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Module Name : Dowry Death, Dowry Suicide and Cruelty by Husband or Relatives for Dowry

Section 304- B Dowry Death

Section 304- B was inserted in the Indian Penal Code, 1860 by the Dowry Prohibition (Amendment) Act 1986. The objective was to combat the menace of dowry killings.

Ingredients

1. Death is caused by **burns or bodily injury** or occurs in normal circumstances.
2. Within **seven years of marriage** where it is shown it is shown that
3. Soon before her death she was subjected to cruelty or harassment.
4. By her husband or any relative of her husband for,
5. Such cruelty or harassment must be in connection with, any demand for dowry.

Such a death is called Dowry death and such husband or relative is deemed to have caused death. Demand for Dowry defined in Section 2, The Dowry Prohibition Act, 1961. This section will apply when the death is preceded by cruelty or harassment by husband or in-laws for dowry and the death occurs in unnatural circumstances.

Punishment – seven years of imprisonment or life imprisonment.

‘Husband’ is a person who enters into marital relationship.

‘Relative of husband’ those related by blood, marriage and adoption.

State of Punjab .vs. Gurmit Singh 2014 Cri.L.J, 3586

The brother of the aunt of the husband is not a relative.

‘**Soon before the death**’ the woman was subjected to cruelty or harassment in connection with a demand for dowry.

‘**Soon before the death**’ – The main ingredient of the offence.

The provision does not use the terms ‘at any time before’ or ‘immediately before.’

Kashmir Kaur .vs. State of Punjab AIR 2013 SC 1039

Supreme Court of India held “soon before” would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate or life link between the effect of cruelty based on dowry demand and the concerned death.

**Satbir Singh And Another .V. State Of Haryana
Criminal Appeal No 1735-1736 Of 2010**

Supreme Court Issues Guidelines For Trial In Dowry Death Cases
Period between cruelty or harassment and death comes within ‘soon before’. In many cases no direct evidence is available and the courts have to act on circumstantial evidence. Establishing a proximate and live link is essential between cruelty and the consequence of death. Section 304 B does not take a pigeonhole approach in categorizing deaths as homicidal, suicidal or accidental.

Presumption as to Dowry Death

Section 113 B of the Indian Evidence Act, 1872

If a woman dies in relation with any demand for dowry and it was shown that soon before her death she was subjected to harassment or cruelty by

any person. Then the court will assume such a person responsible for her death.

***Bansi Lal v. State of Haryana*, (2011) 11 SCC 359,**

Supreme Court held the mandatory application of the presumption under Section 113B of the Evidence Act once the ingredients of Section 304B of IPC stood proved.

State of Himachal Pradesh .v. Nikku Ram and Ors (1995) 6 SCC 219

On completion of the investigation husband, sister-in-law and mother-in-law were charged under the Section of 304-B, 306 and 498-A of the Indian Penal Code. The prosecution failed to produce evidence against them. Mother-in-law was held guilty under Section 324 of the Indian Penal Code for voluntarily causing hurt to her daughter-in-law. Fine of Rs. 3,000 was imposed.

Pawan Kumar .v. State of Haryana (1998 (3) SCC 309)

Case was registered against the accused namely her husband, father-in-law and mother-in-law. Essential elements of Section 304- B were not made out and there was no evidence. The court held him guilty under Section 498A subjecting her to cruelty or harassment by passing comments on her looks and also taunting her to bring more dowry. Pawan Kumar was punished under Section 304B - 7 years of rigorous imprisonment and fine of Rs 500 and in default of paying fine, 6 months will be added to his imprisonment.

Under Section 306 IPC - sentenced to 4 years of rigorous imprisonment and a fine of Rs 200 and in default of the payment 3 months imprisonment.

Section 498A sentenced him for 2 years rigorous imprisonment and Rs 200 fine in default more 3 months to his imprisonment will be added.

Cruelty by husband or relatives of husband - Section 498 A

This Section was introduced by the Criminal Law (Amendment) Act, 1983 to combat the menace of dowry death. The same Act introduced Section

113A to the Indian Evidence Act, 1872 to raise a presumption regarding abetment to suicide of married woman.

Ingredients of Section 498 A

- 1.The woman must be married.
2. She must be subjected to cruelty or harassment
- 3.Such cruelty or harassment must have been shown either by husband or relatives of the husband.

The marriage must be legally valid.

