive measures to curb this issue from the grassroot level and the steps undertaken by the Govt. of Kerala after the Supreme Court interpreted the gap.

2. IMPACT OF PLUGGING THE KEY LOOPHOLE “SOON BEFORE HER DEATH”

The Supreme Court, on 28th May, 2021 plugged the loophole in the phrase ‘soon before her death’ and stated that the term soon before in Section 304-B, IPC cannot be interpreted as immediately before.⁹ *“This interpretation would make it necessary for a woman to have been harassed moments before she died.”*¹⁰ Such vague

interpretations should be avoided, stated the apex court. The Court also held that IPC being a criminal statute, generally should face strict interpretation. However, where strict interpretation leads to absurdity or defeats the spirit for which the legislation was enacted, the courts may in appropriate cases place reliance upon the genuine import of the words, taken in their usual sense to resolve such ambiguities.¹¹ Thus, when the legislature used the words, soon before they left its elucidation in the hands of the courts. The Court held that there are no straitjacket formulae to define what exactly the phrase soon before entails.¹² *“Courts should instead shed light on Section 304-B liberally while keeping in mind the law’s aim and objective to punish dowry and bride-burning.”*¹³

2.1. Need for bridging the much exploited gap aiding the accused

After analysing all the recent bride burning cases in Kerala, one thing is clear that there was a dire need of plugging the loophole in Section 304-B, that in turn aided the accused to flee from the heinous crime they committed. The accused took advantage of the phrase ‘soon before her death’ present in

brides-deaths-trigger-dowry-crackdown-in-southern-india.

⁷ Scroll Staff, Kerala dowry deaths: Husbands of two women taken into custody amid outrage, SCROLL.IN (Jun 23, 2021 · 05:43 pm), <https://scroll.in/latest/998292/kerala-dowry-deaths-husbands-of-two-women-taken-into-custody-amid-outrage>.

⁸ Onmanorama Staff, Dowry death in Kerala: Husband, father-in-law arrested after pregnant woman commits suicide, ONMANORAMA (August 07, 2021 04:10 PM), <https://www.onmanorama.com/news/kerala/2021/08/07/dowry-death-mannarkkad-palakkad.html>.

⁹ *Satbir Singh & Another vs. State of Haryana*, (2021) SCC OnLine SC 404.

¹⁰ Krishnadas Rajgopal, Scope of Section 304 - B in dowry deaths widened by Supreme Court, THE HINDU (29.05.21), <https://epaper.thehindu.com>.

¹¹ *Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company.*, (2018) 9 SCC 1; *State of Gujarat v. Mansukhbhai Kanjibhai Shah.*, (2020) SCC OnLine SC 412.

¹² *Kans Raj v. State of Punjab.*, (2000) 5 SCC 207.

¹³ SAKSHAR LAW ASSOCIATES, <https://www.lexology.com/library/detail.aspx?g=5c0e171d-e67f-4226-b22a-6106c87b1a3c> (last visited June 22, 2021).



Section 304-B, IPC.¹⁴ They took the stand that the prosecution failed to prove that there existed a ‘proximate and live link’ (an incident that is not immediately prior to the death of a woman, but not so remote that the harassment itself has become stale) between the demand for dowry and the consequential death of the deceased victim.¹⁵ Now, with the recent order of the Supreme Court, praying for acquittals on the above grounds will never be an easy task for the accused.

The Supreme Court also stated that at first, it is the duty of the prosecution to comply with all the parameters necessary for constituting an offence under Section 304-B, IPC. The prosecution must establish the existence of a proximate and live link between the dowry demand and harassment for dowry demand by the husband or his relatives.¹⁶ There are cases where the prosecution fails to prove dowry harassment in the first place, it is not easy for them, reason being “*aggrieved women, out of shame and fear of reprisal, do not share their plight with anybody, leaving no witnesses to vouch for said harassment.*”¹⁷

Brides always catch fire behind closed doors in her matrimonial home. It becomes very tedious for the prosecution to gather the evidence, in the way the Supreme Court has stated. Rather, many times the daughter is threatened so that they don’t utter a word

about their plight to their loved ones. In Vismaya’s case the husband had blocked the telephone numbers of her father and brother and had forbidden her from ever contacting them, a standard strategy of all batterers to isolate their spouses from all sources of support.¹⁸

The recent SC judgment of Satbir Singh & Another vs.State of Haryana, does not provide any clarity as to how courts should reach the ‘proximate and live link’, and side steps the gravity and extent of the real problem.¹⁹ In any subsequent judgments if the court puts some insight on this issue especially if it can prove to be a major development in solving this menace.

