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**BURDEN OF PROOF IN DOWRY DEATH CASES- A CRITICAL
ANALYSIS IN THE LIGHT OF CASES DECIDED IN THE PAST 10
YEARS**

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ABSTRACT:

The common custom in India during a marriage is giving a dowry to the groom. Dowry is a gift that can be gold, cash, or a vehicle offered by the bride's family to the groom's family. After the solemnization of the marriage, the woman is tortured in demand of additional dowry by her husband and in-laws. The term dowry death is used to describe the unnatural death of a woman who was either murdered or was forced to commit suicide by her husband or in-laws in an attempt to demand a dowry. Dowry death has been identified as an offense under section 304B of the Indian Penal Code (hereinafter referred to as IPC). Legislature has introduced some dowry laws and has incorporated a few provisions to reduce dowry deaths in India. In this current research paper, the researcher will explain the burden of proof in dowry death cases with the help of case laws. The researcher shall also explain the presumptions drawn under sections 113A, 113B of the Indian Evidence Act 1872 (hereinafter referred to as IEA), the shifting of burden in dowry death cases, and the difference in the application of sections 113A and 113B of IEA. Further, the researcher may also look into the loopholes if there are any.

KEY WORDS: Dowry death, section 304B IPC, section 113B IEA, harassment, cruelty.

INTRODUCTION:

The term "dowry death" alludes to a woman's unnatural death caused by her husband or in-laws harassing and torturing her to extract dowry. Suicide or murder may have been the cause

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of the death. As was already stated, the custom of giving dowry to the groom and his family led to an increase in dowry-related fatalities in India. Even after providing the dowry, women are tortured by the husband or his family for extra dowry from the woman's family in the form of cash or products. The Indian government enacted the Dowry Prohibition Act in 1961 to reduce dowry-related fatalities. There was no change in the number of dowry deaths despite the existence of extremely strict regulations against it. The women are still tortured and harassed for dowry in their households. In any dowry death case, it is of utmost importance to establish the defendant's guilt before the Court so that they can be punished accordingly for the offense they did. According to the general rule of burden of proof, presumption of innocence applies until guilt is proven beyond reasonable doubt. However, in suspicious situations, the law may change the assumption of guilt. To tackle the growing problem of dowry deaths the change in the burden of proof is necessary.

STATEMENT OF PROBLEM-

In this present paper, the research revolves around burden of proof in dowry death cases and the interpretation of criterions based upon which presumptions are drawn under section 113A and 113B of the Indian Evidence Act, 1872. As presumptions of accused being guilty in dowry death cases are taken by the court on a conjoint reading of sections 304 B and 498A of IPC along with section 113B of IEA, 1872, The researcher shall look into whether this presumptions which are made are advantageous or disadvantageous in nature. Whether the mandatory nature of taking presumption against the accused under section 113 B is biased in nature and whether it serves the real purpose of justice or not will be examined. Also, the researcher will try to find loop holes if there are any in the sections dealing with dowry death cases.

RESEARCH QUESTIONS:

1. What must the prosecutor demonstrate to establish that the case constitutes a dowry death?
2. Is the presumption made under section 113B of IEA, 1872, biased?

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3. What was the necessity of inserting provisions relating to shifting the burden of proof from the prosecution to the accused?
4. Can seven years be considered a reasonable time to constitute as a criteria of Dowry death?

HYPOTHESIS:

The mandatory presumption taken under section 113B of IEA, 1872, that the accused is guilty of dowry death, is advantageous and is not biased. Further, The criteria of dying within seven years of marriage according to dowry death under section 304B IPC, which is further connected to section 113B of IEA, 1872, is not reasonable and is more disadvantageous.

RESEARCH OBJECTIVES:

1. To observe the shift of burden of proof in dowry death cases in light of recent case laws.
2. To analyze the effects of presumption drawn under section 113A & 113B OF IEA, 1872 in dowry death cases.
3. To analyze the essentials considered by the courts in the recent case laws dealing with the connection of section 113A & 113B of IEA with Section 304B & 498 A of IPC.