D.Velusamy vs D.Patchaiammal (2010) 10 SCC 469

The Supreme Court has recognized 'live in relationships' as relationships in the nature of marriage. In cases of cruelty relating to live in partners if the case is pending under Section 498A a complaint can be made under the Domestic Violence Act, 2005 under Section 18-22.

Narendra .v. Meena Civil Appeal No 3253 of 2008

The Supreme Court has held 'forcing a husband to separate from his parents amounts to cruelty committed by the wife.' Causing character assassination is cruelty.

Vijaykumar Ramchandra Bhate .vs. Neela Vijaykumar 2003 (6) SCC 334

Cruelty need not be physical cruelty. Mental torture or abnormal behaviour amounts to cruelty. Mental cruelty varies from person to person.

Rosamma Kurian .vs. State of Kerala AIR 2013 SC 329

Common domestic discord in a matrimonial home cannot amount to 'cruelty.'

Constitutional validity of Section 498 A *Sushil Kumar Sharma .v. Union of India 2005 Cr.L.J 3439*

A married woman is treated with cruelty within the four walls of the house by the husband there is no likelihood of evidence. The petitioner

challenged the validity of Section 498A of the Indian Penal Code, 1860. The petitioner says that the offence is made to protect women against dowry and not for misusing it against the innocent family members as a weapon. The Court held the mere possibility of abuse of the provision does not invalidate it. The provision cannot be declared *ultra vires* or unconstitutional.

What is Cruelty?

State of Karnataka .vs. HS Srivastava 1996 Cr. L.J 3103(Kant)

Treatment as to cause reasonable apprehension in the mind of the wife. That living with the husband will be harmful or injurious to her life.

FACTORS

1. Matrimonial relationship between the husband and wife.
2. Cultural and temperamental state of life.
3. State of health.
4. Interaction in daily life.

Does the term 'relative of the husband' include 'girlfriend' or 'concubine'?

Offence must be committed by husband or relative. The term 'relative' is not defined. Ordinarily it includes father, mother, husband, wife, son, daughter, brother, sister, nephew, niece, grandson or grand daughter. Girlfriend and concubine cannot be included. Relatives could be either by blood, marriage or adoption.

**A re-look at the Provision of Section 498A.
*Preethi Gupta .vs. State of Jharkhand (2010) 7 SCC 667***

A large number of cases have flooded the courts. Led to social unrest. Affected peace, happiness and harmony of the society. Supreme Court of India directed a serious relook of the entire provision by enacting a legislation. Following this judgment the Law Commission of India in its 243rd Report made suggestions.

Directions by the Supreme Court of India

Arnesh Kumar .vs State of Bihar (2014) 8 SCC 273

Section 498 is a non bailable offence. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered. All police officers to make arrests after adhering to the check list

Rajesh Sharma vs. State of U.P 2017 SCC Online SC 821

The Supreme Court called for establishing Family Welfare Committees which were to be set up under the aegis of the District Legal Services Authorities in every state. 'Every complaint under Section 498A received by the police or the Magistrate must be referred to this committee.'

Social Action Forum for Manav Adhikar vs. Union of India, (2018)10 SCC 443

The Supreme Court felt the directions laid down in ***Rajesh Sharma & Ors .vs. State of U.P. & Anr*** diluted the objective of Section 498A. The Courts felt that appointing Family Welfare Committee did not fit into the statutory framework of the law. The Court laid down directions to the police officers who are needed to make a preliminary inquiry, arrest, investigation. The court asked the Director General of Police of each state to impart training to the investigating officers. When applications of bail are granted, the Court must make sure that the 'disputed dowry' is recovered.

Section 306- Abetment to Suicide

Ingredients

- Suicide has been committed.
- Person who has abetted the commission of suicide has played an active role in the same.
- Section 113- B of Evidence Act creates a presumption against husband and relative in abatement of suicide of a married woman.

Presumption as to Dowry Death

- **Section 113 B of the Indian Evidence Act, 1872**

If a woman dies in relation with any demand for dowry and it was shown that soon before her death she was subjected to harassment or cruelty

by any person. Then the court will assume such a person responsible for her death.

Hans Raj .v. State of Punjab 1980(II) F.A.C. 396

The term 'normal circumstances' means not the natural death.

Rameshwar Das .v. State of Punjab (2008 Cri.L.J. 14000 S.C)

A pregnant woman will not commit suicide unless the relationship with her husband she is compelled to do so. Offence under Section 304-B is non-cognizable, non compoundable. Triable by Court of Session.