3. MEASURES THAT COULD BE UNDERTAKEN TO CURB THE MENACE FROM THE GRASSROOT LEVEL

The SC concluded that cases end in acquittal due to a defective interpretation of the words ‘soon before’. Largely, Indian courts are resistant to accept harassment of married women in connection with dowry. “*If a woman is harassed after months, or years into her marriage, courts cite ‘passage of time’ to infer that the harassment does not constitute demand for dowry.*”²⁰ This is the scenario even after the law clearly specifies that dowry demands can be made any time before or after the marriage. When the main

¹⁴ See Gurmeet Singh v. State of Punjab., 2021 SCC OnLine SC 403.

¹⁵ Satbir., Supra note 9.

¹⁶ Id., at 9.

¹⁷ Neha Singhal, India’s Dowry Death Issue Can’t Be Fixed by SC Plugging Loophole, THE QUINT (01 Jun 2021, 8:26 PM), <https://www.thequint.com/voices/opinion/dowry-laws-loophole-plugged-supreme-court-real-challenges-ahead-for-women-indian-lower-judiciary-sensitization-abusive-marriage-patriarchy#read-more>.

¹⁸ Gayatri Devi, Vismaya V Nair’s Case Should Be A Wake-Up Call To Put An End To Dowry, INTERSECTIONAL FEMINISM – DESI STYLE (July 1, 2021),

<https://feminisminindia.com/2021/07/01/vismaya-nair-kerala-news-dowry-death/>

¹⁹ THE QUINT, Supra note 17.

²⁰ THE QUINT, Supra note 17.



element of the offence itself is not considered, the question of interpretation of the term 'soon before her death' stands redundant.²¹ It is high time that the State take immediate measures to curb the menace from the ground level as the main problem lies there. The following are a few suggested ones:-

3.1. Amendments in Section 304 B of the IPC

Section 304 B of the IPC should be amended to provide more clarity on the phrase 'soon before her death' used in the provision. Like already mentioned, the phrase soon before aided the accused from being prosecuted and led to injustice on the part of the victims of harassment and their family. *"The Parliament introduced amendments to the Dowry Prohibition Act, as well as the IPC by enacting Dowry Prohibition (Amendment) Act, 1986. By way of this amendment, Section 304-B, IPC was specifically introduced in the IPC, as a stringent provision to curb the menace of dowry death in India."*²² It took 35 years for the Supreme Court to plug this loophole. Thus, Section 304 B should be amended for including a sweeping explanation of the term. This could come handy for the Judiciary to deal with the cases if stated in the provision.

3.2. Proper Investigation at the initial stage of the cases

Defective investigations by the police right at the initial stage of a case slow down the process of judicial proceedings. When a case is registered, proper follow-ups and legal actions are of utmost importance and this has been a major reason for the increasing number of dowry death cases.²³ The Delhi High Court directed the ASJ to conduct further investigation on the basis of petitioners statements and the same will be conducted by a different investigation officer as the High Court noticed the glaring inconsistencies in the investigation and set aside the Judgement.²⁴ The Kerala Police should strive for proper investigation in the initial stages of the cases.

Despite having stringent laws against dowry and domestic violence, many accused elope even after committing such a heinous crime of pushing women to death due to not fulfilling the In-laws' demand for dowry. Courts in India are trying to settle matrimonial related issues through Lok Adalat, mediation and counselling. Even though section 498 (a) of the IPC is a criminal section, yet the abuse suffered by a wife is often buried and adequate punishment is not being handed out.²⁵ Only if the Judiciary starts taking cruelty complaints strictly with the assistance of the investigating officers, will they be able to curb this menace. Considering the minuscule proportion of cases that get decided, over the last five years the average conviction rate has been a mere

²¹ Ibid.