SCOPE/LIMITATIONS OF THE STUDY-

The Scope of this research paper is restricted to India and the provisions prevalent in India. The Study is intended to analyze the burden of proof in case of dowry deaths, hence restricted to only dowry death cases in India. The study comprises of all the relevant sections which deal with dowry deaths and looks into the essentials of those sections. Further the scope of the study entails the recent land mark judgments dealing with burden of proof in dowry death cases.

RESEARCH METHODOLOGY-

The current research paper demands doctrinal research. Further, the researchers also used qualitative descriptive research methodology in this paper. The authors garnered data from the provisions, judicial precedents, and other online databases in the form of journals,

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research papers etc. The main objective of this research paper is to find out whether the presumptions raised under section 113A & 113B of IEA, is advantageous or not and whether it is biased or not. The researchers will analyze these presumptions based on which burden of proof shifts to the accused.

LITERATURE REVIEW-

The researcher began to research about this topic and tried to gain initial understanding on this topic with the help of book on "The Law of Evidence by Batuk Lal",² which has given the researcher a comprehensive idea regarding sections 113A and 113B of the Indian Evidence Act 1872. The researcher could understand the ingredients of these sections and the presumptions raised under them.

Further, the research paper "Presumption as to Dowry Death: An Analysis of Section 113B of Law of Evidence Act, 1872" by Chestha Kapoor³ discussed how section 113 B has helped in establishing the guilt of the accused under section 304 B IPC and further compares section 113A & 113B of the Indian Evidence Act. The author has also shed light on Judicial pronouncements which dealt with essentials of presumptions. Further, This paper has enlightened the researcher on the key role played by section 113 B in dowry death cases and how it differs from section 113A of IEA.

The researcher looked into another paper on "Origin of Dowry System and Section 304-B of Indian Penal Code, 1860 by MR. KAUSTAV CHOUDHURY"⁴ The author explained the connection between section 304-B, section 498 A of IPC, and section 113B of IEA, 1872, to take up a presumption against the accused in dowry death cases. Further, the author explained the aspect of unnatural death in the light of case laws and concludes that laws need to be strictly implemented.

To get the apex court's view regarding the application of relevant sections in dowry death cases, the researcher referred to the book "Leading Cases on Dowry" by Anita Rao &

² BATUK LAL, THE LAW OF EVIDENCE 543-550, (22nd ed. 2018)

³ Chestha Kapoor, Presumption as to Dowry Death: An Analysis of Section 113B of Law of Evidence Act, 1872, JCLJ, 9 2023, <https://www.juscorpus.com/wp-content/uploads/2023/02/155.-Chestha-Kapoor.pdf>.

⁴ Kaustav Choudhary, Origin of Dowry System and Section 304-B of Indian Penal Code, 1860, 2, Inter. J. Leg. Sci. Innov, 14 2020, <https://www.ijlsi.com/wp-content/uploads/Origin-of-Dowry-System-and-Section-304-B-of-Indian-Penal-Code-1860.pdf>.

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Svetlana Sandra Correya,⁵ which gave a deep analysis of Supreme Court judgments in dowry deaths. The researcher looked into the evolution of the presumption principle under sections 113A & B of IEA, 1872, the proximity test, and how the apex court has conjointly used sections 304 B & 498 A IPC with section 113B of IEA. The authors concluded stating that the courts must not loosen their grip on dowry cases by diluting legal provisions in order to conform with socio-cultural practice.

The researcher referred an article titled “S. 304-B IPC and S. 113-B of the Evidence Act are decisive provisions to ascertain unnatural death as dowry death: Allahabad HC explains by Bhumika Indulia,⁶ which explained how these sections play a crucial role in explaining the unnatural death as dowry death. The author also explained how these sections cast the burden of proof on the accused and explained the judicial stance in case of presumption in dowry deaths.

CHAPTER 1: BURDEN OF PROOF ON PROSECUTION

1.1 GENERAL IDEA OF THE BURDEN OF PROOF AND ITS SIGNIFICANCE

The term burden of proof is not defined in Indian Evidence Act. Burden of proof refers to the obligation of the party to establish the veracity of the claimed fact that will enable the court to rule in their advantage. For instance in murder trials, the prosecution is required to prove each claim made by the prosecution that establishes the presence of elements of murder⁷. The burden of evidence is defined as “whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist” under Section 101 of the Indian Evidence Act. It is argued that the burden of

⁵ Ms. NANCY CRUZ AND Ms.RIDDHIMA PABBI, LEADING CASES ON DOWRY 201-234 (Human Rights Law Network (HRLN) 2011)

⁶ Bhumika Indulia, *304-B IPC and S. 113-B of the Evidence Act are decisive provisions to ascertain unnatural death as dowry death: Allahabad HC explains*, SCC BLOG (Jun 14, 2021) <https://www.sconline.com/blog/post/2021/06/14/dowry-death-2/>.

⁷ Dhawan, N. (2015). The burden of proof in dowry death cases: A critical analysis of the Indian legal framework. *International Journal of Legal Developments and Allied Issues*, 1(1), 27-34.

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proof rests with the party who is required to establish the existence of any truth.⁸ A party must prove a fact beyond reasonable doubt in order for the court to accept it as true and award him a favourable verdict, according to section 101.

BURDEN OF PROOF ON PROSECUTION AS PER THE PROVISIONS OF INDIAN EVIDENCE ACT AND IPC.

Burden of proof is on prosecution

The burden of producing evidence is on the prosecution to establish the guilt of the accused due to the general rule of burden of proof-presumption of innocence until guilt is established beyond a reasonable doubt. The Indian Evidence Act of 1872 and the Code of Criminal Procedure of 1973 both have provisions that uphold this idea. According to Sections 101 and 102 of the Indian Evidence Act, the burden of proof⁹ in a criminal case is on the prosecution. The Supreme Court ruled in the case of "*State of U.P. v. Anil Singh*"¹⁰ that the prosecution must establish its case beyond a reasonable doubt and cannot depend on tenuous and unlikely evidence to establish the guilt of the accused.

In the case of "*State of Punjab v. Jagir Singh*"¹¹, the Supreme Court reaffirmed that the burden of proof is with the prosecution to establish the defendant's guilt beyond a reasonable doubt; if it is not successful, the defendant must be found not guilty.

Burden of proof is on prosecution in dowry cases

The burden of proof in dowry death cases is on the prosecution to show that the wife's death was brought on by the husband or his family as a result of the dowry demand. It is the obligation of the prosecution to demonstrate the accused's guilt, and they must show this beyond a reasonable doubt.¹² There are sections in the Indian Penal Code that deal particularly with dowry fatalities. According to Section 304-B¹³ of the IPC, If a woman dies within seven years of her marriage from burns or other physical harm, or if it happens outside

⁸Shukla, R. (2017). The burden of proof in dowry death cases in India: An analytical study. International Journal of Research and Analytical Reviews (IJRAR), 4(4), 442-446.

⁹Khurana, N. (2015). The burden of proof in dowry death cases: A legal analysis. International Journal of Advanced Research in Law and Social Science, 1(1), 22-27.

¹⁰ State of U.P. v. Anil Singh, (1988) 1 SCC 715.

¹¹ State of Punjab v. Jagir Singh, (1979) 3 SCC 53.

¹²Kumari, R. (2017). Burden of proof in dowry death cases in India: A critical analysis. International Journal of Research and Analysis, 4(2), 151-155.

¹³Indian Penal Code, 1860 § 304B

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of normal circumstances, and it is shown that her husband or a relative of her husband subjected her to cruelty or harassment soon before her death because of or in connection with a demand for dowry, the death is referred to as a "dowry death" and the husband or relative is assumed to be responsible." The Indian Evidence Act's Section 113-B establishes a presumption about dowry death.

This section states that, if it is possible for the prosecution to prove that death of the women took place within seven years of marriage and she was subjected to harassment and cruelty for dowry by her husband or his relatives then the court will assume that the accused is guilty. The prosecution must demonstrate these facts beyond reasonable doubt. The notion that the burden of proof in dowry death cases rests with the prosecution has been established in a number of instances.