²² Satbir, supra note 9 at 4.

²³ THE TIMES OF INDIA, <https://timesofindia.indiatimes.com/india/Dowry-deaths-One-woman-dies-every%20hour/articleshow/22201659.cms> (last visited Sep. 1, 2013).

²⁴ Saroj Bhola v. State of NCT of Delhi., 2021 SCC OnLine Del 1497.

²⁵ Vishnu Verma, The horrors of Kerala's dowry deaths, THE INDIAN EXPRESS (July 3, 2021 6:07:12 pm), <https://indianexpress.com/article/india/kerala/the-horrors-of-kerala-dowry-deaths-7387077/>.



36 percent.²⁶ Hence, the Kerala Govt. should also put stress on the conviction rate of the accused as per the laws.

3.3 Victims family should be encouraged to report Dowry harassment cases

People should be made aware of Domestic violence and its prevention through awareness campaigns every year. Victims' families should be encouraged to take immediate measures and register a case under Sec 498 A of the IPC. They should take steps once it comes to their knowledge that their daughter is harassed on account of Dowry demand as a result of which the victims could be saved. In Vismaya's case, her family was aware of her plight as she had sent several images of her injuries which documented the raging beatings and kickings she had endured at the hands of her husband. The family had also witnessed the husband beating the bride in front of their own eyes. *"The family now thinks that they should have lodged a police complaint. "We did not want people to talk about it," Vismaya's brother admitted."*²⁷

4. CONCLUSION

The Kerala Chief Minister has decided to include gender equality in the state's school curriculum.²⁸ The state Govt. has announced a 24x7 helpline number for women to complain about harassment for dowry to the district police and the Police Commissioner

would supervise the follow-up action on the complaints received, reported *The Hindu*.²⁹ Also, a silver lining, Vismaya's husband, who was a government employee has been dismissed from his service on 6.8.21 over wife's dowry-related death, The 24-year-old had shared images specifying torture from her husband assisted with a relative.³⁰

The Kerala State Women's Commission (SWC) has recently presented a draft bill to the State government on reviewing dowry harassment and extravagant weddings. The draft 'Bill for Prevention of Extravaganza and Unlimited Expenditure on Marriages in Kerala, 2021' comes in the wake of an increase in ostentatious marriages in the State.³¹

The commission had also submitted its recommendations on amendments to the Dowry Prohibition Act to the government. It noted that as per Clause 2 of Section 3 of the Act, any presents made at the time of a marriage to either party to the marriage shall not be esteemed to be dowry. However, in the name of gifts, dowry was indirectly changing hands in the State. In such marriages, cases were not being charged under the Act, unless a woman lost her life.³² The above measures could surely help eradicate the menace from the ground level.

²⁶ THE QUINT, Supra note 17.

²⁷ Nikhila Henry, 'Was Unaware of Abuse for 8 Months': Brother on Kerala Dowry Death, THE QUINT (24 Jun 2021, 12:43 PM), <https://www.thequint.com/neon/gender/vismaya-nair-brother-vijith-nair-on-kerala-dowry-death-of-ayurveda-student>.

²⁸ SCROLL.IN, Supra note 7.

²⁹ Ibid.

³⁰ Onmanorama Staff, For the first time in Kerala, a govt employee dismissed over wife's dowry-related

death, ONMANORAMA (August 06, 2021 06.36 PM),

<https://www.onmanorama.com/news/kerala/2021/08/06/kiran-visamaya-death-dismissed-service.html>

³¹ Staff Reporter, Dowry: Women's panel submits draft Bill to govt., THE HINDU (AUGUST 10, 2021 7:10 pm),

<https://www.thehindu.com/news/national/kerala/dowry-womens-panel-submits-draft-bill-to-govt/article35838538.ece>.

³² Ibid.