In the case of *Anil vs State of UP*¹⁴, the informant's sisters marriage was solemnized with appellant Anil and dowry was given to the appellant. But additional dowry was demanded by the in-laws. The informant found her dead in her matrimonial house. The appellant was convicted under section 106 of India Evidence Act and circumstantial evidence, and those are not applicable in this case according to the court. And stated that the trial judge misread the provision of section 106 of Indian Evidence Act and explained as below: It stated that when an offence like murder is committed inside a house, initial burden of proof will be on the prosecution to establish the case. According to section 106 the residents of the house will have corresponding burden to explain as to how the crime was committed. The primary burden of proof to prove that the accused was with the deceased when the incident took place will be on the prosecution. Subsequently appeal was allowed. Another case which dealt with section 106 was *Sahodar Mahto vs State of Bihar (now Jharkhand)*¹⁵. It was ruled that the prosecution has the burden of proof in all criminal cases, and that section 106 is not meant to relieve it of that responsibility. It was further stated that the prosecution need not provide details in specific as to how deceased was killed. In this case as the accused failed to describe how the deceased was discovered in one foot of water in the river, negative inferences must be made against them. According to the case facts the deceased was married to the accused and endured abuse from her spouse and in-laws and was found dead.

¹⁴ Anil v. State of UP (2022) 12 AHC CK 0008

¹⁵ Sahodar Mahto v. State of Bihar (now Jharkhand) (2023) 02 JH CK 0002

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In the case of *Manendra Singh and Others vs State of Madhya Pradesh*¹⁶, a reasonable amount was given as dowry to the appellant on the occasion of Tilak, and after solemnizing the marriage the in-laws demanded additional dowry and subsequently she committed suicide by hanging herself. The trial court framed seven points of consideration and held that as far as dowry death is concerned it is the obligation of the prosecution to demonstrate that the deceased was facing abuse and harassment by her spouse or his family members in relation to the demand for dowry soon before her death. It also held that the settled principle of criminal jurisprudence is that until and unless the prosecution produces all convincing evidences which prove the guilt of the accused, the accused cannot be held liable.

In the case of *Satyawan vs State Of U.P*¹⁷, the court mentioned the important aspects prosecution has to prove in cases of dowry death. It was held by the court that it is the responsibility of the prosecutor to demonstrate actus reus and mens rea to prove the case because according to the normal rule defendant is presumed to be innocent until proven guilty. The burden of proof shifts to the accused to establish his innocence beyond a reasonable doubt if the prosecution is successful in showing that the woman's death occurred within seven years of her marriage, soon before her death she was a victim of harassment and cruelty by her spouse and his relatives in connection with the demand.

Therefore, in dowry death cases, the prosecution must provide adequate evidence to demonstrate the guilt of the accused and show beyond a reasonable doubt that the woman's death was brought on by the husband or his relatives' cruelty or harassment related to dowry.

CHAPTER 2 -SHIFTING OF BURDEN- TO ACCUSED

The legal presumption that specific facts exist in the case of Dowry death is an illustration of this so-called "shifting burden of proof." In other words, the accused now bears the duty of proving his innocence.¹⁸ Shifting of the burden of proof, in case of dowry deaths, is dealt by sections 113 A & 113 B of the Indian Evidence Act, which has to be read along with the Indian Penal Code's (IPC) Sections 304B and 498A.

¹⁶ Manendra Singh and Others v. State of Madhya Pradesh 2023 SCC Online MP 771

¹⁷ Satyawan vs State Of U.P (2022) 07 AHC CK 0005

¹⁸ Sen,P.(2017). The burden of proof in dowry death cased:A critical analysis. Journal of legal studies,5(1),18

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After the Prosecution successfully establishes proof regarding the guilt of the accused, the accused has to discharge that burden of proof to prove himself innocent. As per section 113 B of the Indian Evidence Act¹⁹, When the question pertains to the involvement of a person in dowry death of a woman and it is shown that the woman was facing cruelty or harassment by the person in question soon before her death because of or in connection with any dowry demand, the Court shall presume that the person was responsible for the dowry death. This above section should be read along with section 304 B of IPC²⁰.

The words "soon before she passed away" under section 113 B of IEA, 1872, indicate time's proximity. Thus, the courts will decide the time frame that qualifies as "soon before her death" based on the facts & circumstances of each case. This was well explained in the case of SATBIR SINGH V. STATE OF HARYANA²¹.

In this case, the deceased committed suicide within one year of her marriage due to constant pressure for dowry by her inlaws. Her father, filed a complaint against her husband and her in-laws for dowry death. In this case, the Court observed that a week before her death, she confessed to her brother regarding the pressure for a dowry which shows that there was a live and Proximate link between the death and cruelty made for dowry by her inlaws.

Further, it stated that the phrase " Soon Before Death" shouldn't be interpreted strictly and cannot be construed as immediately before death. There must be a proximate and live link between death and cruelty or harassment made for dowry. Based upon this criterion and the deceased dying unnatural death within one year of her marriage, the Court thus stated that presumption under section 113B had been cast upon the accused, and he has the burden of proof to prove himself innocent. In this case, the Court has upheld the judgment the trial court and High Court gave.

It is to be noted that the claimed act of cruelty would not matter if it happened in the past and has aged well enough not to affect the woman mentally. Cruelty implies both physical and mental, which has harmed the deceased. In other words, the idea of a proximity test requires a direct and ongoing connection between death and the cruelty caused by dowry demand.

¹⁹ Indian Evidence Act, 1872§ 113(B).

²⁰ Indian Penal Code 1860 § 304B.

²¹ Satbir Singh V. State Of Haryana, Air 2021 Sc 2627

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Maya Devi v. State of Haryana²²

In this case, the deceased (Kavitha) was harassed by her husband for dowry, due to which she committed suicide. Later the accused were found guilty by the sessions court, who later appealed to the High Court, which looked into the following aspects under section 113B of IEA, 1872 and Section 304B IPC-

Every time Kavitha gave money to her inlaws, a new request for some more money or things used to come up by the appellants, and she was harassed for the same. She even confessed about picking suicidal ideas due to the harassments she faced to the doctor who treated her. This act of ill-treatment continued till she died; hence the phrase "soon before her death" and her committing suicide, which is an unnatural death within seven years of her marriage, qualifies the criteria mentioned under section 113-B of IEA, 1872 & section 304B IPC. As the appellants couldn't successfully rebut the presumption of being guilty under section 113B of IEA, 1872, they were held guilty.

Kiran Kumar v. State of Kerala²³

In this case, Vismaya was married to the appellant, who later hanged herself in the toilet of their marital home because she was unable to stand the physical & mental abuse and brutal matrimonial demands for dowry from her husband. She was subjected to severe emotional and physical abuse by the appellant, who also encouraged and assisted her suicide. The trial court found the accused guilty, who appealed against the sentence in High Court, stating that there were patent infirmities in the order of conviction.

The appellant stated that the dowry demand was not made at the time of marriage, and there was no proper evidence to show that she was subjected to cruelty & harassment soon before she died concerning dowry. The High Court looked into the facts of the case where the appellant's father, after marriage, had spoken to Vismaya regarding car and gold ornaments to be given as extra dowry and were not happy with what was given to them at the time of marriage. Relying on this telephonic conversation, the Court stated that though there was no

²² Maya Devi v. State of Haryana, (2015) 17 SCC 405

²³ Kiran Kumar v. State of Kerala, 2022 SCC OnLine Ker 6614

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demand for dowry at the time of marriage, the appellant's subsequent demand for dowry after marriage attracts the definition of Dowry under section 2 of the Dowry Prohibition Act, 1961²⁴.

Coming to the second allegation made by the appellant, the Court relied on the exhibits submitted by the Prosecution and observed that, even after *vismaya* returned back to her matrimonial home, She had many fights with him regarding dowry, which shows that she was subjected to cruelty & harassment soon before her death. Hence, the High Court upheld the sentence imposed upon the appellant.

*Bansi Lal v. State of Haryana*²⁵

In this case, the appellant was married to his wife Sarla, who was constantly harassed to give a scooter as dowry, due to which Sarla even left her matrimonial home and stayed with her parents for fourteen months. After Panchayath by her relatives, she was sent back to her matrimonial home, where she committed suicide. A few days before her death, she confessed to her brother regarding the dowry demands made by her inlaws and the harassment she was facing. The Court held that based upon the above facts, there is a proximity between her death and the harassment she was subjected to; in this situation, the presumption under section 113B becomes applicable to the accused.

The Court observed that It should be noted that the legislature, in its wisdom, used the word "shall," making it mandatory for the Court to assume that the individual who had subjected her to cruelty or harassment in association with any demand for dowry had killed her. It is unlike the provisions of Section 113-A of the Evidence Act where a discretion has been conferred upon the Court wherein it had been provided that the Court may presume abetment of suicide by a married woman.²⁶ Therefore, relying upon the above one, the onus is on the

²⁴ Dowry Prohibition Act, 1962, § 2, No.28, Acts of Parliament, 1962(India).

²⁵ *Bansi Lal v. State of Haryana*, (2011) 11 SCC 359

²⁶ *Id.*

accused to rebut this presumption. Further, Section 113-B, relating to Section 304-B IPC, the onus to prove shifts exclusively and heavily on the accused.

Hence, in this case, the burden of proof was shifted on the accused to rebut the presumption against him, which he failed to do and was held guilty.

This case clearly distinguishes between sections 113A & 113 B. Under 113A, it may presume, which is based upon facts of the case, whereas under section 113 B, the shall presume is based upon the presumption of law, thus being mandatory in nature. The common link between these sections is that the presumptions taken under them are rebuttable.

Gurmeet Singh v. State of Punjab²⁷-

In this case, the deceased committed suicide by consuming poison due to pressure induced by her inlaws to bring more dowry. In this case, the complainant, the father of the deceased, mentioned that the inlaws & husband of his daughter used to harass her into giving a car as dowry or equivalent cash to it, and when the complainant failed to fulfill their wish, his daughter was harassed again. Further, 15-20 days before her death, the deceased informed her parents regarding the constant pressure for the car and the harassment she was subjected to.

The Court, in this case, held that, as the ingredients provided under section 304B of IPC have been fulfilled, i.e., the death took place within four years, the death occurred in an abnormal circumstance & she was subjected to cruelty soon before her death. Hence, the burden of proof shifts on the accused persons under section 113 B of the Indian Evidence Act 1872, and it's up to them to rebut it. Further, the accused failed to rebut this presumption as they couldn't adduce any evidence to support the same, and the Court found them guilty.

Therefore, in light of the above case laws, it can be established that the ingredients under section 304B IPC need to be successfully established by the Prosecution only after which the presumption under article 113 B of the IEA, 1872, can be taken by the Court against the accused. But, at the same time, it is observed in the case of *Satbir Singh v. State of*

²⁷ Gurmeet Singh v. State of Punjab, LL 2021 SC 262.

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*Haryana*²⁸ that “the Judges, the Prosecution, and the defense should exercise caution when conducting a trial since Section 304-B IPC read together with Section 113-B of the Evidence Act has a precarious nature.

Further, it was also observed in the same case that the accused must be shown evidence that could be used against him in Court, and the Court should seek a response from him. The accused's solicitor must carefully plan his client's defense from the beginning of the case, considering Section 304-B of the IPC and Section 113-B of the Evidence Act's peculiarities.²⁹

Similarly, as under section 113 B of IEA, a presumption can also be drawn under section 113A of IEA, which states that "When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by a such relative of her husband."³⁰ Cruelty under this section shall have the same meaning as under section 498A of IPC.³¹ Under this section, its up to the discretion of the court whether it would take presumption of guilt of accused or not, if it takes such presumption then it can be rebuttable.

NEED FOR A CHANGE:

The general principle of criminal jurisprudence as observed from above mentioned statements is that the burden of proof is on the prosecution and it has to prove the case beyond reasonable doubt. But the question here is whether this general principle is consistent with the present social world. Given the rising crime rate, there should be some change in the legislation to protect many innocent women from the clutches of death. Bentham, father of English Law has observed that “every precondition that is not essential to protect the innocent provides crime with a dangerous hiding place”³². If a criminal escaped from the punishment then it means that an innocent is becoming victim to another crime. Palsy holds similar

²⁸ Satbir Singh V. State Of Haryana, Air 2021 Sc 2627

²⁹ *Id.*

³⁰ Indian Evidence Act, 1872§ 113(A).

³¹ Indian Penal Code 1860 § 498A.

³² Dowry Deaths: Burden Of Proof, 37 JILI (1995) 519

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opinion and stated the maxim “Let ten guilty persons escape but not an innocent person suffer”³³.

Therefore it can be said that in view of escalating crime rate there has to be some change in our law with regard to the burden of proof. And such reformation in the law is that raising of mandatory presumption against the accused in cases of dowry death. This may be very harsh but keeping in mind the increasing number of dowry deaths, it was necessary to incorporate this provision. In the case of *Baijnath and Ors. Vs. State of Madhya Pradesh*,³⁴ it was held by the court that the accused cannot be found guilty by relying solely on the presumption to make up for the lack of sufficient evidence if the prosecution is unable to establish such fact through cogent, coherent, and convincing evidence.

LOOPHOLES:

Legislature has inserted this section with an idea to raise a presumption against the husband or the husband's family for the abetment of suicide since brutal treatment of a married woman is typically restricted within the four walls of the matrimonial house, and it is difficult to get direct proof. It is observed by the Court that the legislature expects that the couple would have settled down in life after this turbulent seven-year period, which is considered to be a turbulent time.³⁵

But, this period cannot be considered a tenable one, as married women might still face dowry demands even after seven years of their marriage due to any financial crisis or in need of money in the family or due to any sudden wishes by her husband or her-inlaws. There can also be a situation wherein there would not have been any demand for dowry at the beginning of the marriage. After seven years of the marriage, when the woman is settled in her marital family, then the inlaws may harass her to bring dowry, taking advantage of her situation where it is hard for the woman to leave her settled family life and is now only left with the option to bring the demanded dowry and continue her settled life.

In most of the dowry death cases, family members are the complainants based on whose testimony the accused are mostly convicted as producing direct evidence is difficult in this

³³ *Id.*

³⁴ *Baijnath and Ors. Vs. State of Madhya Pradesh*, 1966 SCR (1) 210

³⁵ *State of Punjab v. Iqbal Singh*, (1991) 3 SCC 1

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kind of cases. But this lands the accused in a disadvantageous position as the complainants can exaggerate their statements against accused to get him harsher punishment.

The job of administering justice is extremely difficult and it will become more challenging when there is very minimal support from the society. In cases of dowry death it will become almost impossible for the prosecution or the accused to prove any fact regarding harassment and cruelty for dowry when there is no social support.

CONCLUSION & SUGGESTIONS:

According to the general principle of criminal jurisprudence, the burden of proof is on the prosecution to prove the guilt beyond reasonable doubt. As the crime rate is escalating, it became difficult for the prosecution to prove the guilt in every case. Shifting of burden of proof is one of the great developments in legislature as it strengthened the effect of the law and became a curse to the culprits as they have to prove their innocence. In Dowry death cases, especially having a mandatory presumption under section 113B of IEA, 1872, has been very advantageous in cases where the accused has caused the death of a woman by harassing her for dowry.

This presumption has been extremely helpful in resolving this problem because it is challenging to acquire evidence in dowry death cases. To provide justice, the Court's liberal interpretation of "soon before death" is a boon to the victim's family, as it checks the proximity between the death and harassment based on facts & circumstances of each case. Further, having presumptions under sections 113A & 113B of IEA, which are rebuttable, shows that the legislature has given a fair chance to the accused to rebut this presumptions thus being unbiased to both of the parties.

A Few suggestions regarding this area are-

- 1) That the seven years time period be considered to be removed and the provision of section 304 B should not be made time bound.
- 2) The court should be cautious while taking mandatory presumption under section 113B of IEA, as sometimes, the family members of deceased try to falsely implicate innocent accused in dowry death cases.

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- 3) The legislature should include the concept of confidentiality in admitting evidence given by people who are relatives or friends to the accused as often such people get scared or dubious of becoming a witness due to their personal relation with the accused thus resulting in loss of evidence.
- 4) The Government should also educate people regarding the importance of giving evidence in case of dowry deaths.



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